Passage of the

Transport (Scotland) Bill 2004

SPPB 84

Volume 1
Passage of the

Transport (Scotland) Bill 2004

SP Bill 28 (Session 2), subsequently 2005 asp 12

SPPB 84

Volume 1: Introduction and Stage 1

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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. Extracts from the Official Report are re-printed as corrected for the archive version of the Official Report.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
- Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.
After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Clerking and Reporting Directorate. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Enterprise and Culture Committee and the Finance Committee both reported to the Local Government and Transport Committee on the Bill at Stage 1. Their reports are included in Annexe A of the Stage 1 Report. However, the minutes and also the oral and written evidence for meetings of these Committees were not included in the Stage 1 report, and they are therefore included in this volume after the report. The appendices from the Subordinate Legislation Committee’s report to the Local Government and Transport Committee on the Bill at Stage 1 were also not included in that report, and are likewise included.

Forthcoming titles

The next titles in this series will be:

- SPPB 85: Smoking, Health and Social Care (Scotland) Bill 2004
- SPPB 86: Management of Offenders etc. (Scotland) Bill 2005
- SPPB 87: Environmental Assessment (Scotland) Bill 2005
- SPPB 88: Licensing (Scotland) Bill 2005
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Transport (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to provide for the setting up and functions of new transport bodies and to enable the Scottish Ministers to discharge certain transport functions; to provide further for the control and co-ordination of road works and for the enforcement of the duties placed on those who carry them out; to set up national concessionary fares schemes; and to make other, miscellaneous modifications of the law relating to transport.

PART 1

REGIONAL TRANSPORT

CHAPTER 1

REGIONAL TRANSPORT PARTNERSHIPS

Establishment etc.

1 Establishment of regional Transport Partnerships

(1) The Scottish Ministers shall, by order—

(a) divide Scotland into regions for the purposes of this Part of this Act;

(b) create, for each region, a body corporate (to be known as the Transport Partnership with the addition of the name given, by or under the order, to the region);

(c) provide as to the constitution of each Transport Partnership.

(2) In carrying out the duty under subsection (1)(c) above, the Scottish Ministers—

(a) shall secure that the membership of a Transport Partnership includes a councillor (but only one councillor) appointed by and from each council the area or any part of the area of which falls within the Transport Partnership’s region (each such member of the Transport Partnership being a “councillor member” and each such council being, in relation to the Transport Partnership, a “constituent council”);

(b) shall secure—
(i) that during the period ending with the event specified in subsection (3) below, the other members of the Transport Partnership are appointed to it by the Scottish Ministers; and

(ii) that afterwards each such member is appointed by the Partnership but subject to the consent of the Scottish Ministers;

(c) shall provide as to the duration and termination of membership of members of the Transport Partnership;

(d) shall provide as to the determination of questions for decision by the Transport Partnership; and for the purposes of any decision which is to be determined by a vote—

(i) shall provide that each member has a single vote;

(ii) shall, subject to subsection (4) below, provide as to weightings to be applied to the votes cast by councillor members; and may in so doing provide as to different weightings to be applied to the votes cast by different councillor members;

(iii) shall secure, whether in providing as to the weighting of votes of councillor members in accordance with sub-paragraph (ii) above or in providing for the number of other members, or in a combination of both, that the minimum voting capacity of all the councillor members of the Partnership is not less than two-thirds of that of its whole membership;

(e) may provide that certain of the offices of the Transport Partnership may be held only by councillor members;

(f) may provide that councillor members (but only councillor members) may be represented and vote by proxies at meetings of the Transport Partnership;

(g) may provide for the appointment by each of—

(i) the Transport Partnership; and

(ii) the Scottish Ministers,

of one or more observers, that is to say, persons who may (to such extent as may be specified in or provided for in the order) participate in proceedings of the Partnership but who may not hold office in it or participate in its decisions.

(3) The event referred to in subsection (2)(b) above is the holding of the poll at ordinary elections for councillors in 2007.

(4) For the purpose of subsection (2)(d)(ii) above, a vote shall be weighted by making it count as one, two, three or four votes.

2 Dissolution of RTPs

(1) The Scottish Ministers may, by order, dissolve any one or more Transport Partnerships or all of them.

(2) The Scottish Ministers shall, before making an order under this section, consult the Transport Partnership or Partnerships to be dissolved and its (or their) constituent councils.

(3) An order under this section may modify any enactment.
Administration

3 Funding and borrowing

(1) The net expenses of a Transport Partnership for each financial year shall be paid by its constituent councils.

(2) The share of the expenses to be paid by a constituent council under subsection (1) above shall be—

(a) such as the Transport Partnership, having regard to its transport strategy, thinks fit; or

(b) where the Partnership is unable to decide, such as is determined by the Scottish Ministers by order.

(3) The Scottish Ministers may, by order, provide as to the arrangements for the payment of amounts payable under this section.

(4) For the purposes of this section, the net expenses of a Transport Partnership for a financial year are those of its expenses for that year which are not met—

(a) by a grant made by any person which is not repayable;

(b) by a grant so made which is subject to a condition requiring repayment and which remains unsatisfied; or

(c) by any other income for that year.

(5) A Transport Partnership may borrow money for the purpose of its capital expenditure.

(6) In this section, “financial year” means the period of 12 months ending with 31st March.

4 Administrative functions of RTPs

Schedule 1 provides as to the administrative functions of Transport Partnerships.

Regional transport strategies

5 Formulation and content of regional transport strategies

(1) It is the duty of each Transport Partnership to draw up a strategy for transport within its region (its “transport strategy”).

(2) The matters to which the Transport Partnership shall give consideration when carrying out that duty include—

(a) the respects in which that transport needs to be developed or improved, including those respects which relate to future needs;

(b) the respects in which the transport which is or might be provided or facilitated within the region affects or might affect the well-being (including the social and economic well-being) of persons there and the environment;

(c) the respects in which the transport referred to in paragraph (b) above secures or will secure the needs of any parts of the region which the Partnership considers to be different from the remainder of the region by reason of their remoteness or their being sparsely populated;
(d) the respects in which the transport referred to in paragraph (b) above should integrate with transport which is or might be provided or facilitated elsewhere;

(e) the respects in which the transport referred to in paragraph (b) above will contribute to the realisation of the transport policies of the Scottish Ministers;

(f) what—

(i) might be done to achieve the development and improvement, social and economic well-being and integration respectively referred to in paragraphs (a), (b) and (d) above and the conservation and enhancement of the environment; and

(ii) having regard to cost, funding and practicability, is to be done to achieve them;

(g) how progress towards those achievements is to be measured and monitored;

(h) how the functions conferred by and under this Act on the Transport Partnership are to be exercised so as to fulfil its transport strategy and, where the Transport Partnership considers that the conferring of further functions is necessary for that purpose, what those functions are;

(i) the respects in which the Transport Partnership, so as to enable it to fulfil its transport strategy, is to seek to influence its constituent councils in the performance of their functions relating to transport and how the Transport Partnership would do so.

(3) In performing its duty under this section, a Transport Partnership shall have regard to any guidance in that respect given to it or to Transport Partnerships generally by the Scottish Ministers.

6 Procedure before and after the drawing up of transport strategies

(1) A Transport Partnership shall—

(a) before arriving at its transport strategy, consult its constituent councils and such other persons as it thinks fit;

(b) within 12 months of its creation under section 1 above, submit its transport strategy to the Scottish Ministers.

(2) A transport strategy has effect for the purposes of this Act when it is approved by the Scottish Ministers.

(3) In deciding whether to approve a transport strategy, the Scottish Ministers shall include among the matters to which they have regard the extent to which it will contribute to the realisation of their transport policies.

(4) On approving its transport strategy, the Scottish Ministers shall inform the Transport Partnership of that fact.

(5) On being so informed, the Transport Partnership shall—

(a) inform its constituent councils that its transport strategy has effect, specifying the date when it took effect;

(b) send each of them a copy of the transport strategy; and

(c) publish the transport strategy in such manner as it thinks fit.
7  **Review, modification and renewal of transport strategies**

   (1) A Transport Partnership—

       (a) shall keep its transport strategy under review;

       (b) may modify its transport strategy or draw up a new one;

       (c) shall, within such period as is specified in a direction by the Scottish Ministers requiring it to do so, draw up a new transport strategy.

   (2) Sections 5(2) and (3) and 6(1)(a) and (2) to (5) above apply in relation to the modification of a transport strategy and the drawing up of a new one as they apply in relation to the drawing up of a Transport Partnership’s original transport strategy.

   (3) A direction given for the purposes of subsection (1)(c) above may be given to one or more or all Transport Partnerships.

8  **Duty of constituent councils and other public bodies as respects transport strategies**

   (1) A constituent council shall, so far as possible, perform those of its functions which relate to or which affect or are affected by transport consistently with the transport strategy of the (or, as the case may be, each) Transport Partnership of which it is a constituent council.

   (2) Each specified public body shall, so far as possible, perform those of its functions and activities which relate to or which affect or are affected by transport consistently with the transport strategy of the (or, as the case may be, each) Transport Partnership in relation to which it is specified.

   (3) In subsection (2) above, “specified” means specified by order made by the Scottish Ministers and in specifying a public body for the purposes of that subsection, the Scottish Ministers shall specify the Transport Partnership or Partnerships in relation to which it is specified.

9  **Joint transport strategies**

   (1) Two or more Transport Partnerships may together, in the discharge of their respective duties under sections 5 and 6(1) above, draw up a joint transport strategy for transport within their combined regions.

   (2) This Part of this Act applies in relation to the Transport Partnerships which draw up a joint transport strategy, to their combined regions and to that strategy as it applies to a Transport Partnership, its region and its transport strategy.

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**Regional transport functions**

10  **Other transport functions of RTPs**

   (1) The Scottish Ministers may, by order, provide for any function relating to transport, being a function under any enactment, which they, having regard to a Transport Partnership’s transport strategy, think fit, to be carried out by that Transport Partnership—
(a) instead of the person who, immediately before it was so provided, was responsible
for carrying it out; or
(b) concurrently with that person.

(2) The person referred to in subsection (1) above may be the Scottish Ministers.

(3) A Transport Partnership which proposes to request the making of an order under
subsection (1) above shall, before doing so, consult its constituent councils on what the
order might do.

(4) In making such a request, a Transport Partnership shall have regard to any guidance
given by the Scottish Ministers as to the form and content of such requests.

(5) Before making an order under subsection (1) above, the Scottish Ministers shall
consult—
(a) except where the order will be made at its request, the Transport Partnership to
which the order will relate;
(b) its constituent councils; and
(c) such other persons as the Scottish Ministers think fit.

(6) An order under subsection (1) above may modify any enactment.

(7) Notwithstanding subsection (1) above, the Scottish Ministers may, if they consider it
expedient to do so, by order, provide for any function of the kind specified in section
12(2) below to be carried out by a Transport Partnership.

(8) Subsections (3) to (6) above apply to an order made under subsection (7) above as they
apply to one made under subsection (1) above.

11 Manner of performance of RTPs’ functions

A Transport Partnership shall—
(a) carry out its functions so as to fulfil its transport strategy;
(b) in doing so—
(i) comply with any directions in that respect given to it or to Transport
Partnerships generally by the Scottish Ministers; and
(ii) measure and monitor progress towards the achievements referred to in
section 5(2)(f) above.

12 Transport functions of Scottish Ministers

(1) The Scottish Ministers may, by order, provide for any function of the kind specified in
subsection (2) below which they think fit to be carried out by them—
(a) instead of the person who, immediately before it was so provided, was responsible
for carrying the function out; or
(b) concurrently with that person.

(2) That kind of function consists of any function—
Part 1—Regional transport

Chapter 3—Consequential provision

13 Transfer of staff, property and liabilities

(1) The TUPE regulations apply in relation to any function transferred by virtue of section 2, 10 or 12 above whether or not those regulations would so apply apart from this subsection.

(2) Where, by virtue of the TUPE regulations, whether as applied by subsection (1) above or not, a member of staff (the “employee”) of a body, authority or other person (the “former employer”) becomes an employee of another body, authority or other person (the “new employer”) in consequence of the transfer of a function by virtue of section 2, 10 or 12 above, the employee’s period of employment by the former employer counts, for the purposes of the Employment Rights Act 1996 (c.18), as a period of employment by the new employer and the change of employment does not break the continuity of the period of employment.

(3) For the purposes of subsections (1) and (2) above, a function is to be regarded as transferred by virtue of section 2, 10 or 12 above irrespective of how the transfer is described in that section or in the order made under it.

(4) Where, by virtue of section 2, 10 or 12 above, a function of one body, authority or other person (the “original”)—

(a) becomes that of another; or

(b) falls to be no longer carried out,

the Scottish Ministers may, by order, provide for the transfer to that other body, authority or other person or, as the case may be, to such body, authority or other person as they think fit of such of the original’s property and liabilities as are specified in or otherwise identified by the order.

(5) Subsection (4) above has effect in relation to property and liabilities specified in or identified by an order made under it despite any provision (of whatever nature) which would otherwise prevent or restrict its operation or that of the order; and any provision which would penalise that operation is disapplied.

(6) In this section, the “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) (or any regulations replacing those regulations) as from time to time amended.
14 **Creation, appointment, status and funding of Scottish Road Works Commissioner**

5 (1) There is, by this Act, created an office, the holder of which is to be known as the Scottish Road Works Commissioner (in this Part, “the Commissioner”).

(2) The Commissioner shall be appointed, on such terms and conditions as they determine, by the Scottish Ministers.

(3) Those terms and conditions may include arrangements relating to the payment of pensions, allowances or gratuities to, or in respect of, persons who have ceased to hold office as the Commissioner.

(4) The Commissioner is not a servant or agent of the Crown and has no status, immunity or privilege of the Crown.

(5) The Scottish Ministers may make grants to the Commissioner in respect of the Commissioner’s expenses.

15 **Functions of Commissioner**

(1) The Commissioner has the general functions of—

(a) monitoring the carrying out of works in roads in Scotland;

(b) promoting compliance with the 1991 Act and obligations imposed under it; and

(c) promoting the pursuit of good practice by those persons who have functions conferred on or permissions granted to them by or under that Act, as well as the particular functions conferred upon the Commissioner by or under that or this Act.

(2) The Commissioner may, for the purposes of the discharge of the general functions referred to in paragraphs (b) and (c) of subsection (1) above, assess whether the persons referred to in subsection (1)(c) above are complying with the 1991 Act and any obligations imposed on them under it and are following good practice.

(3) In this section “good practice” means compliance with—

(a) any code of practice issued or approved under the 1991 Act or any direction issued under that Act; and

(b) subject to such codes and directions, such practice in the doing by the persons referred to in subsection (1)(c) above of what they must or may do by or under the 1991 Act as appears to the Commissioner to be desirable.

(4) Schedule 2 provides further as to the Commissioner.

(5) The Commissioner may do anything calculated to facilitate the discharge of any of the Commissioner’s functions.
Duty of road works authority and undertakers to provide Commissioner with information

1. A road works authority or an undertaker shall, on being required to do so by the Commissioner, provide the Commissioner with such information relevant to their respective functions and activities as the Commissioner reasonably asks for for the purposes of the performance of the Commissioner’s functions.

2. For the purposes of subsection (1) above, information is relevant to functions or activities if it is information which the authority or undertaker possesses or can reasonably be expected to acquire.

3. Where—
   a. a road works authority or an undertaker; and
   b. the Commissioner,
do not agree as to whether information asked for by the Commissioner in pursuance of subsection (1) above is reasonably asked for, the matter shall be settled in such manner as may be prescribed by the Scottish Ministers by regulations.

4. Where regulations under subsection (3) above prescribe that a matter is to be settled by arbitration, section 158 of the 1991 Act shall apply in relation to that matter as that section applies in relation to a matter which, under Part 4 of that Act, is to be so settled.

The Scottish Road Works Register

17. For section 112 (the road works register) of the 1991 Act there are substituted the following sections—

112A. The Scottish Road Works Register

1. The Scottish Road Works Commissioner (in this Part, “the Commissioner”) shall keep a register, to be known as the Scottish Road Works Register (in this Part, “the SRWR”).

2. The SRWR shall be kept in such form and manner as may be prescribed.

3. The Commissioner shall make arrangements so as to enable any person who is required, by a provision of this Act, to enter particulars, information or a notice in the SRWR, to have access to the SRWR for that purpose.

4. The Commissioner shall make the SRWR available, at all reasonable times and free of charge, for inspection—
   a. so far as it relates to restricted information, by any person having authority to execute works of any description in the road in respect of which that restricted information is kept in the SRWR or who, not being a person having that authority, nevertheless appears to the Commissioner to have a sufficient interest in that information,
   b. so far as it relates to information which is not restricted, by any person.

5. In subsection (4), “restricted” information is information of a prescribed description.
Duty to enter certain information in the Scottish Road Works Register

(1) A road works authority shall enter in the SRWR such particulars of each road for which the authority are responsible as may be prescribed.

(2) A road works authority which has—

(a) under section 109, granted permission as regards apparatus and works,
(b) under section 115, given directions as to the timing of works, or
(c) under section 115A, given directions as to the placing of apparatus,

shall enter in the SRWR such information relating to that matter as may be prescribed.

(3) A roads authority which has—

(a) under section 85 of the Roads (Scotland) Act 1984 (c.54), given permission for the deposit of a skip on a road for which a road works authority are responsible,
(b) under subsection (2) of section 86 of that Act, required the removal or repositioning of a skip deposited on such a road or removed or repositioned such a skip,
(c) become aware that a constable has, under subsection (1) of that section, required or caused the removal or repositioning of such a skip,
(d) given notice under—

(i) section 87 of that Act requiring the removal of a structure from a road for which a road works authority are responsible and (where considered requisite under that section) the reinstatement of the road, or
(ii) section 88 of that Act requiring the removal or alteration of a projection affecting such a road,
(e) under section 90 of that Act, given consent for the fixing or placing of an overhead bridge, beam, rail or other apparatus along or across such a road,
(f) under section 91 of that Act, served notice requiring work to be done or carried out work in relation to such a road, or
(g) under section 92 of that Act, given consent to the planting of a tree or shrub near a carriageway or required its removal, where the carriageway is, or is part of, such a road,

shall enter in the SRWR such information relating to that matter as may be prescribed.

(4) Information to be entered in the SRWR under this section shall be entered in such form and manner as may be prescribed.”.

(2) In section 113 of the 1991 Act (giving of advance notice of certain road works)—

(a) in subsection (1) “to the road works authority” is repealed; and
(b) for subsection (3) there is substituted—

“(3A) For the purposes of subsection (1) an undertaker gives notice by entering in the SRWR such information as may be prescribed.”.
(3) In section 114 of the 1991 Act (notice of starting date of road works)—
(a) in subsection (1) the words from “to”, where thirdly occurring, to the end are
repealed; and
(b) for subsection (3) there is substituted—
“(3A) For the purposes of subsection (1) an undertaker gives notice by—
(a) giving to any relevant authority (not being the road works authority) and
to any other person having apparatus in the road which is likely to be
affected by the works a notice—
(i) stating the date on which it is proposed to begin the works, and
(ii) containing such other information as may be prescribed, and
(b) entering in the SRWR a copy of that notice.”.

(4) In section 116 of the 1991 Act (notice of emergency works)—
(a) in subsection (2) the words from “to” to the end are repealed; and
(b) for subsection (3) there is substituted—
“(3A) For the purposes of subsection (2) an undertaker gives notice by—
(a) giving to each person to whom notice would be required to be given
under section 114 a notice—
(i) stating the undertaker’s intention, or as the case may be, the fact
that he has begun to execute the works, and
(ii) containing such other information as may be prescribed, and
(b) entering in the SRWR a copy of that notice.”.

(5) In subsection (2) of section 117 of the 1991 Act (restriction of works following
substantial road works)—
(a) for “published in the prescribed manner” there is substituted “entered in the
SRWR”; and
(b) for “published”, where secondly and thirdly occurring, there is substituted “so
entered”.

(6) In section 165 of the 1991 Act (index for Part 4)—
(a) after the entry for “carriageway” there is inserted—
“the Commissioner section 112A(1)”; and
(b) after the entry for “special enactment” there is inserted—
“the SRWR section 112A(1)”.

Miscellaneous

18 Directions as to timing of road works

(1) Section 115 of the 1991 Act (directions as to timing of road works) is amended in
accordance with subsections (2) to (4) below.

(2) In subsection (1)—
(a) in paragraph (b) at the end there is added “or on certain days (or at certain times on certain days)”; and

(b) after “the times” there is inserted “or days (or both)”.  

(3) After that subsection there is inserted—

“(1A) If it appears to a road works authority—

(a) that subsisting road works are causing or are likely to cause serious disruption to traffic, and

(b) that the disruption would be avoided or reduced if the works were to continue to be carried out only at certain times or on certain days (or at certain times on certain days),

the authority may give the undertaker such directions as may be appropriate as to the times or days (or both) when the works may or may not continue to be carried out.”.

(4) After subsection (3) there is inserted—

“(3A) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, the failure is attributable to a direction under this section.”.

19 Directions as to placing of apparatus in roads

(1) After section 115 of the 1991 Act there is inserted—

“115A Power to give directions as to placing of apparatus

(1) Where—

(a) an undertaker is proposing to execute road works consisting of the placing of apparatus in a road (the “proposed road”),

(b) placing the apparatus in the proposed road is likely to cause disruption to traffic, and

(c) it appears to the road works authority that—

(i) there is another road in which the apparatus could be placed (the “other road”), and

(ii) the conditions in subsection (2) are satisfied,

the authority may by directions require the undertaker not to place the apparatus in the proposed road (but shall not require the undertaker to place the apparatus in the other road).

(2) The conditions referred to in subsection (1)(c)(ii) are that—

(a) disruption to traffic would be avoided or reduced if the apparatus were to be placed in the other road,

(b) placing the apparatus in the other road would be a reasonable way of achieving the purpose for which the apparatus is to be placed, and

(c) it is reasonable to require the undertaker not to place the apparatus in the proposed road.

(3) Directions under this section may be varied or revoked by further such directions.
(4) The procedure for giving directions under this section shall be as prescribed.

(5) The Scottish Ministers may by regulations make provision for appeals against directions under this section, including provision as to the procedure to be followed on an appeal.

(6) An undertaker who executes works in contravention of directions under this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, the failure is attributable to a direction under this section.

(8) The Scottish Ministers may issue or approve for the purposes of this section a code of practice giving practical guidance as to the exercise by road works authorities of the power conferred by this section; and in exercising that power a road works authority shall have regard to the code of practice.”.

(2) In section 116 of the 1991 Act (notice of emergency works in roads), in subsection (1), the word “or” is repealed and after “works”, where first occurring, there is inserted “or section 115A (power to give directions as to placing of apparatus)”.

20 Restriction on works following substantial road works

(1) In section 117 of the 1991 Act (restriction on works following substantial road works)—

(a) in subsection (1), for “twelve months” there is substituted “3 years”; and

(b) in subsection (6), at the beginning of paragraph (b) there is inserted “if convicted of an offence under this subsection,”.

(2) In section 114 of the 1991 Act (notice of starting date of works), in subsection (2), after “works” there is inserted “or in cases where the undertaker has been given notice under section 117(1)”.

21 Duty of road works authority to co-ordinate road works etc.

(1) Section 118 of the 1991 Act (road works authority’s duty to co-ordinate road works etc.) is amended in accordance with subsections (2) to (5) below.

(2) After subsection (2) there is inserted—

“(2A) In discharging their duty under this section, a road works authority shall have regard to all information in the SRWR which relates to the functions of the authority.

(2B) A road works authority shall, so as to maximise the utility of that information for the purposes of subsection (2A)—

(a) assist the Commissioner in complying with the duty imposed by subsection (1) of section 112A (as read with subsection (2) of that section), and

(b) keep that information under surveillance.”.

(3) In subsection (3), after “co-ordination”, there is inserted “and the specific duties imposed by subsections (2) to (2B)”.

(4) After that subsection there is inserted—
(3A) In discharging all the duties referred to in subsection (3), a road works authority shall have regard also to such guidance as is contained in the practice referred to in section 15(3)(b) of the Transport (Scotland) Act 2004 (asp 00).

(5) In subsections (4) and (5), for “Secretary of State”, in each place where it occurs, there is substituted “Commissioner”.

22 Duty of undertakers to co-operate with authorities and other undertakers

(1) Section 119 of the 1991 Act (undertakers’ duty to co-operate) is amended in accordance with subsections (2) to (4) below.

(2) After subsection (1) there is inserted—

“(1A) In discharging the duty under this section, an undertaker shall have regard to all information in the SRWR about matters which might affect, or be affected by, works being or proposed to be carried out by the undertaker.

(1B) An undertaker shall, so as to maximise the utility of that information for the purposes of subsection (1A)—

(a) assist the Commissioner in complying with the duty imposed by subsection (1) of section 112A (as read with subsection (2) of that section), and

(b) keep that information under surveillance.

(1C) In subsections (1A) and (1B), “undertaker” does not include a person having permission under section 109 to execute road works.”.

(3) After subsection (2) there is inserted—

“(2A) In discharging the duties imposed by subsections (1) to (1B), an undertaker shall—

(a) comply with any direction in that respect given to the undertaker by the Commissioner, and

(b) have regard to such guidance as is contained in the practice referred to in section 15(3)(b) of the Transport (Scotland) Act 2004 (asp 00), and paragraphs (a) and (b) of subsection (2) shall apply in relation to any such direction as they apply in relation to the code of practice referred to in that subsection.

(2B) If it appears to the Commissioner that an undertaker is not properly complying with his duty under subsection (1), he may direct the undertaker to supply him with such information as he considers necessary to enable him to decide whether that is the case and, if so, what action to take.

The direction shall specify the information to be provided and the period within which it is to be provided.”.

(4) After subsection (3) there is inserted—

“(4) A direction under this section may be varied or revoked by a further direction.”.
23 Enforcement of section 119 of 1991 Act

(1) Subsection (3) of section 119 of the 1991 Act (which subsection makes it an offence for an undertaker executing road works to fail to use best endeavours to co-operate with the road works authority and other undertakers) is repealed.

(2) After that section (which requires undertakers to co-operate with road works authorities and others in the execution of road works) there is inserted—

“119A Enforcement of section 119: imposition of penalties

(1) The Scottish Ministers may, by regulations, make provision for or in connection with—

(a) the imposition by the Commissioner of penalties on undertakers who fail to comply with duties imposed on them by section 119,

(b) the payment of such penalties.

(2) The regulations may include provision for or in connection with—

(a) the notification and enforcement of penalties,

(b) the level of penalties,

(c) appeals against the imposition of penalties including the appointment of persons to hear and determine such appeals.”.

24 Qualifications of supervisors and operatives

(1) Section 126 of the 1991 Act (qualifications of supervisors and operatives) is amended in accordance with subsections (2) to (5) below.

(2) After subsection (1) there is inserted—

“(1A) A road works authority may (unless the case is one excepted from subsection (1)) by notice require an undertaker executing road works—

(a) to notify them of the name of—

(i) the person who is currently the qualified supervisor required under subsection (1), and

(ii) each person who has previously been the qualified supervisor so required, and

(b) to provide them with such evidence of the requisite qualification of the person or, as the case may be, each person named as may be prescribed.”.

(3) After subsection (2) there is inserted—

“(2A) A road works authority may (unless the case is one excepted from subsection (2)) by notice require an undertaker executing road works—

(a) to notify them of the name of—

(i) a person whose presence on site at any time specified in the notice (being a time when the works were in progress) enabled the undertaker to comply with his duty under subsection (2), or

(ii) each person whose presence on site during the progress of the works enabled the undertaker to comply with his duty under subsection (2), and
(b) to provide them such evidence of the requisite qualification of the or, as the case may be, each person named as may be prescribed.

(2B) A notice under subsection (1A) or (2A) may be given at any time while the works are being executed or within such period after their completion as may be prescribed.

(2C) The undertaker shall comply with a notice under subsection (1A) or (2A) within such period and in such way as may be prescribed.

(4) In subsection (3), for “or (2)” there is substituted “, (2) or (2C)”.

(5) In subsection (4), after paragraph (b) there is inserted “and “(c) the form of any document to be issued by an approved body to certify or otherwise show that a qualification has been conferred on any person.”.

### 25 Duty of authorities, undertakers etc. to ensure competence of employees etc.

After section 126 of the 1991 Act there is inserted—

"126A Duty of authorities, undertakers etc. to ensure competence of employees etc.

Each of the authorities and other persons set out in the first column below shall use their or, as the case may be, his best endeavours to ensure that each of that authority’s or, as the case may be, that person’s employees or agents whose duty it is to carry out for that authority or person a function conferred on that authority or person by or under an enactment set out relative to that authority or person in the second column below is competent to perform that duty—

| A road works authority | Section 112B(1) and (2) of this Act; section 16 of the Transport (Scotland) Act 2004 (asp 00) (duty to provide Road Works Commissioner with certain information). |
| A roads authority | Section 112B(3) of this Act. |
| An undertaker | Sections 113(1), 114(1) and 116(2) of this Act; section 16 of the Transport (Scotland) Act 2004 (asp 00) (duty to provide Road Works Commissioner with certain information). |

### 26 Duty of undertaker to notify completion of road works: form and procedure

In section 129 of the 1991 Act (duty of undertaker to reinstate road after road works)—

(a) in subsection (3), for “inform the road works authority” there is substituted “give the required notice”;

(b) in subsection (4), for “notify the road works authority” there is substituted “give the required notice”;

(c) after subsection (5) there is inserted—

“(5A) For the purposes of subsection (3) or (4) an undertaker gives the required notice by—

(a) giving to the Commissioner a notice containing such information as may be prescribed, and

(b) giving to an approved body a notice containing such information as may be prescribed.
(b) entering in the SRWR a copy of that notice.”.

27 Notices requiring remedial works relating to reinstatements

(1) In section 131 of the 1991 Act (powers of road works authority in relation to reinstatement of roads)—

(a) in subsection (3), for “of not less than 7 working days” there is substituted “, not being shorter than such period as may be prescribed,”; and

(b) after that subsection there is inserted—

“(3A) Different minimum periods may be prescribed under subsection (3) for different descriptions of remedial works; and cases may be so prescribed in which no minimum period applies.”.

(2) In section 149 of the 1991 Act (which, among other things, enables the authorities responsible for sewers, drains and tunnels to require their reinstatement)—

(a) in subsection (2), for “of not less than 7 working days” there is substituted “, not being shorter than such period as may be prescribed,”; and

(b) after that subsection there is inserted—

“(2A) Different minimum periods may be prescribed under subsection (2) for different descriptions of remedial works; and cases may be so prescribed in which no minimum period applies.”.

Resurfacing

28 Power of road works authority to require undertaker to resurface road

(1) After section 132 of the 1991 Act there is inserted—

“Resurfacing

132A Power to require undertaker to resurface road

(1) In prescribed circumstances, the road works authority may by notice (a “resurfacing notice”) require an undertaker within subsection (2) to execute such resurfacing works in a road as may be specified in the notice.

(2) An undertaker is within this subsection if—

(a) he has given notice under section 113 or 114 of proposed road works,

(b) he is executing road works, or

(c) he has, within such period ending with the giving of the notice as may be prescribed (or if no period is prescribed, at any time), executed road works,

and the works will involve, involve or (as the case may be) involved the breaking up of any part of the road.

(3) The works specified in the resurfacing notice may relate to any part of the road (including any part not, and not to be, broken up by the undertaker); but regulations made by the Scottish Ministers may restrict the extent of the works that may be so specified.
(4) The resurfacing notice relieves the undertaker to the extent (if any) specified in the notice of his duty under section 129 to reinstate the surface of the road; but regulations made by the Scottish Ministers may restrict the circumstances in which and the extent to which undertakers may be relieved of that duty.

(5) The road works authority may by notice to the undertaker vary or withdraw a resurfacing notice; but regulations made by the Scottish Ministers may restrict the circumstances in which notices may be varied or withdrawn.

(6) A road works authority may serve a resurfacing notice notwithstanding that the authority (in any capacity) are under a duty to undertake any of the works specified in the notice.

(7) In this Part—

“resurfacing notice” has the meaning given by subsection (1),

“resurfacing works” means any works relating to the replacement of the surface of any part of a road,

“surface” includes a paved surface.

132B Power to specify timing etc. of resurfacing

(1) A resurfacing notice may require an undertaker to—

(a) execute the works specified in the notice in stages so specified,

(b) begin the execution of those works (or any stage of them) at or by a date and time so specified,

(c) execute those works (or any stage of them) at times or on days (or at times on days) so specified,

(d) complete the execution of those works (or any stage of them) by a date and time so specified.

(2) The Scottish Ministers may by regulations make provision restricting, in some or all cases, the power to include requirements within subsection (1), including provision that—

(a) requires a road works authority to consult an undertaker before a prescribed description of requirement is included in a notice,

(b) provides that any date specified in a notice for the beginning, execution or completion of works shall not be earlier than a prescribed period from the date on which the notice is given.

132C Materials, workmanship and standard of resurfacing

(1) An undertaker who has been served with a resurfacing notice shall, when executing the works specified in the notice, comply with such requirements as may be prescribed as to the specification of materials to be used and the standards of workmanship to be observed.

(2) The undertaker shall also ensure that, for the prescribed period after completion of the works, those works conform to such performance standards as may be prescribed.”.

(2) In section 165 of that Act (index for Part 4)—

(a) after the entry for “relevant authority (in relation to road works)” there is inserted—
“resurfacing notice section 132A(7) resurfacing notice section 132A(7)”;

(b) after the entry for statutory right there is inserted—

“surface section 132A(7)”.

29 Resurfacing: regulations and guidance

After section 132C of the 1991 Act (as inserted by section 28 above) there is inserted—

“132D Resurfacing: regulations

(1) The Scottish Ministers may make regulations supplementing sections 132A to 132C.

(2) The regulations may, in particular—

(a) make provision about the information to be contained in a resurfacing notice (including the way in which resurfacing works are to be described),

(b) prescribe, for cases where a resurfacing notice may be served on more than one undertaker, the matters that a road works authority shall take into account when selecting the undertaker to be served with the notice,

(c) impose a requirement on an undertaker, in prescribed circumstances, to give notice to the road works authority of a prescribed event,

(d) prescribe circumstances in which an undertaker is entitled to pay a sum to the road works authority instead of executing the works specified in a resurfacing notice, and make provision about the manner in which such sums are to be calculated,

(e) confer a right of review or appeal against a resurfacing notice or any requirement contained in it, and make provision about the period within which and manner in which any such right may be exercised and about the determination of appeals and the persons who may determine them,

(f) require disputes of a prescribed description (including disputes as to the existence of circumstances prescribed under section 132A(1)) to be determined in such manner and by such persons as may be prescribed,

(g) apply, with or without modifications, any provisions of this Part or of the Roads (Scotland) Act 1984 (c.54) in relation to works specified in a resurfacing notice (and provide that for those purposes the works are to be treated as road works or works of any other description).

(3) The regulations may create, in respect of any breach of a requirement imposed by a resurfacing notice or of a duty imposed by section 132C, or any contravention of the regulations, an offence punishable on summary conviction—

(a) where the offence consists of a failure to give a notice in accordance with the regulations, with a fine not exceeding level 4 on the standard scale,

(b) in any other case, with a fine not exceeding level 5 on the standard scale.
(4) The first regulations for the purposes of each of this section and sections 132A to 132C shall not be made unless a draft of them has been laid before and approved by a resolution of the Scottish Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

132E Resurfacing: guidance

(1) The Scottish Ministers may, for the purposes of sections 132A to 132D (including regulations under those sections), issue or approve a code of practice giving practical guidance as to the exercise of powers and the discharge of duties under those sections.

(2) In exercising those powers and in discharging those duties, road works authorities and undertakers shall have regard to the code of practice.”.

30 Contributions to costs of resurfacing by undertaker

(1) After section 137 of the 1991 Act there is inserted—

“137A Contributions to costs of resurfacing by undertaker

(1) Where a road works authority have given a resurfacing notice to an undertaker—

(a) the authority shall pay to the undertaker a proportion, calculated in the prescribed manner, of the costs reasonably incurred by the undertaker in executing the works specified in the notice,

(b) an undertaker to whom subsection (2) applies shall pay to the undertaker referred to in paragraph (a) a proportion, calculated in the prescribed manner, of those costs.

(2) This subsection applies to an undertaker if—

(a) the undertaker has, before the completion of the works specified in the notice, executed road works which involved the breaking up of any part of a road, and

(b) the works specified in the notice include the resurfacing of that part of the road.

(3) The Scottish Ministers may by regulations prescribe exceptions to the duty imposed by subsection (1)(b).

(4) The payments referred to in subsection (1) shall be made in such instalments and manner, and within such period, as may be prescribed.

(5) The Scottish Ministers may by regulations make provision requiring disputes of a prescribed description (including disputes as to whether subsection (2) applies to an undertaker) to be determined in such manner and by such persons as may be prescribed.

(6) For the purposes of this section, any costs incurred by an undertaker (including any costs of a road works authority which are borne by the undertaker) in consequence of a failure by the undertaker to comply with any duty under this Part shall be treated as having been incurred unreasonably.
(7) The first regulations for the purposes of this section shall not be made unless a draft of them has been laid before and approved by a resolution of the Scottish Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(2) In section 155 of the 1991 Act, in subsection (3), after “road)” there is inserted “or 137A (contributions to costs of resurfacing by undertakers)”.

**Enforcement of 1991 Act**

### 31 Increase in penalties for summary offences under 1991 Act

(1) The maximum fine for each offence under a provision of the 1991 Act listed in column 1 of the table in schedule 3 is increased from level 3 on the standard scale to the level specified for that provision in column 3 of the table.

(2) Accordingly, in each provision so listed, for “level 3” there is substituted “level 4” or “level 5” (as specified in column 3 of the table).

### 32 Fixed penalty offences

(1) After section 154 of the 1991 Act there is inserted—

**154A Fixed penalties for certain offences under this Part**

(1) Any offence under this Part relating to road works which is listed in the first column of Schedule 6A (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Part.

(2) Offences listed in that Schedule which are committed by virtue of section 166 (offences by bodies corporate and partnerships) are not fixed penalty offences.

(3) The Scottish Ministers may by order modify that Schedule so as to provide for offences under this Part relating to road works to become (or cease to be) fixed penalty offences.

(4) No such order shall be made unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.

(5) Schedule 6B (which makes provision about fixed penalties for fixed penalty offences) has effect.”.

(2) In section 165 of that Act (index for Part 4), after the entry for “expenses” there is inserted—

“fixed penalty offence section 154A(1)”.

(3) After Schedule 6 to that Act there are inserted Schedules 6A and 6B as set out in schedules 4 and 5 to this Act.

### 33 Civil penalties for certain offences under 1991 Act

After section 154A of the 1991 Act (as inserted by section 32 above) there is inserted—

**154B Civil penalties for certain offences**

(1) The Scottish Ministers may, by regulations, make provision for or in connection with—
(a) the imposition by road works authorities of penalty charges in respect of such offences under this Part of this Act as are specified in the regulations,

(b) the payment of such charges.

(2) The regulations shall include provision specifying the person or persons by whom a penalty charge in respect of an offence is to be paid (who may be or, as the case may be, include a person other than the person who committed the offence).

(3) The regulations shall include provision—

(a) prohibiting criminal proceedings or the giving of a fixed penalty notice in respect of any description of conduct for which a penalty charge may be imposed, or

(b) securing that a penalty charge is not payable or is refunded where the conduct is the subject of criminal proceedings or of a fixed penalty notice.

(4) The regulations shall include provision about the standard of proof required to establish the commission of an offence in respect of which a penalty charge may be imposed and may include other provision for or in connection with evidence and procedure.

(5) The regulations may set different levels of penalty charges in respect of different offences and in respect of the same offences committed in different circumstances.

(6) The regulations may include provision for and in connection with—

(a) the notification of penalty charges to persons appearing to be liable to pay them,

(b) the enabling and effect of the making of representations to road works authorities by persons who are or may be liable to pay those charges,

(c) appeals by those persons against the imposition of those charges.”.

Resolution of disputes under 1991 Act

34 Method of settlement of certain disputes under 1991 Act

(1) In each of the provisions of the 1991 Act mentioned in subsection (2) below, for “by arbitration” there is substituted “in the prescribed manner”.

(2) Those provisions are—

(a) section 117(7) (consent to contravene restriction on works following substantial road works);

(b) section 120(6) (protected roads: consent as to placing of apparatus);

(c) section 121(5) (exercise of powers in relation to protected roads);

(d) section 133(2) (meaning of “reasonable period” for the purposes of charges for prolonged road works);

(e) section 143(3) (measures necessary where apparatus affected by major works);

(f) section 155(3) (disputes about costs and expenses); and
(g) in Schedule 6 (roads with special engineering difficulties), paragraph 2(1).

(3) In section 143(4) of the 1991 Act (failure to comply with agreement or decision)—
   (a) for “of the arbiter” there is substituted “made”; and
   (b) after “subsection (3)” there is inserted “in settlement of a dispute”.

(4) After section 157 of the 1991 Act (reckoning of time periods) there is inserted—

   “157A Regulations prescribing manner of settlement of disputes

   Regulations under this Part prescribing the manner in which any question or dispute is to be settled may in particular make provision for the question or, as the case may be, dispute to be settled—

   (a) by the Commissioner, or
   (b) by arbitration.”.

(5) In Schedule 6 (roads with special engineering difficulties)—

   (a) in paragraph 10(1), for “arbiter” to “arbitration” there is substituted “person to whom it falls, by virtue of regulations made under paragraph 2(1), to settle a dispute under that paragraph”; and

   (b) in paragraph 12—

      (i) in sub-paragraph (2), for “arbitration” there is substituted “be settled in the prescribed manner”;
      (ii) in sub-paragraph (3), for “arbiter” there is substituted “person to whom it falls to settle the matter”; and
      (iii) in sub-paragraph (4), for “the arbiter” there is substituted “that person”.

Enforcement of certain offences under the Roads (Scotland) Act 1984

35 Fixed penalty offences under the Roads (Scotland) Act 1984

(1) After section 130 of the Roads (Scotland) Act 1984 (c.54) there is inserted—

   “130A Fixed penalties for certain offences

   (1) A fixed penalty offence is any offence under this Act which—

      (a) is listed in the first column in Schedule 8A to this Act (and described in general terms in the second column); and
      (b) is prescribed in regulations made by the Scottish Ministers.

   (2) Offences listed in that Schedule which are committed by virtue of section 130 of this Act (offences committed by bodies corporate, etc.) are not fixed penalty offences.

   (3) Schedule 8B to this Act (which makes provision about fixed penalties for fixed penalty offences) has effect.

   (4) Regulations under subsection (1)(b) above may make transitional provision.”.

(2) After Schedule 8 to that Act there are inserted Schedules 8A and 8B as set out in schedules 6 and 7 to this Act.

(3) In section 156 of the 1991 Act (service of notices etc.) after subsection (2) there is inserted—
“(3) References in this section to notices authorised to be given or served for the purposes of this Part include reference to notices under Schedule 8B to the Roads (Scotland) Act 1984 (c.54) (fixed penalties for certain offences under that Act).”.

36 Civil penalties for certain offences under the Roads (Scotland) Act 1984

After section 130A of the Roads (Scotland) Act 1984 (as inserted by section 35 above) there is inserted—

“130B Civil penalties for certain offences

(1) The Scottish Ministers may, by regulations, make provision for or in connection with—

(a) the imposition by roads authorities of penalty charges in respect of such offences under this Act as are specified in the regulations;

(b) the payment of such charges.

(2) The regulations shall include provision specifying the person or persons by whom a penalty charge in respect of an offence is to be paid (who may be or, as the case may be, include a person other than the person who committed the offence).

(3) The regulations shall include provision—

(a) prohibiting criminal proceedings or the giving of a fixed penalty notice in respect of any description of conduct for which a penalty charge may be imposed; or

(b) securing that a penalty charge is not payable or is refunded where the conduct is the subject of criminal proceedings or of a fixed penalty notice.

(4) The regulations shall include provision about the standard of proof required to establish the commission of an offence in respect of which a penalty charge may be imposed and may include other provision for or in connection with evidence and procedure.

(5) The regulations may set different levels of penalty charges in respect of different offences and in respect of the same offences committed in different circumstances.

(6) The regulations may include provision for and in connection with—

(a) the notification of penalty charges to persons appearing to be liable to pay them;

(b) the enabling and effect of the making of representations to roads authorities by persons who are or may be liable to pay those charges;

(c) appeals by those persons against the imposition of those charges.”.
PART 3
MISCELLANEOUS

37 National travel concession schemes

(1) The Scottish Ministers may, by order, make national travel concession schemes.

(2) A national travel concession scheme is a scheme for the provision of travel concessions to eligible persons travelling on eligible services on eligible journeys.

(3) A national travel concession scheme may operate throughout Scotland or only in a part or parts of Scotland; and, in any case, may provide differently for different areas.

(4) A national travel concession scheme shall include provision—
(a) determining or for the determination of the rate or rates of travel concessions;
(b) specifying or for the specification of the days and times during which travel concessions are provided;
(c) requiring or enabling operators of eligible services to provide travel concessions;
(d) as to the reimbursement of those operators for providing travel concessions;
(e) for enforcement of and appeals against requirements under paragraph (c) above; and
(f) for such other matters connected with the scheme as the Scottish Ministers think fit.

(5) A national travel concession scheme may provide for the modification or revocation of any travel concession scheme established under section 93 of the Transport Act 1985 (c.67) (local authority travel concession schemes).

(6) An operator of eligible services who fails to comply with an obligation imposed by or under a national travel concession scheme on the operator is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) In this section—
“eligible journey”, in relation to a national travel concession scheme, means a journey beginning at or ending in a place in which the scheme operates;
“eligible person” in relation to a national travel concession scheme, means a person who is of such description as the Scottish Ministers may by order specify;
“eligible service” means a service of such description as the Scottish Ministers may by order specify; and
“travel concession”, in relation to a journey, means—
(a) reduction of the fare (within the meaning of the Public Passenger Vehicles Act 1981 (c.14)) for the journey below the amount applicable to an adult who is not entitled to any reduction; or
(b) waiver of such fare.

38 Abolition of requirement on local traffic authority to inform Ministers about certain pedestrian crossings

In section 23(2) of the Road Traffic Regulation Act 1984 (c.27)—
(a) after paragraph (a) there is inserted “and”; and
(b) paragraph (c) (duty of local traffic authority to inform the Scottish Ministers in writing before establishing, altering or removing a pedestrian crossing on a road other than a trunk road) and the word “and” which immediately precedes it are repealed.

39 Modification of Highlands and Islands Shipping Services Act 1960 and loans for transport-related purposes

(1) The Highlands and Islands Shipping Services Act 1960 (c.31) (financial and other assistance to those concerned with providing sea transport services for the Highlands and Islands), so far as relating to the provision of that assistance by the Scottish Ministers, ceases to have effect.

(2) Nothing in subsection (1) above affects any undertaking given, advance made, contract or other obligation or transaction entered into or action entered upon before that subsection comes into force.

(3) Section 70 of the Transport (Scotland) Act 2001 (asp 2) (grants for transport-related purposes) is amended in accordance with subsections (4) to (6) below.

(4) In subsection (1), after “grants” there is inserted “or loans”.

(5) In subsection (2)—

(a) after “Grants” there is inserted “and loans”;

(b) for “amount” there is substituted “amounts”;

(c) after “including” there is inserted “, in the case of grants,”.

(6) In subsection (4)—

(a) after “grants” insert “and loans”;

(b) after “grant”, in both places where it occurs, there is inserted “or loan”.

40 Amendment of procedure for dealing with applications for harbour orders

(1) Paragraph 18 of Schedule 3 to the Harbours Act 1964 (c.40) (“the 1964 Act”) (which provides for the holding of an inquiry or public hearing where an objection is made to an application for a harbour revision or empowerment order and is not withdrawn) shall be amended in accordance with subsections (2) to (4) below.

(2) For sub-paragraph (1) there is substituted—

“(1) This paragraph applies if an objection to the application was made to the Scottish Ministers and has not been withdrawn.

(1A) It does not apply, however, if—

(a) the Scottish Ministers decide that the application is not to proceed further;

(b) they consider the objection is frivolous or trivial;

(c) the objection does not specify the grounds on which it is made; or

(d) the objection was not made within the period allowed for making it.

(1B) Before making their decision under paragraph 19, the Scottish Ministers may—

(a) cause an inquiry to be held; or
(b) give to the person who made the objection referred to in sub-paragraph (1) an opportunity of appearing before and being heard by a person appointed by them.

(1C) Where—

(a) the objection referred to in sub-paragraph (1) is made by a person within sub-paragraph (1D); and

(b) the person informs the Scottish Ministers in writing that the person wishes the objection to be referred to an inquiry or dealt with in accordance with sub-paragraph (1B)(b),

the Scottish Ministers shall, before making their decision under paragraph 19, either cause an inquiry to be held or, if they so determine, cause the objection to be dealt with in accordance with sub-paragraph (1B)(b).

(1D) The persons within this sub-paragraph are—

(a) any council constituted under the Local Government etc. (Scotland) Act 1994 (c.39) for an area in which the harbour (or any part of it) is situated; and

(b) if the order will authorise the compulsory acquisition of land, any person who is entitled to be served with notice under paragraph 11.”.

(3) In sub-paragraph (2), for “sub-paragraph (1)(a)” there is substituted “sub-paragraph (1B)(b)”.

(4) In sub-paragraph (3), paragraph (a) is repealed.

(5) In paragraph 19 of that Schedule (decisions on an application for a harbour revision or empowerment order), there is inserted at the end of sub-paragraph (1) “; and

(f) any written representations submitted to the Scottish Ministers by the applicant or any objector in elaboration of the application or, as the case may be, objection.”;

and the word “and” occurring between sub-paragraphs (1)(d) and (e) is repealed.

41 Amendment of procedure where harbour revision orders are made by the Scottish Ministers of their own motion

(1) For paragraph 28 of Schedule 3 to the 1964 Act there is substituted—

“28 (1) This paragraph applies if an objection to the proposal was made to the Scottish Ministers and has not been withdrawn.

(2) It does not, however, apply if—

(a) the Scottish Ministers decide that the proposal is not to proceed further;

(b) they consider the objection is frivolous or trivial;

(c) the objection does not specify the grounds on which it is made; or

(d) the objection was not made within the period allowed for making it.

(3) Before making their decision under paragraph 29, the Scottish Ministers may—

(a) cause an inquiry to be held; or
(b) give to the person who made the objection referred to in sub-paragraph (1) an opportunity of appearing before and being heard by a person appointed by them.

(4) Where—

(a) the objection referred to in sub-paragraph (1) is made by a council constituted under the Local Government etc. (Scotland) Act 1994 (c.39) for an area in which the harbour (or any part of it) is situated; and

(b) the council informs the Scottish Ministers in writing that it wishes the objection to be referred to an inquiry or dealt with in accordance with sub-paragraph (3)(b),

the Scottish Ministers shall, before making their decision under paragraph 29, either cause an inquiry to be held or, if they so determine, cause the objection to be dealt with in accordance with sub-paragraph (3)(b).

(5) Where an objector is heard in accordance with sub-paragraph (3)(b), the Scottish Ministers shall allow such other persons as they think appropriate to be heard on the same occasion.”.

(2) In paragraph 29 of that Schedule (decision on harbour revision order proposed by the Scottish Ministers)—

(a) in sub-paragraph (1)(b), after “inquiry” there is inserted “and of any person appointed for the purpose of hearing an objector”; and

(b) there is inserted at the end of sub-paragraph (1) “; and

(c) any written representations submitted to the Scottish Ministers by an objector in elaboration of the objection.”.

and the word “and” between sub-paragraphs (1)(a) and (b) is repealed.

Transitional provision for sections 40 and 41

Nothing in section 40 or 41 of this Act applies—

(a) in relation to an application for an order under section 14 or 16 of the 1964 Act if the application was made before those sections of this Act come into force; or

(b) in relation to a proposal by the Scottish Ministers to make a harbour revision order of the Scottish Ministers’ own motion in respect of which a notice was published in the Edinburgh Gazette under paragraph 26(1)(a) of Schedule 3 to the 1964 Act before those sections of this Act come into force.

Minor amendments of Transport (Scotland) Act 2001

(1) The Transport (Scotland) Act 2001 (asp 2) is amended in accordance with subsections (2) to (7) below.

(2) In section 48 (interpretation of Part 2 (bus services)), in the definition of “relevant general policies” for “and” there is substituted “or”.

(3) In section 54(2) (road not to be subject to charges under more than one charging scheme) for “A road shall not” there is substituted “No part of a road shall”.

(4) In section 64 (which enables regulations for, among other things, the determination of disputes and appeals against those determinations)—
(a) in subsection (1), in paragraph (a), for “relating to charging schemes” there is substituted “arising under this Part of this Act”; and

(b) after that subsection there is inserted—

“(1A) Provision may be made under subsection (1) above for the appointment of—

(a) persons to determine the disputes; and

(b) persons to hear and determine the appeals,

referred to in that subsection.

(1B) Provision made by virtue of subsection (1A) above may include provision for the payment by charging authorities of expenditure incurred in and in consequence of the making of appointments by virtue of that subsection.”.

(5) In section 79(1) (issue of guidance to local traffic and transport authorities), in paragraph (d), after “authorities” there is inserted “and local traffic authorities (or any one or more local traffic authorities)”.

(6) In section 82(1) (interpretation) in the definition of “local transport strategy”—

(a) the words from “in” (where first occurring) to “Act” are repealed;

(b) after “by” there is inserted “(a)”; and

(c) after “authority” there is inserted “; or

(b) a local traffic authority,”.

(7) In schedule 1, in paragraph 5 (application by charging authorities of proceeds of road user charging)—

(a) in sub-paragraph (1), sub-sub-paragraph (b) and the word “or” immediately preceding it are repealed; and

(b) after that sub-paragraph there is inserted—

“(1A) A charging authority may, for the purposes of sub-paragraph (1) above, pay money to any local traffic authority, local transport authority or other person.”.

PART 4

GENERAL

44 Orders and regulations

(1) Any power of the Scottish Ministers under this Act to make an order or regulations shall be exercisable by statutory instrument.

(2) Subject to subsection (3) below, a statutory instrument containing an order (other than an order made under section 46(2) below) or regulations made under this Act shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) A statutory instrument containing an order made under section 1(1), 2(1), 10(1) or (7), 12(1) or 37(1) above shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Scottish Parliament.

(4) Orders and regulations under this Act may make—

(a) different provision for different purposes; and
(b) supplemental, incidental, consequential, transitory, transitional or saving provision.

45 Interpretation

(1) In Part 1 of this Act, “council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39).

(2) In Part 2 of this Act—

“the Commissioner” has the meaning given by section 14 above; and


(3) Expressions used in Part 2 of this Act and in the 1991 Act have, in this Act, the same meaning as in that Act.

46 Short title and commencement

(1) This Act may be cited as the Transport (Scotland) Act 2004.

(2) This Act (except this section and section 44 above) comes into force in accordance with provision made by order by the Scottish Ministers.
## Schedule 1—Administrative functions of RTPs

### Staff

1. A Transport Partnership shall appoint such employees as it considers necessary for the carrying out of its functions.

2. If—
   - (a) proceedings are brought against an employee of a Transport Partnership in respect of—
     - (i) anything done by the employee in accordance or purportedly in accordance with an enactment; or
     - (ii) anything not done by the employee which it is alleged should have been done by the employee in accordance with an enactment; and
   - (b) the Transport Partnership is satisfied that the employee honestly believed—
     - (i) that the act or omission was within the scope of the employee’s employment; and
     - (ii) that the employee was, under the enactment, required or entitled to do what was done or omit to do what should have been done,

     then the Transport Partnership may indemnify all or any part of any damages or expenses which the employee might have been ordered to pay or might have or has incurred.

3. A Transport Partnership—
   - (a) shall obtain an appropriate guarantee for the accounting for all money and property which is or is likely to be in the custody or under the control of its employees;
   - (b) may obtain such a guarantee for all money and property which is or is likely to be in the custody or under the control of any person other than one of its employees.

4. If it comes to the knowledge of a person who is an employee of a Transport Partnership that a contract in which the person has a direct or indirect pecuniary interest (not being a contract to which that person is a party) has been or is proposed to be entered into by the Transport Partnership, that person shall, as soon as practicable, give written notice of that fact to the Transport Partnership.

5. (1) An employee of a Transport Partnership who, under colour of the employment, accepts any fee or reward other than remuneration and expenses commits an offence.

   (2) A person who commits such an offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

### Land

6. (1) For the purposes of its functions, a Transport Partnership may—
   - (a) acquire by agreement; or
(b) if authorised by the Scottish Ministers, purchase compulsorily, any land.

(2) Sub-paragraph (1)(b) above—

(a) does not apply in relation to Crown land (within the meaning of section 242 of the Town and Country Planning (Scotland) Act 1997 (c.8)); and

(b) is subject to any other enactment conferring on the Transport Partnership power to acquire land compulsorily.

(3) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) applies in relation to the compulsory purchase of land under sub-paragraph (1)(b) above as if—

(a) that provision were contained in an Act in force immediately before the commencement of that Act; and

(b) the Transport Partnership were a local authority.

(4) The power to purchase land compulsorily under sub-paragraph (1)(b) above includes power to acquire a servitude or other right in or over land by the creation of a new right.

(5) A Transport Partnership shall not, without the consent of the Scottish Ministers, dispose of land for a consideration less than the best that could reasonably be expected to be obtained on the open market.

Private legislation

7 A Transport Partnership may, if it thinks fit, promote or oppose private legislation in the Scottish Parliament.

Participation in community planning

8 In the Local Government in Scotland Act 2003 (asp 1)—

(a) in section 16 (participation of public bodies in community planning)—

(i) in subsection (1), after paragraph (h) there is inserted—

“(i) a Transport Partnership created under the Transport (Scotland) Act 2004 (asp 00)”; and

(ii) in subsection (2), for “(h)” there is substituted “(i)”; and

(b) in section 17 (reports etc. on implementation of community planning), in subsection (3), for “(h)” there is inserted “(i)”.

Legal proceedings, notices etc.

9 (1) Sections 189 to 193, 195 and 197 to 199 (legal proceedings, notices etc.) of the Local Government (Scotland) Act 1973 (c.65) apply in relation to a Transport Partnership as they apply in relation to a council.

(2) A Transport Partnership shall appoint one of its employees as its proper officer for the purposes of sections 190, 191 and 193 of the Local Government (Scotland) Act 1973.

Reporting and information

10 A Transport Partnership shall—
(a) as soon as practicable after the end of each financial year, give the Scottish Ministers and publish a report on the performance of its functions during that year;

(b) provide the Scottish Ministers with such information about the performance of those functions as they may require.

Finance etc.

11 (1) The Local Government (Scotland) Act 1973 (c.65) is amended in accordance with sub-paragraphs (2) and (3) below.

(2) In section 106(1) (application of Part VII (finance) to bodies other than local authorities) after paragraph (b) there is inserted—

“(ba) a Transport Partnership created under the Transport (Scotland) Act 2004 (asp 00);”.

(3) In section 118(5) (authorities required to make local financial returns), after “authorities” there is inserted “or any Transport Partnership created under the Transport (Scotland) Act 2004 (asp 00)”.

(4) A Transport Partnership shall appoint one of its employees as its proper officer for the purposes of Part VII of the 1973 Act.

(5) In section 61(c) of the Local Government in Scotland Act 2003 (asp 1) (meaning of “local authority” for purposes of Act), in sub-paragraph (iv), after “board”, where secondly occurring, there is inserted “, a Transport Partnership created under the Transport (Scotland) Act 2004 (asp 00)”.

Contracts etc.

12 (1) The following enactments apply in relation to a Transport Partnership as they apply in relation to a council—

(a) the Local Authority (Goods and Services) Act 1970 (c.39);

(b) the Local Government Contracts Act 1997 (c.65); and

(c) sections 78 to 81 (building, contracts etc.) of the Local Government (Scotland) Act 1973 (c.65).

(2) The Local Government Act 1988 (c.9) is amended in accordance with sub-paragraphs (3) and (4) below.

(3) In section 1(1) (defined bodies) after paragraph (g) there is inserted—

“(ga) a Transport Partnership created under the Transport (Scotland) Act 2004 (asp 00);”.

(4) In Schedule 2 (bodies to which Part 2 of the Act applies), after the entry for a National Park Authority in Scotland there is inserted the following entry—

“A Transport Partnership created under the Transport (Scotland) Act 2004 (asp 00)”.

(5) In section 61(c) of the Local Government in Scotland Act 2003 (asp 1) (meaning of “local authority” for purposes of Act)—

(a) in sub-paragraph (iii), the words “and sections 51 and 52 above” are repealed; and
(b) after paragraph (iv) there is inserted—

“(iva) in sections 51 and 52 above, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39), a joint fire board, a joint police board and a Transport Partnership created under the Transport (Scotland) Act 2004 (asp 00);”.

Standards of members’ conduct

13 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) (devolved public bodies for the members of which there are to be codes of conduct under the Act), after the entry for the State Hospitals Board for Scotland there is inserted the following entry—

“A Transport Partnership created under the Transport (Scotland) Act 2004 (asp 00)”.

Investigation

14 In Part 1 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (asp 11) (authorities liable to investigation and not subject to removal from that liability), after the entry numbered 11 there is inserted the following entry—

“11A Any Transport Partnership created under the Transport (Scotland) Act 2004 (asp 00)”.

Freedom of information

15 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (asp 13) (public authorities subject to duty to disclose information), after the entry numbered 24 there is inserted the following entry—

“24A A Transport Partnership created under the Transport (Scotland) Act 2004 (asp 00)”.

SCHEDULE 2
(introduced by section 15)

SCOTTISH ROAD WORKS COMMISSIONER: FURTHER PROVISION

Staff

1 (1) The Commissioner may, with the consent of the Scottish Ministers as to numbers and terms and conditions, appoint staff.

(2) The Commissioner may, with the approval of the Scottish Ministers, make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of the staff of the Commissioner and may, in particular—

(a) make contributions or payments towards provision for such pensions, allowances or gratuities;

(b) establish and administer one or more pension schemes.

(3) Section 14(4) of this Act applies to staff appointed under this paragraph as it applies to the Commissioner.
Accounts

2 The Commissioner shall—
   (a) prepare, for each financial year and in accordance with directions given by the Scottish Ministers, an account of the Commissioner’s income and expenditure; and
   (b) send the account, by such time as the Scottish Ministers may direct, to the Auditor General for Scotland for auditing.

Reports and information

3 The Commissioner shall—
   (a) as soon as practicable after the end of each financial year, give the Scottish Ministers and publish a report on the performance of the Commissioner’s functions during that year;
   (b) provide the Scottish Ministers with such information about the performance of those functions as they may require.

SCHEDULE 3
(introduced by section 31)

INCREASE IN MAXIMUM FINES FOR CERTAIN SUMMARY OFFENCES UNDER THE 1991 ACT

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<tr>
<td>Provision specifying fine</td>
<td>Brief description of offence or offences to which the fine relates</td>
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SCHEDULE 4
(introduced by section 32)

SCHEDULE 6A TO THE NEW ROADS AND STREET WORKS ACT 1991

“SCHEDULE 6A

FIXED PENALTY OFFENCES UNDER PART 4

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SCHEDULE 5
(introduced by section 32)

SCHEDULE 6B TO THE NEW ROADS AND STREET WORKS ACT 1991

“SCHEDULE 6B

FIXED PENALTIES FOR CERTAIN OFFENCES UNDER PART 4

Power to give fixed penalty notices

1 (1) An authorised officer of a road works authority may, if having reason to believe that a person is committing or has committed a fixed penalty offence, give that person a fixed penalty notice in relation to that offence.

(2) In this Schedule “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty.

2 A fixed penalty notice for an offence may not be given after such time relating to the offence as the Scottish Ministers may by regulations prescribe.

Contents of fixed penalty notice

3 (1) A fixed penalty notice shall identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.

(2) A fixed penalty notice shall also state—

(a) the amount of the penalty and the period within which it may be paid,

(b) the discounted amount and the period within which it may be paid,

(c) the person to whom and the address at which payment may be made,

(d) the method or methods by which payment may be made,
The person to whom and the address at which any representations relating to the notice may be made,

(f) the consequences of not making a payment within the period for payment.

(3) The person specified under sub-paragraph (2)(c) must be the road works authority or a person acting on their behalf.

The amount of the penalty and the period for payment

4 (1) The penalty for a fixed penalty offence is (subject to paragraph 5) such amount, not exceeding 30 per cent. of the maximum fine for that offence, as may be prescribed.

(2) The period for payment of the penalty is the period of 29 days beginning with the day on which the notice is given.

(3) The road works authority may extend the period for paying the penalty in any particular case if they consider it appropriate to do so.

The discounted amount

5 (1) A discounted amount is payable instead of the amount prescribed under paragraph 4(1) if payment is made before the end of the period of 15 days beginning with the day on which the notice is given.

(2) The discounted amount for a fixed penalty offence is such amount, not exceeding 25 per cent. of the maximum fine for the offence, as may be prescribed.

(3) If the last day of the period specified in sub-paragraph (1) does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.

Effect of notice and payment of penalty

6 (1) This paragraph applies where a person is served with a fixed penalty notice in respect of a fixed penalty offence.

(2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.

(3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the road works authority after that time.

(4) Payment of the discounted amount counts for the purposes of sub-paragraph (3) only if it is made before the end of the period for payment of the discounted amount.

(5) In proceedings for the offence a certificate which—

(a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the road works authority, and

(b) states that payment of an amount specified in the certificate was or was not received by a date so specified,
is sufficient evidence of the facts stated.

Request for hearing

7 (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.

(2) A notice requesting a hearing under sub-paragraph (1) shall be in writing and shall be sent by post or delivered to the person specified under paragraph 3(2)(c) in the fixed penalty notice at the address so specified.

(3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.

(4) Where a person has requested a hearing in accordance with this section—

(a) the road works authority shall hold the hearing,

(b) a person authorised for the purpose by the road works authority in whose area the offence was committed shall notify the procurator fiscal of the request, and

(c) the period for payment of the fixed penalty shall be calculated so that the period beginning with the giving of the notice under this paragraph and ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

Power to withdraw notices

8 (1) If the road works authority consider (whether after holding a hearing under paragraph 7 or not) that a fixed penalty notice which has been given ought not to have been given, they may give to the person to whom it was given a notice withdrawing the fixed penalty notice.

(2) Where a notice under sub-paragraph (1) is given—

(a) the road works authority shall repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice, and

(b) no proceedings shall be commenced or continued against that person for the offence in question.

(3) The road works authority shall consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

Recovery of unpaid fixed penalties

9 Subject to paragraph 8, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it shall be enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.
Judicial determination of enforcement of fixed penalty

10 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 9 may apply to the sheriff by summary application for a declaration that the fixed penalty is not enforceable on the ground that—

(a) the fixed penalty was paid before the expiry of the period for paying, or
(b) the person has made a request for a hearing in accordance with paragraph 7 and no hearing has been held within a reasonable time after the request.

(2) On an application under sub-paragraph (1), the sheriff may declare—

(a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty,
(b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 7,
(c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request, and accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

General and supplementary

11 The Scottish Ministers may make regulations about—

(a) the application by road works authorities of fixed penalties paid under this Schedule,
(b) the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this Schedule.

12 The Scottish Ministers may by regulations—

(a) prescribe circumstances in which fixed penalty notices may not be given,
(b) modify paragraph 4(2) or 5(1) so as to substitute a different period for the period for the time being specified there,
(c) prescribe the method or methods by which penalties may be paid.”

SCHEDULE 6
(introduced by section 35)

SCHEDULE 8A TO THE ROADS (SCOTLAND) ACT 1984

“SCHEDULE 8A

FIXED PENALTY OFFENCES

<table>
<thead>
<tr>
<th>Offence</th>
<th>Brief description</th>
</tr>
</thead>
<tbody>
<tr>
<td>An offence under section 58(1)</td>
<td>Deposit of building materials in or erection of scaffolding over road without or other than in accordance with permission.</td>
</tr>
<tr>
<td>An offence under section 85(3) as read with (4)</td>
<td>Deposit of builder’s skip on road without permission of roads authority.</td>
</tr>
</tbody>
</table>
SCHEDULE 7
(introduced by section 35)

SCHEDULE 8B TO THE ROADS (SCOTLAND) ACT 1984

“SCHEDULE 8B

FIXED PENALTIES FOR CERTAIN OFFENCES

Power to give fixed penalty notices

1 (1) An authorised officer of a roads authority may, if having reason to believe that a person is committing or has committed a fixed penalty offence, give that person a fixed penalty notice in relation to that offence.

(2) In this Schedule “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty.

2 A fixed penalty notice for an offence may not be given after such time relating to the offence as the Scottish Ministers may by regulations prescribe.

Contents of fixed penalty notice

3 (1) A fixed penalty notice shall identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.

(2) A fixed penalty notice shall also state—

(a) the amount of the penalty and the period within which it may be paid;
(b) the discounted amount and the period within which it may be paid;
(c) the person to whom and the address at which payment may be made;
(d) the method or methods by which payment may be made;
(e) the person to whom and the address at which any representations relating to the notice may be made;
(f) the consequences of not making a payment within the period for payment.

(3) The person specified under sub-paragraph (2)(c) must be the roads authority or a person acting on their behalf.

The amount of the penalty and the period for payment

4 (1) The penalty for a fixed penalty offence is (subject to paragraph 5) such amount, not exceeding 30 per cent. of the maximum fine for that offence, as the Scottish Ministers may by regulations prescribe.

(2) The period for payment of the penalty is the period of 29 days beginning with the day on which the notice is given.

(3) The roads authority may extend the period for paying the penalty in any particular case if they consider it appropriate to do so.
The discounted amount

5 (1) A discounted amount is payable instead of the amount prescribed under paragraph 4(1) if payment is made before the end of the period of 15 days beginning with the day on which the notice is given.

(2) The discounted amount for a fixed penalty offence is such amount, not exceeding 25 per cent. of the maximum fine for the offence, as the Scottish Ministers may by regulations prescribe.

(3) If the last day of the period specified in sub-paragraph (1) does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.

Effect of notice and payment of penalty

6 (1) This paragraph applies where a person is served with a fixed penalty notice in respect of a fixed penalty offence.

(2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.

(3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the roads authority after that time.

(4) Payment of the discounted amount counts for the purposes of sub-paragraph (3) only if it is made before the end of the period for payment of the discounted amount.

(5) In proceedings for the offence a certificate which—

(a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the roads authority; and

(b) states that payment of an amount specified in the certificate was or was not received by a date so specified,

is sufficient evidence of the facts stated.

Request for hearing

7 (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.

(2) A notice requesting a hearing under sub-paragraph (1) shall be in writing and shall be sent by post or delivered to the person specified under paragraph 3(2)(c) in the fixed penalty notice at the address so specified.

(3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.

(4) Where a person has requested a hearing in accordance with this section—

(a) the roads authority shall hold the hearing;

(b) a person authorised for the purpose by the roads authority in whose area the offence was committed shall notify the procurator fiscal of the request; and
(c) the period for payment of the fixed penalty shall be calculated so that the period beginning with the giving of the notice under this paragraph and ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

5

**Power to withdraw notices**

8 (1) If the roads authority consider (whether after holding a hearing under paragraph 7 or not) that a fixed penalty notice which has been given ought not to have been given, they may give to the person to whom it was given a notice withdrawing the fixed penalty notice.

(2) Where a notice under sub-paragraph (1) is given—

(a) the roads authority shall repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice; and

(b) no proceedings shall be commenced or continued against that person for the offence in question.

15 (3) The roads authority shall consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

**Recovery of unpaid fixed penalties**

9 Subject to paragraph 8, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it shall be enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

**Judicial determination of enforcement of fixed penalty**

10 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 9 may apply to the sheriff by summary application for a declaration that the fixed penalty is not enforceable on the ground that—

(a) the fixed penalty was paid before the expiry of the period for paying; or

(b) the person has made a request for a hearing in accordance with paragraph 7 and no hearing has been held within a reasonable time after the request.

(2) On an application under sub-paragraph (1), the sheriff may declare—

(a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty;

(b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 7;

(c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request, and accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

**General and supplementary**

11 The Scottish Ministers may make regulations about—

(a) the application by roads authorities of fixed penalties paid under this Schedule;
(b) the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this Schedule.

12 The Scottish Ministers may by regulations—

(a) prescribe circumstances in which fixed penalty notices may not be given;

(b) modify paragraph 4(2) or 5(1) so as to substitute a different period for the period for the time being specified there;

(c) prescribe the method or methods by which penalties may be paid.”
Transport (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to provide for the setting up and functions of new transport bodies and to enable the Scottish Ministers to discharge certain transport functions; to provide further for the control and co-ordination of road works and for the enforcement of the duties placed on those who carry them out; to set up national concessionary fares schemes; and to make other, miscellaneous modifications of the law relating to transport.

Introduced by:  Nicol Stephen
On: 27 October 2004
Bill type: Executive Bill
These documents relate to the Transport (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 27 October 2004

TRANSPORT (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Transport (Scotland) Bill introduced in the Scottish Parliament on 27 October 2004:

   • Explanatory Notes;
   • a Financial Memorandum;
   • an Executive Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 28–PM.
EXPLANATORY NOTES

INTRODUCTION

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

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

THE BILL

4. The Bill takes forward the proposals in the White Paper *Scotland’s transport future* \(^1\) and fulfils commitments in the Partnership Agreement (*A Partnership for a Better Scotland: Partnership Agreement* \(^2\) published in May 2003) to bring forward legislation to:

- create regionally based Transport Partnerships;
- enable certain transport functions currently carried out by Strathclyde Passenger Transport Executive and Strathclyde Passenger Transport Authority to be carried out by the Scottish Ministers;
- create the office of the Scottish Road Works Commissioner to monitor the quality of road works;
- improve the co-ordination of road works by making the Scottish Road Works Register a key planning tool;
- introduce stricter requirements for reinstating roads and new provisions on resurfacing roads;
- make further provision for enforcing road work offences;
- empower the Scottish Ministers to introduce national concessionary travel schemes and modify or revoke any existing schemes run by transport authorities;
- permit local authorities to establish, alter or remove pedestrian crossings without notifying the Scottish Ministers;
- streamline the administrative process for supporting shipping services in the Highlands and Islands;
- amend the procedures for dealing with applications for harbour orders; and
- enable local authorities in the current Strathclyde Passenger Transport Area to establish quality partnerships, quality contracts and joint-ticketing schemes.

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5. The Bill impacts on a number of Acts but makes particular reference to:

6. The Bill is in four parts:
   - Part 1: Regional Transport;
   - Part 2: Road Works;
   - Part 3: Miscellaneous;
   - Part 4: General.

COMMENTARY ON SECTIONS

PART 1: REGIONAL TRANSPORT

CHAPTER 1: REGIONAL TRANSPORT PARTNERSHIPS

Establishment etc.

Section 1: Establishment of regional Transport Partnerships

7. Section 1 places a duty on the Scottish Ministers to create regionally based Transport Partnerships by order.

8. Section 1(1) requires the Scottish Ministers to determine the boundaries of the Transport Partnerships so that every part of Scotland is within a Transport Partnership. It also obliges the Scottish Ministers to ensure that Transport Partnerships have a constitution to govern their activities.

9. Section 1(2)(a) requires that the membership of each Transport Partnership includes one councillor from each council that is a member of the Transport Partnership. It defines the terms “councillor member” and “constituent council”.

10. Section 1(2)(b) requires the Scottish Ministers to appoint additional members to each Transport Partnership. Under section 1(3) this requirement will only continue until the council elections of May 2007. Thereafter, these external members will be appointed by the Transport Partnership itself, and these appointments will be subject to the consent of the Scottish Ministers.

11. Section 1(2)(d) requires the Scottish Ministers to establish the decision-making rules for a Transport Partnership. Each member (both councillor and external members) will have one vote but, under section 1(4), some councillor members shall have their votes weighted so as to count as up to 4 votes. It is the Scottish Ministers’ intention that the weighting of councillors’ votes will be broadly in line with the relative size of the population of the council that they represent. If only a part of a council’s area is within a partnership region, only the population from the part of the council’s area which is covered by that partnership is to be taken into account when determining the vote weightings allocated.
12. Section 1(2)(e) gives powers to the Scottish Ministers to determine that certain offices of the partnership, for example the Chair or Deputy Chair, can be held only by councillor members and not by external members.

13. The Scottish Ministers will carry out their duties and powers in this section by orders that will, as stated in section 44, be laid in draft and subject to the affirmative resolution procedure.

Section 2: Dissolution of RTPs

14. Section 2 empowers the Scottish Ministers, by order, to dissolve Transport Partnerships. Before doing so, the Scottish Ministers will be required to consult the Transport Partnerships in question and their constituent councils.

15. The Scottish Ministers will carry out their duties and powers in this section by orders that will, as stated in section 44, be laid in draft and subject to the affirmative resolution procedure.

Administration

Section 3: Funding and borrowing

16. Section 3 requires the constituent councils who form each Transport Partnership to fund its net expenses, as defined in subsection (4). A Transport Partnership’s income can come from a number of sources including from the Scottish Ministers.

17. Under section 3(2) the share of the expenses to be paid by each constituent council will be determined by the Transport Partnership having regard to its transport strategy (formulated under section 5) but if the Transport Partnership is unable to decide then the relevant shares will be prescribed by the Scottish Ministers by order.

18. Section 3(3) empowers the Scottish Ministers, by order, to make arrangements to ensure that each constituent council meets its obligation to provide the Transport Partnership with the share of its net expenses determined by section 3(2).

19. Section 3(5) clarifies that Transport Partnerships will be able to borrow money on the same terms and subject to the same conditions as local authorities.

Section 4: Administrative functions of RTPs

20. Section 4 provides as to the administrative functions of Transport Partnerships, Schedule 1 provides the details. An explanation of the provisions can be located at paragraphs 97 to 108 of these notes.
Regional transport strategies

Section 5: Formulation and content of regional transport strategies

21. Section 5(1) places a duty on each Transport Partnership to draw up a transport strategy for its region. These strategies will focus on transport within the region but should also, in line with section 5(2)(d), take into account transport to and from the region.

22. Section 5(2) outlines the matters that the Transport Partnerships should consider when drawing up their strategies. Section 5(2)(f) requires the strategy to include an assessment of what might be done to achieve the objectives set out in subsection (2)(a), (b) and (d) subject to constraints of cost, funding and practicability. Under section 5(2)(g) the strategy must consider how progress towards the objectives is to be measured and monitored. Under section 5(2)(h) the strategy must describe how the Transport Partnership will use those functions that have already been conferred upon it to fulfil the strategy. It must also identify those other functions, if any, that the Transport Partnership needs in order to fulfil the strategy. The Scottish Ministers may, under section 5(3), issue guidance about transport strategies.

Section 6: Procedure before and after the drawing up of transport strategies

23. Section 6 places a duty on Transport Partnerships to draw up, and submit to the Scottish Ministers, their first transport strategy within 1 year of their establishment. The timing of subsequent strategies is covered by section 7. Before submitting the strategy the Transport Partnership must consult its constituent councils and other persons as it thinks fit.

24. Under section 6(2) the transport strategy becomes effective when it is approved by the Scottish Ministers and when deciding, under section 6(3), whether to approve the strategy the Scottish Ministers will assess whether it will assist with the realisation of their own transport policies.

25. Section 6(5)(c) places a duty on the Transport Partnerships to publish their completed strategies.

Section 7: Review, modification and renewal of transport strategies

26. Under section 7(1) each Transport Partnership must keep its strategy under review and may modify it or draw up a new one. The Scottish Ministers may direct any Transport Partnership to draw up a new strategy within such a period as they may specify. Sections 5 and 6 apply to modifying an existing transport strategy and the drawing up of a new one as they apply to the preparation of the original strategy.

Section 8: Duty of constituent councils and other public bodies as respects transport strategies

27. Section 8 obliges constituent councils to perform their transport-related functions consistently with the transport strategy of the Transport Partnership for their area. The same duty is placed on certain other public bodies as specified by order.
Section 9: Joint transport strategies

28. Section 9 enables two or more Transport Partnerships to produce a joint transport strategy for their combined regions. A joint transport strategy would be subject to all the same provisions in Part 1 that apply to a transport strategy.

Regional transport functions

Section 10: Other transport functions of RTPs

29. Section 10 gives the Scottish Ministers powers to confer, by order, transport functions on Transport Partnerships provided that the Transport Partnerships have produced their transport strategies. This provision enables the Scottish Ministers to transfer a transport function from one body, such as a local authority, to a Transport Partnership so that the local authority can no longer directly exercise that function. It also enables the Scottish Ministers to confer a transport function on a Transport Partnership without taking it away from a local authority, or whichever body is currently exercising the function. In this case the transport function would be exercised concurrently by that local authority or body and the Transport Partnership. Section 10(3) and (4) requires that when a Transport Partnership requests such a conferring of functions from the Scottish Ministers that this request follows consultation with the Transport Partnership’s constituent councils and is in line with guidance produced by the Scottish Ministers.

30. Section 10(2) ensures that the Scottish Ministers may, in the same way, transfer to or share their own transport functions with Transport Partnerships.

31. Section 10(6) enables an order to modify any enactment.

32. Section 10(7) gives the Scottish Ministers powers to confer, by order, the transport functions of Strathclyde Passenger Transport Authority and Strathclyde Passenger Transport Executive on a Transport Partnership in advance of a transport strategy being produced by that Transport Partnership.

Section 11: Manner of performance of RTPs’ functions

33. Section 11 ensures that a Transport Partnership carries out its functions in fulfilment of its strategy and in doing so complies with directions from the Scottish Ministers and measures and monitors progress in achieving its objectives.

CHAPTER 2: SCOTTISH MINISTERS’ TRANSPORT FUNCTIONS

Section 12: Transport functions of Scottish Ministers

34. Section 12 gives powers to the Scottish Ministers, by order, to transfer transport functions from Strathclyde Passenger Transport Authority or Strathclyde Passenger Transport Executive to the Scottish Ministers.
CHAPTER 3: CONSEQUENTIAL PROVISION

Section 13: Transfer of staff, property and liabilities

35. Section 13 specifies that the regulations governing the protection of employment rights in the event of a transfer of undertaking, as defined in section 13(6), apply whenever the transfer of a function to a Transport Partnership or the Scottish Ministers takes place under sections 2, 10 or 12. These transfers have implications for those people currently engaged in exercising those functions.

36. Section 13(4) and (5) empowers the Scottish Ministers, when a transfer of functions takes place, to require, by order, the transfer of any property or liabilities linked to those functions.

PART 2: ROAD WORKS

37. This Part of the Bill amends sections of Part IV of the New Roads and Street Works Act 1991. Part IV of the 1991 Act is attached (as an annex to these Notes) for information with the deleted text scored out and new text in italics.

The Scottish Road Works Commissioner

Section 14: Creation, appointment, status and funding of Scottish Road Works Commissioner

38. Section 14 of the Bill creates the office of a Scottish Road Works Commissioner. The Commissioner will be appointed on terms and conditions determined by the Scottish Ministers. The Commissioner is not a servant or agent of the Crown and has no status, immunity or privilege of the Crown. The Scottish Ministers can make grants to the Commissioner in respect of the Commissioner’s expenses.

Section 15: Functions of Commissioner

39. Section 15 of the Bill specifies the purpose and functions of the Commissioner. (Schedule 2 enables the Commissioner to appoint staff and makes provision about the preparation and submission of accounts, see paragraphs 109 to 112 of these notes). The purpose and functions of the Commissioner are:

- monitoring the carrying out of road works in Scotland by road works authorities and undertakers;
- promoting compliance with the 1991 Act and the obligations imposed under it; and
- promoting the pursuit of good practice by road works authorities and undertakers. “Good practice” means compliance with any code of practice issued under the Act; and, subject to that code, meeting any obligations set out in the 1991 Act and its associated codes of practice which the Commissioner thinks are required.
Section 16: Duty of road works authority and undertakers to provide Commissioner with information

40. Section 16 of the Act specifies the duties of road works authorities and undertakers to provide the Commissioner with information relevant to their responsibilities for road works. The Commissioner can require this information to be provided, providing the Commissioner needs it to fulfil the Commissioner’s functions. For road works authorities and undertakers, this means information which the authority or undertaker has or can reasonably be expected to acquire – for example, details of training provision for staff involved in updating the Scottish Road Works Register. In the case of the road works authority, it might include information relating to its local road network, the use of that network by different kinds of traffic, or the effects of that use.

41. Any dispute between a road works authority or undertaker and the Commissioner as to information asked for by the Commissioner is to be settled in a manner that will be prescribed by the Scottish Ministers in regulations.

The Scottish Road Works Register

Section 17: The Scottish Road Works Register

42. Section 17 of the Bill substitutes section 112 (‘the road works register’) of the 1991 Act with section 112A and 112B. In addition to the functions set out in section 15, section 112A imposes on the Commissioner a duty to keep a register, to be known as the Scottish Road Works Register (SRWR). The SRWR must show any information required to enable the SRWR to maintain a complete picture of road works and other works being carried out on roads. This information, and the format required for the SRWR, will be prescribed in regulations.

43. The Commissioner will make the SRWR available, at all reasonable times and free of charge, for inspection by anyone unless the information is restricted. If the information is restricted it will be made available to anyone with authority to execute the works. The Commissioner can also require that the information be made available to anyone with sufficient interest. The SRWR is essential for road authorities to fulfil their general duty, under section 118 of the 1991 Act, to coordinate road works. The reasons for restricting information (for example, national security) will be prescribed in regulations.

44. Section 112B of the 1991 Act places a duty on a road works authority to maintain and update the SRWR with:

- details of each road for which the authority is responsible as may be prescribed in regulations.
- permissions granted under section 109 of the 1991 Act. This information should include details of the apparatus and works to which the permission relates.
- for each road for which a road works authority are responsible, information about road works and other works (for example, the location of skips and scaffolding) which are carried out on the road. The Act refers to road works authorities’ existing responsibilities under sections 113 to 115 of the 1991 Act, and the Roads (Scotland) Act 1984. The latter refers to information about skips and various other types of works on the road.
45. The content and format of information required by Section 112B will be prescribed in regulations.

46. Section 113(1) of the 1991 Act has been amended to require undertakers to give advance notice of road works to the SRWR, by inputting information directly so that the road works authority can quickly access up-to-date information in order to co-ordinate road works and other works taking place on roads.

47. Section 114(1) of the 1991 Act has been amended to require statutory undertakers to give notice of start date of works to the SRWR, again by inputting information directly.

48. Sections 116 and 117 amend existing provisions on emergency works and restrictions on follow-up works, requiring the information to be entered in the SRWR.

Miscellaneous

Section 18: Directions as to timing of road works

49. Section 115 of the 1991 Act is amended to define and clarify the road works authority’s powers to direct the timing of road works, by giving the road works authority the power to direct the time or days or both when road works can or cannot be carried out.

Section 19: Directions as to placing of apparatus in roads

50. Section 19 of the Bill introduces new powers for road works authorities to direct the placing of apparatus in the road, by the introduction of section 115A to the 1991 Act. Section 115A allows the road works authority to refuse permission for an undertaker to place apparatus in a road where it appears likely to cause disruption, and where there is another road in which the apparatus could reasonably be placed. Directions under this section may be varied or revoked by further directions. The procedure for giving directions under this section will be prescribed in regulations. The Scottish Ministers may make regulations to make provision for appeals against directions, and the procedure to be followed.

Section 20: Restriction on works following substantial road works

51. Section 20 of the Bill amends section 117 of the 1991 Act which allows road works authorities to impose restrictions on works following substantial road works. It increases the length of time during which road works authorities may restrict works to up to 3 years. A further minor amendment to section 114 of the 1991 Act is made, with reference to section 117(1), to impose a further restriction on the period of notice required before the starting date of works.

Section 21: Duty of road works authority to co-ordinate road works etc.

52. Section 21 of the Bill amends section 118 of the 1991 Act to strengthen the general duty of road works authorities to co-ordinate road works. New subsection (2A) requires the road works authority to have regard to all information in the SRWR which relates to their functions. Subsection (2B) requires them to assist the Commissioner in meeting his duty under section 112A (the keeping
These documents relate to the Transport (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 27 October 2004

of the SRWR), by making best use of the information in fulfilling their functions, and keeping this information ‘under surveillance’. In practice, this means that the road works authority should update and use the SRWR as its daily planning tool for co-ordinating road works and fulfilling its traffic management functions. The Commissioner can issue a direction to the road works authority on how the authority should discharge its duty. The Commissioner may also require the road works authority to provide information on how it is discharging its duty. If it appears that the road works authority are not discharging their duty a further direction can be issued telling them how to comply with their statutory duty.

Section 22: Duty of undertakers to co-operate with authorities and other undertakers

53. Section 22 of the Bill amends section 119 of the 1991 Act so as to augment the general duty on undertakers to co-operate with road works authorities in executing road works. It does this with four new subsections: (1A) and (1B); (2A) and (2B).

54. Under subsection (1A), undertakers must have regard to all information in the SRWR relating to road works which they are carrying out, or plan to carry out.

55. Subsection (1B) requires undertakers to assist the Commissioner to fulfil his duty to keep the SRWR. It also requires the undertaker to keep this information ‘under surveillance’, which in practice means that the undertaker should update and use the SRWR as its daily planning tool when planning and carrying out road works. Persons granted consent by a road works authority under section 109 of the 1991 Act are exempt from these requirements – the road works authority must do this on their behalf.

56. Subsection (2A) requires undertakers to comply with any direction given to them by the Commissioner in meeting the duties imposed on them by (1A) and (1B), and in relation to the relevant code of practice.

57. If the Commissioner thinks that an undertaker is failing to do this, he can ask for more information from the undertaker by issuing a further direction under subsection (2B).

Section 23: Enforcement of section 119 of the 1991 Act

58. Section 23 of the Bill repeals the current offence provision, relating to the failure of the undertaker to co-operate with the road works authority, and replaces it with a power given to the Commissioner to impose a financial penalty. It introduces section 119A allowing the Commissioner to impose penalty charges on statutory undertakers who have failed to comply with the duties imposed upon them in section 119. The circumstances in which a penalty charge can be imposed, the notification and enforcement of it, the level of charge and appeals against it will be set out in regulations.

Section 24: Qualifications of supervisors and operatives

59. Section 24 amends section 126 of the 1991 Act to require undertakers executing road works to: notify road works authorities of the names of the qualified supervisor and operatives (and of any previous supervisors and operatives) working on site; and provide evidence of their qualifications.
The road works authority can issue a notice requiring the provision of this evidence at any time while the works are in progress, or within such period after their completion as prescribed by regulation, and the undertaker must comply with this notice.

Section 25: Duty of authorities, undertakers etc. to ensure competence of employees etc.

60. Section 25 requires road works authorities, undertakers and other persons specified in regulations to use their best endeavours to ensure that their employees or agents who are responsible for maintaining and updating information on the SRWR are competent to perform this task.

Section 26: Duty of undertaker to notify completion of road works: form and procedure

61. Section 26 of the Bill amplifies the duty of undertakers to notify completion of road works following reinstatement of the road. It requires undertakers to provide notice that works have been completed, in a timescale and form to be set out in regulations. It also requires undertakers to provide this information directly to the SRWR.

Section 27: Notices requiring remedial works relating to reinstatements

62. Section 27 makes amendments to section 131 and section 149 of the 1991 Act, to allow different notice periods for remedial works on the reinstatement of roads, sewers, drains and tunnels to be prescribed. This allows a road works authority, where reinstatement does not meet the required standard and requires remedial work which may be urgent, to shorten the minimum period for the remedial works to be completed by undertakers.

Resurfacing

Section 28: Power of road works authority to require undertaker to resurface road

63. Section 28 of the Bill gives road works authorities a new power to require undertakers to resurface a road in certain circumstances, and introduces a new section 132A to the 1991 Act.

64. Undertakers affected by this new power are those who have given notice under section 113 or section 114 of the 1991 Act, are carrying out road works at the time the road works authority issues the requirement, or are still within the notice period for the completion of road works. The circumstances in which a road works authority can issue a notice will be set out in regulations, and will allow the road works authority to require a part of a road to be resurfaced which has not directly been broken up by the undertaker. Equally, the regulations may restrict the extent of the resurfacing works which undertakers are required to carry out.

65. New section 132B gives road works authorities a power to require undertakers to complete resurfacing within certain time periods. It also requires, through regulations, road works authorities to consult undertakers on required time periods, and does not allow the time period to be retrospective from the date when the notice is given. This is to ensure that the time periods allocated to undertakers for the completion of resurfacing are reasonable.
66. New section 132C allows road works authorities to specify the materials and standards of workmanship to be used by undertakers when completing resurfacing work.

Section 29: Resurfacing: regulations and guidance

67. New section 132D to the 1991 Act makes provision for detailed regulations on resurfacing, covering the following areas:

- Information to be provided in a resurfacing notice.
- The decision making process which a road works authority should follow where more than one undertaker has been working on the same area of road, but only one will be served with notice to complete resurfacing.
- Requirements for an undertaker to give notice of any additional events in relation to resurfacing.
- Circumstances when undertakers can pay a road works authority to complete the resurfacing itself, rather than the undertaker complete it directly.
- Appeal mechanisms and dispute resolution.

68. New section 132E to the 1991 Act makes provision for detailed guidance (in the form of a code of practice) on resurfacing which road works authorities and undertakers must follow in discharging their respective duties under this part of the 1991 Act.

Section 30: Contributions to costs of resurfacing by undertaker

69. Section 30 of the Bill inserts new section 137A in the 1991 Act which sets out how contributions to the costs of resurfacing should be made. It allows both the road works authority and undertakers involved in working on an area of road to make contributions to the undertaker on which notice has been served (under new section 28) to complete a resurfacing. Details of payments, exemptions, and dispute resolution will be set out in regulations.

70. Section 30 also provides that any costs incurred by an undertaker (including any costs of a road works authority which are borne by the undertaker) in consequence of a failure by the undertaker to comply with any duty under Part IV of the 1991 Act are to be treated as having been incurred unreasonably.

71. Subsection (3) of section 155 of the 1991 Act is amended in line with section 29.

Enforcement of 1991 Act

Section 31: Increase in penalties for summary offences under 1991 Act

72. Section 31 introduces an increase in penalties for offences listed in column 1, schedule 2 to the Bill. Some penalties are being raised to level 4 (£2,500) and others to level 5 (£5,000).
Section 32: Fixed penalty offences

73. Section 32 introduces new section 154A which provides for fixed penalties for certain offences as set out in schedules 4 and 5 to the Bill. The table identifying the offences to which fixed penalties apply is in schedule 4 of the Bill (which inserts a new Schedule 6A to the 1991 Act). The details of how the fixed penalty system will operate are contained in schedule 5 to the Bill (which inserts a new Schedule 6B to the 1991 Act).

74. Subsection (1) of section 154A of the 1991 Act provides that any offence which is listed in the first column of the new schedule 6A is a fixed penalty offence.

75. Subsection (2) of section 154A of the 1991 Act provides that offences committed by virtue of section 166 of the 1991 Act are not fixed penalty offences. In general terms, the effect of section 166 is that in cases where an offence by a body corporate is committed with the connivance or consent, or is attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body, then that officer is also guilty of an offence and is liable to be prosecuted.
76. To aid comprehension a schematic representation that may lead to a fixed penalty notice being issued is shown above. The type of fixed penalty notice flow illustrated would only apply to offences relating to a failure to give the prescribed starting date for road works (opening notice) or a failure to give the prescribed notice for completion of a reinstatement (closure notice). Other fixed penalty offences such as failure to give the prescribed advance notice or prescribed notice for emergency works will follow a similar flow of determination. Similar procedures will apply when skips and scaffolding are placed on the road without the permission of the relevant roads authority.

Section 33: Civil penalties for certain offences under 1991 Act

77. Section 33 introduces section 154B which provides that the Scottish Ministers may make regulations that will enable road works authorities to impose penalty charges for breaches of the 1991 Act that are considered appropriate for civil enforcement.

Resolution of disputes under 1991 Act

Section 34: Method of settlement of certain disputes under 1991 Act

78. Section 34 introduces a new section 157A, which provides for the settlement of certain disputes in a manner to be prescribed by regulations.

Enforcement of certain offences under the Roads (Scotland) Act 1984

Section 35: Fixed penalty offences under the Roads (Scotland) Act 1984

79. Section 35 introduces new section 130A to the 1984 Act which provides for fixed penalties for certain offences as prescribed in schedules 6 and 7 to the Bill. The table identifying the offences to which fixed penalties apply is in schedule 6 of the Bill (which inserts a new Schedule 8A to the 1984 Act). The details of how the fixed penalty system will operate are contained in schedule 7 to the Bill (which inserts a new Schedule 8B to the 1984 Act).

Section 36: Civil penalties for certain offences under the Roads (Scotland) Act 1984

80. Section 36 introduces section 130B to the 1984 Act which provides that the Scottish Ministers may make regulations that will enable road authorities to impose penalty charges for breaches of the 1984 Act that are considered appropriate for civil enforcement.

PART 3: MISCELLANEOUS

Section 37: National travel concession schemes

81. Section 37 enables the Scottish Ministers, by order, to make national concessionary travel schemes. A national travel concession scheme provides travel concessions to ‘eligible persons’ travelling on ‘eligible services’ on ‘eligible journeys’. These terms are defined in subsection (7). The schemes may be new or they may modify or revoke existing local authority concessionary schemes established under section 93 of the Transport Act 1985.

82. Section 37(4) outlines elements which must be included in a national scheme. These include: the rate of the concession; when the concession is available; the right of operators to take
part in the scheme and the corresponding right of the Scottish Ministers to require them to take part; payments to operators for providing concessions; the enforcement of participation by operators in the scheme; and appeals against compulsory participation.

83. Section 37(6) makes it a criminal offence punishable by a fine not exceeding level 3 (£1000) on the standard scale if an operator fails to comply with an obligation imposed under a scheme.

Section 38: Abolition of requirement on local traffic authority to inform Ministers about certain pedestrian crossings

84. This section amends section 23 of the Road Traffic Regulation Act 1984 by removing the requirement in section 23(2)(c) for a local traffic authority to inform the Scottish Ministers in writing before establishing, altering or removing a pedestrian crossing.

Section 39: Modification of Highlands and Islands Shipping Services Act 1960 and loans for transport-related purposes

85. Section 39 modifies the effect of the Highlands & Islands Shipping Services Act 1960 as regards devolved purposes for Scotland. The Act is not repealed for reserved purposes. Subsections (3) to (6) amend section 70 of the Transport (Scotland) Act 2001 so as to permit the Scottish Ministers to make loans as well as grants for transport-related purposes.

Section 40: Amendment of procedure for dealing with applications for harbour orders

86. Section 40 amends paragraph 18 of Schedule 3 to the Harbours Act 1964 so as to give the Scottish Ministers greater discretion to determine whether objections raised to an application for a Harbour Order should be dealt with by means of a public inquiry, a hearing or by written representations.

Section 41: Amendment of procedure where harbour revision orders are made by the Scottish Ministers of their own motion

87. Section 41 amends paragraph 28 of Schedule 3 to the Harbours Act 1964, in relation to harbour revision orders made by the Scottish Ministers of their own motion, in the same way as section 40 amends the procedure for ‘applied for’ Harbour Orders.

Section 42: Transitional provision for sections 40 and 41

88. Section 42 ensures that the amendments to the Harbour Orders procedure will not apply to pre-existing applications.

Section 43: Minor amendments of Transport (Scotland) Act 2001

89. Section 43(2) amends section 48 of the Transport (Scotland) Act 2001 to enable local authorities to operate quality partnerships, quality contracts and joint ticketing schemes in the area covered by Strathclyde Passenger Transport Authority.
90. Section 43(3) amends section 54(2) of that Act to ensure that the same physical section of a road cannot be subject to more than one road user charging scheme at the same time.

91. Section 43(4) amends section 64 of that Act to introduce subsection (1A) to enable the appointment of persons (adjudicators) to determine disputes relating to road user charging and subsection (1B) to provide that local authorities will pay for the adjudicators.

92. Subsection 43(5) amends section 79(1) of that Act so that any guidance issued by the Scottish Ministers, in relation to local transport strategies, can apply to local traffic authorities as well as to local transport authorities.

93. Subsection 43(6) amends section 82(1) of that Act so that guidance under section 79 of the 2001 Act does not have to be issued before a local transport strategy can be prepared by local traffic authorities as well as by local transport authorities.

94. Subsection 43(7) amends paragraph 5 of Schedule 1 to that Act to enable a charging authority to distribute net proceeds from road user charging to any local traffic authority, local transport authority or other person for the purpose of directly or indirectly facilitating the achievement of the policies in the charging authority’s local transport strategy.

PART 4: GENERAL

Section 44: Orders and regulations

95. Section 44 sets out the process by which the Scottish Ministers obtain approval from the Scottish Parliament to take forward their order or regulation making powers. Section 42(3) details which orders will be subject to the affirmative procedure which requires the Scottish Parliament to approve positively by resolution the proposals within a statutory instrument.

Section 46: Short title and commencement

96. Section 46 allows the Scottish Ministers to set different dates to commence different provisions of the Bill.

SCHEDULES

Schedule 1: Administrative functions of RTPs

97. Schedule 1 applies various requirements and gives various administrative functions to Transport Partnerships to enable them to operate effectively. They will have some of the characteristics of local authorities and these provisions bring the Transport Partnerships into line with certain requirements of local government legislation.

98. Paragraphs 1 to 5 apply to Transport Partnerships the rules on the appointment etc of staff that apply to local authorities. Paragraph 1 requires the Transport Partnerships to appoint staff to exercise their functions. Paragraph 2 empowers a Transport Partnership to indemnify its employees. Paragraph 3 applies to Transport Partnerships similar provision for security of money
entrusted to their employees as it is already available to local authorities. Paragraph 4 requires employees of the Transport Partnerships to declare potential conflicts of interest. Paragraph 5 makes it an offence for any employee of a Transport Partnership to receive, through the exercise of their duties, any payment or reward other than remuneration and expenses due to them under their contract of employment. This offence is based on the one already applying to local government employees.

99. Paragraph 6 confers on the Transport Partnerships certain powers related to the acquisition by agreement, compulsory purchase, and disposal, of land. These are based on the powers already available to local authorities and may only be exercised by a Transport Partnership in the exercise of its transport functions.

100. Paragraph 7 provides that Transport Partnerships may promote or oppose private legislation in the Scottish Parliament.

101. Paragraph 8 requires Transport Partnerships to participate in community planning in the same way as various other public bodies.

102. Paragraph 9 applies various miscellaneous local authority responsibilities to Transport Partnerships. These concern, in particular, provisions on legal proceedings. Sub-paragraph (2) requires each partnership to appoint one of its employees as its proper officer, in line with the existing requirement on local authorities. This post-holder is required for the purposes of legal proceedings.

103. Paragraph 10 requires Transport Partnerships to prepare, publish and give to the Scottish Ministers an annual report on the performance of its functions. It also requires Transport Partnerships to give to the Scottish Ministers, on request, any information about the performance of their functions.

104. Paragraph 11 applies to Transport Partnerships certain of the rules governing finance that already apply to local authorities.

105. Paragraph 12 applies to Transport Partnerships various rules governing the entering into of contracts. These rules already apply to local authorities.

106. Paragraph 13 amends the Ethical Standards in Public Life etc. (Scotland) Act 2000 to add the Transport Partnerships to the list of devolved public bodies for which they are to be codes of conduct for their members.

107. Paragraph 14 amends the Scottish Public Services Ombudsman Act 2002 to include Transport Partnerships in the list of bodies that the Ombudsman can investigate.

108. Paragraph 15 amends the Freedom of Information (Scotland) Act 2002 so as to apply to Transport Partnerships the duty on public authorities to disclose information.
Schedule 2: Scottish Road Works Commissioner: further provision

109. Schedule 2 of the Bill sets out further provisions in respect of the Commissioner.

110. Paragraph 1 relates to the terms and conditions, including pension and other allowances to staff, who have with the consent of the Scottish Ministers, been appointed.

111. Paragraph 2 confirms a duty on the Commissioner to prepare, for each financial year and, in accordance with directions given by the Scottish Ministers, an account of income and expenditure which will be sent to the Scottish Ministers. The Scottish Ministers may also direct that such accounts are sent to the Auditor General for Scotland for auditing.

112. Paragraph 3 confirms a duty on the Commissioner at the end of each financial year to give to the Scottish Ministers, and publish, a report on his performance during that year. The Commissioner shall also provide the Scottish Ministers with such information about the performance of those functions as may be required.

Schedule 3: Increase in maximum fines for certain summary offences under the 1991 Act

113. The schedule lists offences and their maximum fine levels as introduced by section 31.

Schedule 4: Schedule 6A to the New Roads and Street Works Act 1991

114. The schedule lists fixed penalty offences as introduced by section 32.

Schedule 5: Schedule 6B to the New Roads and Street Works Act 1991

115. Schedule 5 paragraph 1(1) provides power for an authorised officer to issue a fixed penalty notice.

116. Paragraph 2 provides the Scottish Ministers with the power to set via regulation a time limit between an offence being committed and an authorised officer being able to give a fixed penalty notice.

117. Paragraph 4 provides for the level of the financial limits of the fixed penalty notice and the period within which payment of the notice should be made. The road works authority has a power to extend the period of payment.

118. Paragraph 5 enables offenders to pay a lesser amount in respect of the fixed penalty notice if they make an earlier payment.

119. Paragraph 7 enables a person in receipt of a fixed penalty notice to request a hearing in respect of the offence for which they have been given notice provided that that request is made within 29 days of receipt of the notice. The request must be made in writing to the designated person at the address shown on the fixed penalty notice. The road works authority will hold the meeting and the procurator fiscal will be notified that a hearing is to be held. The period between a
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person requesting a hearing and being notified of the hearing’s decision will not count towards the 29 days for the payment of the penalty.

120. Paragraph 8 provides for a power of the road works authority to withdraw notices, in cases where they have been erroneously issued or consider there are extenuating circumstances. Sub-paragraph (3) provides that a road works authority is bound to consider any representations made by or on behalf of a person given a notice, and that they must decide in all circumstances whether to withdraw the notice.

121. Paragraph 9 provides for the recovery of unpaid fixed penalty fines. After the expiry of 29 days the road works authority is able to enforce the unpaid penalty as if it were an extract registered decree arbitral. In practice this means that the unpaid penalty can be recovered in the same way as a sum of money due under a civil court decree.

122. Paragraph 10 provides a mechanism under which disputes as to whether or not a fixed penalty has been paid or a hearing sought within the period for paying can be resolved by the courts. Sub-paragraph (1) enables a person who is in dispute with a road works authority to apply to the sheriff by summary application for a declaration that the fixed penalty cannot be enforced under paragraph 9 either because the fixed penalty has been paid or a request for a hearing has been made within the period for paying.

123. Paragraph 10(2) provides that the sheriff may declare that the person has or has not paid the penalty or requested a hearing within the period for paying and that the fixed penalty is or is not enforceable under paragraph 9.

124. Paragraph 12(a) and (c) provides the Scottish Ministers with powers to make regulations prescribing the circumstances in which a fixed penalty notice may not be given and the methods for the payment of penalties.

125. The schematic below provides the detail, for illustrative purposes, of the provisions within schedule 5 in respect of the process associated with payment of fixed penalties for certain offences.

Schedule 6: Schedule 8A to the Roads (Scotland) Act 1984

126. The schedule lists fixed penalty offences introduced by section 35.

Schedule 7: Schedule 8B to the Roads (Scotland) Act 1984

127. Paragraphs 11 and 12 of the new Schedule 8B (inserted into 1984 Act by schedule 7 to the Bill) provide the Scottish Ministers with powers to make regulations relating to the new Schedule 8A (inserted by schedule 6 to the Bill).

128. The schematic below provides the detail, for illustrative purposes, of the provisions within schedule 7 (as well as schedule 5) in respect of the process associated with payment of fixed penalties for certain offences.
107. Roads, road works and undertakers.

(1) In this Part a "road" means any way (other than a substitute road made under section 74(1) of the [1984 c. 54.] Roads (Scotland) Act 1984 or a waterway) whether or not there is over it a public right of passage and whether or not it is for the time being formed as a way; and the expression includes a square or court, and any part of a road.

(2) Where a road passes over a bridge or through a tunnel, references in this Part to the road include that bridge or tunnel.

(3) In this Part "road works" means works for any purposes other than roads purposes, being works of any of the following kinds executed in a road in pursuance of a statutory right or with permission granted under section 109—

(a) placing apparatus, or
(b) inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it,

or works required for or incidental to any such works (including, in particular, breaking up or opening the road, or any sewer, drain or tunnel under it, or tunnelling or boring under the road).

(4) In this Part "undertaker" in relation to road works means the person by whom the relevant statutory right is exercisable (in the capacity in which it is exercisable by him) or a person having permission granted under section 109 to execute road works, as the case may be.

(5) References in this Part to the undertaker in relation to apparatus in a road are to the person entitled, by virtue of a statutory right or a permission granted under section 109, to carry out in relation to the apparatus such works as are mentioned in subsection (3); and references to an undertaker having apparatus in the road, or to the undertaker to whom apparatus belongs, shall be construed accordingly.

108. The road works authority and other relevant authorities.

(1) In this Part "the road works authority" in relation to a road means, subject to the following provisions—

(a) if the road is a public road, the roads authority, and
(b) if the road is not a public road, the road managers.
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(2) In the case of a road for which the Secretary of State is the roads authority but in relation to which a local roads authority acts as his agent under section 4 of the Roads (Scotland) Act 1984, the local roads authority shall be regarded as the road works authority for the purposes of section 112 (the road works register) and sections 113 to 119 (advance notice and co-ordination of works).

(3) Subsection (1)(b) has effect subject to section 146 as regards the application of this Part to prospective public roads.

(4) In this Part the expression "road managers", used in relation to a road which is not a public road, means the authority, body or person liable to the public to maintain or repair the road or, if there is none, any authority, body or person having the management or control of the road.

(5) The Secretary of State may by regulations make provision for exempting road managers from provisions of this Part which would otherwise apply to them as the road works authority in relation to a road.

(6) References in this Part to the relevant authorities in relation to any road works are to the roads authority and also—

(a) where the works include the breaking up or opening in the road of a sewer vested in the local authority, that local authority;

(b) where the road is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, that authority; and

(c) where in any other case the road, not being a public road, is carried or crossed by a bridge, the bridge authority.

109. Permission to execute road works.

(1) A road works authority may grant permission in writing, subject to such reasonable conditions as they consider appropriate, to persons to whom this section applies—

(a) to place, or to retain, apparatus in a road, and

(b) thereafter to inspect, maintain, adjust, repair, alter or renew the apparatus, change its position or remove it,

and to execute for those purposes any works required for or incidental to such works (including, in particular, breaking up or opening the road, or any sewer, drain or tunnel under it, or tunnelling or boring under the road).

(2) A person to whom permission has been granted under this section to execute works may do so without obtaining any consent which would otherwise be required to be given—

(a) by any other relevant authority in its capacity as such, or

(b) by any person in his capacity as the owner of apparatus affected by the works;
but without prejudice to the provisions of this Part as to the making of requirements by any such authority or person or as to the settlement of a plan and section and the execution of the works in accordance with them.

(3) The granting of permission under this section to a person does not dispense that person from obtaining any other consent, licence or permission which may be required; and it does not authorise the installation of apparatus for the use of which the licence of the Secretary of State is required unless and until that licence has been granted.

(4) This section applies to persons who are described in one or more of the following paragraphs—

(a) persons of a prescribed class,

(b) persons carrying out works of a prescribed class,

(c) persons carrying out works in a prescribed area.

(5) The conditions referred to in subsection (1) may include conditions as to—

(a) the payment of fees,

(b) the future cessation or withdrawal of the permission, and

(c) indemnification of the authority against claims arising out of what is permitted.

(6) Before granting permission under this section the road works authority shall give not less than 10 working days' notice to each of the following—

(a) where the works are likely to affect a sewer vested in a local authority, to that authority,

(b) where the works are to be executed in a part of a road which is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, to that authority,

(c) where in any other case the part of the road in which the works are to be executed is carried or crossed by a bridge, to the bridge authority,

(d) to any person who has given notice under section 113 (advance notice of certain works) of his intention to execute road works which are likely to be affected by the works to which the permission relates, and

(e) to any person having apparatus in the road which is likely to be affected by the works; but a failure to do so does not affect the validity of the permission.
(7) Where permission has been granted under section 61 of the [1984 c. 54.] Roads (Scotland) Act 1984 in respect of apparatus and the road works authority consider that permission could be granted under this section in respect of that apparatus, they may cancel the permission granted under section 61 of the 1984 Act and, if they cancel that permission, they shall substitute for it permission granted in accordance with subsection (1) above.

(8) The works referred to in subsection (1) above do not include works for road purposes.

110. Prohibition of unauthorised road works.

(1) It is an offence for a person other than the road works authority—

(a) to place apparatus in a road, or

(b) to break up or open a road, or a sewer, drain or tunnel under it, or to tunnel or bore under a road, for the purpose of placing, inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, or of changing the position of apparatus or removing it, otherwise than in pursuance of a statutory right or in accordance with a permission granted under section 109.

(2) A person committing an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) This section does not apply to—

(a) works for which consent or permission has been given under the Roads (Scotland) Act 1984 by a roads authority,

(b) works for road purposes, or

(c) emergency works of any description.

(4) If a person commits an offence under this section, the road works authority may—

(a) in the case of an offence under subsection (1)(a), direct him to remove the apparatus in respect of which the offence was committed, and

(b) in any case, direct him to take such steps as appear to them necessary to reinstate the road or any sewer, drain or tunnel under it.

If he fails to comply with the direction, the authority may remove the apparatus or, as the case may be, carry out the necessary works and recover from him the costs reasonably incurred by them in doing so.

111. Emergency works.

(1) In this Part "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

(2) Where works comprise items some of which fall within the preceding definition, the expression "emergency works" shall be taken to include such of the items as do not fall within that definition as cannot reasonably be severed from those that do
(3) Where in any civil or criminal proceedings brought by virtue of any provision of this Part the question arises whether works were emergency works, it is for the person alleging that they were to prove it.

FN1 FN2 112. (1) A road works authority shall keep a register showing with respect to each road for which they are responsible such information as may be prescribed with respect to the road works, and such other descriptions of works as may be prescribed, executed or proposed to be executed in the road.

(2) The register shall contain such other information, and shall be kept in such form and manner, as may be prescribed.

(3) The authority shall make the register available for inspection, at all reasonable hours and free of charge—

(a) so far as it relates to restricted information, by any person having authority to execute works of any description in the road, or otherwise appearing to the authority to have a sufficient interest, and

(b) so far as it relates to information which is not restricted, by any person.

The Secretary of State may make provision by regulations as to the information which is restricted for the purposes of this subsection.

(4) The Secretary of State may make arrangements for the duties to be discharged by means of one or more central registers kept by a person appointed in pursuance of the arrangements.

FN5 (4A) Before making any arrangements under subsection (4) the Secretary of State shall consult—

(a) any road works authority having duties under this section which he intends not to specify for the purposes of the arrangements; and

(b) any undertaker (other than a person having permission under section 109 to execute road works) having apparatus in a road for which such road works authority is responsible.]

(5) If such arrangements are made the Secretary of State may require the road works authorities so specified to participate in and make contributions towards the cost of the arrangements.

(6) The Secretary of State may by regulations make provision with respect to any register kept in pursuance of this section—

(a) requiring the registration of such information as may be prescribed, and

(b) requiring the payment of such fee as may be prescribed in respect of the registration of information of any prescribed description;

and the regulations may contain provision as to the person responsible for securing the registration of the information and the person liable to pay the fee.
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112A The Scottish Road Works Register.

(1) The Scottish Road Works Commissioner (in this Part, “the Commissioner”) shall keep a register, to be known as the Scottish Road Works Register (in this Part, “the SRWR”).

(2) The SRWR shall be kept in such form and manner as may be prescribed.

(3) The Commissioner shall make arrangements so as to enable any person who is required, by a provision of this Act, to enter particulars, information or a notice in the SRWR, to have access to the SRWR for that purpose.

(4) The Commissioner shall make the SRWR available, at all reasonable times and free of charge, for inspection—

(a) so far as it relates to restricted information, by any person having authority to execute works of any description in the road in respect of which that restricted information is kept in the SRWR or who, not being a person having that authority, nevertheless appears to the Commissioner to have a sufficient interest in that information;

(b) so far as it relates to information which is not restricted, by any person.

(5) In subsection (4), “restricted” information is information of a prescribed description.

112B Duty to enter certain information in the Scottish Road Works Register.

(1) A road works authority shall enter in the SRWR such particulars of each road for which the authority are responsible as may be prescribed.

(2) A road works authority which has—

(a) under section 109, granted permission as regards apparatus and works;

(b) under section 115, given directions as to the timing of works; or

(c) under section 115A, given directions as to the placing of apparatus,

shall enter in the SRWR such information relating to that matter as may be prescribed.

(3) A roads authority which has—

(a) under section 85 of the Roads (Scotland) Act 1984 (c.54), given permission for the deposit of a skip on a road for which a road works authority are responsible;

(b) under subsection (2) of section 86 of that Act, required the removal or repositioning of a skip deposited on such a road or removed or repositioned such a skip;

(c) become aware that a constable has, under subsection (1) of that section, required or caused the removal or repositioning of such a skip;

(d) given notice under—

(i) section 87 of that Act requiring the removal of a structure from a road for which a road works authority are responsible and (where considered requisite under that section) the reinstatement of the road; or

(ii) section 88 of that Act requiring the removal or alteration of a projection affecting such a road;

(e) under section 90 of that Act, given consent for the fixing or placing of an overhead bridge, beam, rail or other apparatus along or across such a road;

(f) under section 91 of that Act, served notice requiring work to be done or carried out work in relation to such a road; or
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(g) under section 92 of that Act, given consent to the planting of a tree or shrub near a carriageway or required its removal, where the carriageway is, or is part of, such a road, shall enter in the SRWR such information relating to that matter as may be prescribed.

(4) Information to be entered in the SRWR under this section shall be entered in such form and manner as may be prescribed.

Notice and co-ordination of works

113. Advance notice of certain works.

(1) In such cases as may be prescribed an undertaker proposing to execute road works shall give the prescribed advance notice of the works to the road works authority.

(2) Different periods of notice may be prescribed for different descriptions of works.

(3) The notice shall contain such information as may be prescribed.

(3A) For the purposes of subsection (1) an undertaker gives notice by entering in the SRWR such information as may be prescribed.

(4) After giving advance notice under this section an undertaker shall comply with such requirements as may be prescribed, or imposed by the road works authority, as to the providing of information and other procedural steps to be taken for the purpose of co-ordinating the proposed works with other works of any description proposed to be executed in the road.

(5) An undertaker who fails to comply with his duties under this section commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

114. Notice of starting date of works.

(1) An undertaker proposing to begin to execute road works involving—

(a) breaking up or opening the road, or any sewer, drain or tunnel under it, or

(b) tunnelling or boring under the road,

shall give not less than 7 working days' notice (or such other notice as may be prescribed) to the road works authority, to any other relevant authority and to any other person having apparatus in the road which is likely to be affected by the works.

(2) Different periods of notice may be prescribed for different descriptions of works or in cases where the undertaker has been given notice under section 117(1), and cases may be prescribed in which no notice is required.

(3) The notice shall state the date on which it is proposed to begin the works and shall contain such other information as may be prescribed.

(3A) For the purposes of subsection (1) an undertaker gives notice by—

(a) giving to any relevant authority (not being the road works authority) and to any other person having apparatus in the road which is likely to be affected by the works a notice—
(i) stating the date on which it is proposed to begin the works; and
(ii) containing such other information as may be prescribed; and
(b) entering in the SRWR a copy of that notice.

(4) Where notice is required to be given under this section, the works shall not be begun without notice or before the end of the notice period, except with the consent of those to whom notice is required to be given.

(5) An undertaker who begins to execute any works in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) In proceedings against a person for such an offence it is a defence for him to show that the contravention was attributable—
(a) to his not knowing the position, or not knowing of the existence, of another person's apparatus, or
(b) to his not knowing the identity or address of—
(i) a relevant authority, or
(ii) the person to whom any apparatus belongs,
and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.

(7) A notice under this section shall cease to have effect if the works to which it relates are not substantially begun before the end of the period of seven working days (or such other period as may be prescribed) beginning with the starting date specified in the notice, or such further period as may be allowed by those to whom notice is required to be given.

115. Power to give directions as to timing of works.

(1) If it appears to the road works authority—
(a) that proposed road works are likely to cause serious disruption to traffic, and
(b) that the disruption would be avoided or reduced if the works were carried out only at certain times, or on certain days (or at certain times on certain days)
the authority may give the undertaker such directions as may be appropriate as to the times or days (or both) when the works may or may not be carried out.

(1A) If it appears to a road works authority—
(a) that subsisting road works are causing or are likely to cause serious disruption to traffic; and
(b) that the disruption would be avoided or reduced if the works were to continue to be carried out only at certain times or on certain days (or at certain times on certain days),
These documents relate to the Transport (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 27 October 2004

The authority may give the undertaker such directions as may be appropriate as to the times or days (or both) when the works may or may not continue to be carried out.

(2) The procedure for giving a direction shall be prescribed by the Secretary of State.

(3) An undertaker who executes works in contravention of a direction under this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3A) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, the failure is attributable to a direction under this section.

(4) The Secretary of State may issue or approve for the purpose of this section a code of practice giving practical guidance as to the exercise by road works authorities of the power conferred by this section; and in exercising that power a road works authority shall have regard to the code of practice.

**115A Power to give directions as to placing of apparatus.**

(1) Where—

(a) an undertaker is proposing to execute road works consisting of the placing of apparatus in a road (the “proposed road”);

(b) placing the apparatus in the proposed road is likely to cause disruption to traffic; and

(c) it appears to the road works authority that—

(i) there is another road in which the apparatus could be placed (the “other road”);

and

(ii) the conditions in subsection (2) are satisfied,

the authority may by directions require the undertaker not to place the apparatus in the proposed road (but shall not require the undertaker to place the apparatus in the other road).

(2) The conditions referred to in subsection (1)(c)(ii) are that—

(a) disruption to traffic would be avoided or reduced if the apparatus were to be placed in the other road;

(b) placing the apparatus in the other road would be a reasonable way of achieving the purpose for which the apparatus is to be placed; and

(c) it is reasonable to require the undertaker not to place the apparatus in the proposed road.

(3) Directions under this section may be varied or revoked by further such directions.

(4) The procedure for giving directions under this section shall be as prescribed.

(5) The Scottish Ministers may by regulations make provision for appeals against directions under this section, including provision as to the procedure to be followed on an appeal.

(6) An undertaker who executes works in contravention of directions under this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
(7) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, the failure is attributable to a direction under this section.

(8) The Scottish Ministers may issue or approve for the purposes of this section a code of practice giving practical guidance as to the exercise by road works authorities of the power conferred by this section; and in exercising that power a road works authority shall have regard to the code of practice.”.

116. Notice of emergency works.

(1) Nothing in section 113 (advance notice), section 114 (notice of starting date) or section 115 (directions as to timing of works) or section 115A (power to give directions as to placing of apparatus) affects the right of an undertaker to execute emergency works.

(2) An undertaker executing emergency works shall, if the works are of a kind in respect of which notice is required by section 114, give notice as soon as reasonably practicable, and in any event within two hours (or such other period as may be prescribed) of the works being begun, to the persons to whom notice would be required to be given under that section.

(3) The notice shall state his intention or, as the case may be, the fact that he has begun to execute the works and shall contain such other information as may be prescribed.

(3A) For the purposes of subsection (2) an undertaker gives notice by—

(a) giving to each person to whom notice would be required to be given under section 114 a notice—

(i) stating the undertaker’s intention, or as the case may be, the fact that he has begun to execute the works; and

(ii) containing such other information as may be prescribed; and

(b) entering in the SRWR a copy of that notice.

(4) An undertaker who fails to give notice in accordance with this section commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) In proceedings against a person for such an offence it is a defence for him to show that the contravention was attributable—

(a) to his not knowing the position, or not knowing of the existence, of another person's apparatus, or

(b) to his not knowing the identity or address of—

(i) a relevant authority, or

(ii) the person to whom any apparatus belongs,

and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.
117. Restriction on works following substantial works carried out for road purposes.

(1) Where it is proposed to carry out substantial works in a road, the road works authority may by notice in accordance with this section restrict the execution of road works during the twelve months following the completion of those works.

For this purpose substantial works means works for road purposes, or such works together with other works, of such description as may be prescribed.

(2) The notice shall be published in the prescribed manner entered in the SRWR and shall specify the nature and location of the proposed works, the date (not being less than three months after the notice is published so entered) on which it is proposed to begin the works, and the extent of the restriction.

(3) A copy of the notice shall be given to each of the following-

(a) where there is a sewer vested in a [sewerage ] authority in the part of the road to which the restriction relates, to that authority;

(b) where the part of the road to which the restriction relates is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, to that authority,

(c) where in any other case the part of the road to which the restriction relates is carried or crossed by a bridge, to the bridge authority,

(d) any person who has given notice under section 113 (advance notice of certain works) of his intention to execute road works in the part of the road to which the restriction relates, and

(e) any other person having apparatus in the part of the road to which the restriction relates;

but a failure to do so does not affect the validity of the restriction imposed by the notice.

(4) A notice ceases to be effective if the works to which it relates are not substantially begun-

(a) on or within one month from the date specified in the notice, or

(b) where road works are in progress in the part of the road to which the restriction relates on that date, within one month from the completion of those works.

(5) An undertaker shall not in contravention of a restriction imposed by a notice under this section break up or open the part of the road to which the restriction relates, except-

(a) to execute emergency works,

(b) with the consent of the road works authority, or

(c) in such other cases as may be prescribed.

(6) If he does-
(a) he commits an offence and is liable on summary conviction to a fine not exceeding
level 5 on the standard scale, and

(b) if convicted of an offence under this subsection he is liable to reimburse the road
works authority any costs reasonably incurred by them in reinstating the road.

(7) The consent of the road works authority under subsection (5)(b) shall not be unreasonably
withheld; and any question whether the withholding of consent is unreasonable shall be
settled by arbitration in the prescribed manner.

(8) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a
supply or service if, or to the extent that, his failure is attributable to a restriction imposed by
a notice under this section.

118. General duty of road works authority to co-ordinate works.

(1) A road works authority shall use their best endeavours to co-ordinate the execution of
works of all kinds (including works for road purposes) in the roads for which they are
responsible-

(a) in the interests of safety,

(b) to minimise the inconvenience to persons using the road (having regard, in
particular, to the needs of people with a disability), and

(c) to protect the structure of the road and the integrity of apparatus in it.

(2) That duty extends to co-ordination with other road works authorities where works in a
road for which one authority are responsible affect roads for which other authorities are
responsible.

(2A) In discharging their duty under this section, a road works authority shall have regard to
all information in the SRWR which relates to the functions of the authority.

(2B) A road works authority shall, so as to maximise the utility of that information for the
purposes of subsection (2A)—

(a) assist the Commissioner in complying with the duty imposed by subsection (1) of
section 112A (as read with subsection (2) of that section); and

(b) keep that information under surveillance.

(3) The Secretary of State shall issue or approve for the purposes of this section codes of
practice giving practical guidance as to the matters mentioned above; and in discharging their
general duty of co-ordination and the specific duties imposed by subsections (2) to (2B) a
road works authority shall have regard to any such code of practice.

(3A) In discharging all the duties referred to in subsection (3), a road works authority shall
have regard also to such guidance as is contained in the practice referred to in section
15(3)(b) of the Transport (Scotland) Act 2004 (asp 00).

(4) If it appears to the Secretary of State, Commissioner that a road works authority are not
properly discharging their general duty of co-ordination, he may direct the authority to supply
him with such information as he considers necessary to enable him to decide whether that is
the case and if so what action to take.

The direction shall specify the information to be provided and the period within which it is to
be provided.

(5) If after the end of that period (whether or not the direction has been complied with) it
appears to the Secretary of State Commissioner that the authority are not properly discharging
their general duty of co-ordination, he may direct the authority to take such steps as he
considers appropriate for the purpose of discharging that duty.

The direction shall specify the steps to be taken and the period within which they are to be
taken, and may include a requirement to make a report or periodic reports to the Secretary of
State Commissioner as to what steps have been taken and the results of taking them.

(6) A direction under this section may be varied or revoked by a further direction.

119. General duty of undertakers to co-operate.

(1) An undertaker shall as regards the execution of road works use his best endeavours to co-
operate with the road works authority and with other undertakers—

(a) in the interests of safety,

(b) to minimise the inconvenience to persons using the road (having regard, in
particular, to the needs of people with a disability), and

(c) to protect the structure of the road and the integrity of apparatus in it.

(1A) In discharging the duty under this section, an undertaker shall have regard to all
information in the SRWR about matters which might affect, or be affected by, works being or
proposed to be carried out by the undertaker.

(1B) An undertaker shall, so as to maximise the utility of that information for the purposes of
subsection (1A)—

(a) assist the Commissioner in complying with the duty imposed by subsection (1) of
section 112A (as read with subsection (2) of that section); and

(b) keep that information under surveillance.

(1C) In subsections (1A) and (1B), “undertaker” does not include a person having permission
under section 109 to execute road works

(2) The Secretary of State shall issue or approve for the purposes of this section codes of
practice giving practical guidance as to the matters mentioned in subsection (1); and—

(a) so far as an undertaker complies with such a code of practice he shall be taken to
comply with his duty under that subsection, and

(b) a failure in any respect to comply with any such code is evidence of failure in that
respect to comply with that duty.
(2A) In discharging the duties imposed by subsections (1) to (1B), an undertaker shall comply with any direction in that respect given to the undertaker by the Commissioner; and paragraphs (a) and (b) of subsection (2) shall apply in relation to any such direction as they apply in relation to the code of practice referred to in that subsection.

(2B) If it appears to the Commissioner that an undertaker is not properly complying with his duty under subsection (1), he may direct the undertaker to supply him with such information as he considers necessary to enable him to decide whether that is the case and, if so, what action to take.

The direction shall specify the information to be provided and the period within which it is to be provided.

(3) An undertaker who fails to comply with his duty under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A direction under this section may be varied or revoked by a further direction.

119A Enforcement of section 119: imposition of penalties

(1) The Scottish Ministers may, by regulations, make provision for or in connection with—

(a) the imposition by the Commissioner of penalties on undertakers who fail to comply with duties imposed on them by section 119;

(b) the payment of such penalties.

(2) The regulations may include provision for or in connection with—

(a) the notification and enforcement of penalties;

(b) the level of penalties;

(c) appeals against the imposition of penalties including the appointment of persons to hear and determine such appeals.

Roads subject to special controls

120. Protected roads.

(1) The consent of the road works authority is required for the placing of apparatus by an undertaker in a protected road, except as mentioned below.

The following are "protected roads" for this purpose—

(a) any road or proposed road which is a special road in accordance with section 7 of the Roads (Scotland) Act 1984, and

(b) any road designated by the road works authority as protected.

(2) Consent is not required for the placing of apparatus—

(a) by way of renewal of existing apparatus, or

(b) in pursuance of a permission granted under section 109 of this Act (permission to execute road works) or section 61 of the Roads (Scotland) Act 1984 (permission to
place and maintain apparatus under a road), except where the permission was granted before the road became a protected road.

(3) The road works authority may require the payment of-
   (a) a reasonable fee in respect of the legal or other expenses incurred in connection with the giving of their consent under this section, and
   (b) an annual fee of a reasonable amount for administering the consent;
and any such fee is recoverable from the undertaker.

This shall not be construed as affecting any right of the authority where they own the land on which the road is situated to grant, subject to such terms and conditions as they think fit, the right to place anything in, under or over the land.

(4) Where the apparatus is to be placed crossing the protected road and not running along it, the road works authority shall not withhold their consent unless there are special reasons for doing so.

(5) Consent to the placing of apparatus in a protected road may be given subject to conditions; and the road works authority may agree to contribute to the expenses incurred by the undertaker in complying with the conditions.

(6) Any dispute between a road works authority and an undertaker as to the withholding of consent, the imposition of conditions, or the making of contributions shall be settled by arbitration in the prescribed manner.

(7) An undertaker having a statutory duty to afford a supply or service shall not be regarded as in breach of that duty if, or to the extent that, it is not reasonably practicable to afford a supply or service by reason of anything done by the road works authority in exercise of their functions in relation to a protected road.

121. Supplementary provisions as to designation of protected roads.

(1) The Secretary of State may prescribe-
   (a) the criteria for designating a road as protected,
   (b) the procedure for making or withdrawing such a designation, and
   (c) the information to be made available by a road works authority as to the roads for the time being designated by them.

(2) Where a road has been designated as protected the road works authority may direct an undertaker to remove or change the position of apparatus placed in the road at a time when it was not so designated.

The authority shall indemnify the undertaker in respect of his reasonable expenses in complying with such a direction.

(3) Where a designation is withdrawn the road works authority may give such directions as they consider appropriate as to-
These documents relate to the Transport (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 27 October 2004

(a) the continuance in force of any conditions subject to which consent was given for the placing of apparatus in the road, and

(b) the continuance of entitlement to any contributions in respect of the expenses of an undertaker in complying with such conditions.

(4) Where a designation is made or withdrawn the road works authority may give such directions as they consider appropriate with respect to works in progress in the road when the designation comes into force or ceases to have effect.

(5) Any dispute between a road works authority and an undertaker as to the exercise by the authority of their powers under subsection (2), (3) or (4) shall be settled by arbitration in the prescribed manner.

(6) Where a road has been designated as protected, the roads authority shall indicate that it has been so designated in the list of public roads which they are obliged to maintain by virtue of section 1 or 2 of the Roads (Scotland) Act 1984.

122. Roads with special engineering difficulties.

(1) The provisions of Schedule 6 have effect for requiring the settlement of a plan and section of road works to be executed in a road designated by the road works authority as having special engineering difficulties.

(2) The Secretary of State may prescribe-

(a) the criteria for designating a road as having special engineering difficulties,

(b) the procedure for making or withdrawing such a designation, and

(c) the information to be made available by a road works authority as to the roads for the time being so designated by them.

(3) Where a local roads authority are asked to designate a road as having special engineering difficulties-

(a) by a transport authority on the ground of the proximity of the road to a structure belonging to, or under the management or control of, the authority, or

(b) by an undertaker having apparatus in the road,

and decline to do so, the transport authority or undertaker may appeal to the Secretary of State who may direct that the road be designated.

(4) The designation of a road as having special engineering difficulties shall not be withdrawn except after consultation with any transport authority or undertaker at whose request the designation was made; and a designation made in pursuance of a direction by the Secretary of State shall not be withdrawn except with his consent.

(5) Where a road has been designated as having special engineering difficulties, the roads authority shall indicate that it has been so designated in the list of public roads which they are obliged to maintain by virtue of section 1 or 2 of the Roads (Scotland) Act 1984.
123. Traffic-sensitive roads.

(1) Regulations made for the purposes of section 113, 114 or 116 (notices required to be given in respect of road works) may make special provision in relation to road works in a road designated by the road works authority as traffic-sensitive.

(2) The Secretary of State may prescribe-

(a) the criteria for designating a road as traffic-sensitive,

(b) the procedure for making or withdrawing such a designation, and

(c) the information to be made available by a road works authority as to the roads for the time being so designated by them.

(3) If it appears to the road works authority that the prescribed criteria are met only at certain times or on certain dates, a limited designation may be made accordingly.

In such a case the reference in subsection (1) to the execution of works in a road designated as traffic-sensitive shall be construed as a reference to works so executed at those times or on those dates.

(4) Where a road has been designated as traffic-sensitive, the roads authority shall indicate that it has been so designated in the list of public roads which they are obliged to maintain by virtue of section 1 or 2 of the Roads (Scotland) Act 1984.

General requirements as to execution of road works

124. Safety measures.

(1) An undertaker executing road works shall secure-

(a) that any part of the road which is broken up or open, or is obstructed by plant or materials used or deposited in connection with the works, is adequately guarded and lit, and

(b) that such traffic signs are placed and maintained, and where necessary operated, as are reasonably required for the guidance or direction of persons using the road, and in accordance with section 120 of the Roads (Scotland) Act 1984 (duty to have regard to the needs of people with a disability).

(2) In discharging in relation to a road his duty with respect to the placing, maintenance or operation of traffic signs, an undertaker shall comply with any directions given by the traffic authority.

The power of the traffic authority to give directions under this subsection is exercisable subject to any directions given by the Secretary of State under section 65 of the Road Traffic Regulation Act 1984.

(3) The Secretary of State may issue or approve for the purposes of this section codes of practice giving practical guidance as to the matters mentioned in subsection (1); and-

(a) so far as an undertaker complies with such a code of practice he shall be taken to comply with that subsection; and
(b) a failure in any respect to comply with any such code is evidence of failure in that respect to comply with that subsection.

(4) An undertaker who fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) If it appears to the road works authority that an undertaker has failed to comply with subsection (1) or (2), they may take such steps as appear to them necessary and may recover from the undertaker the costs reasonably incurred by them in doing so.

(6) If a person without lawful authority or excuse-
   (a) takes down, alters or removes any fence, barrier, traffic sign or light erected or placed in pursuance of subsection (1) or (2) above, or
   (b) extinguishes a light so placed,
he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

125. Avoidance of unnecessary delay or obstruction.

(1) An undertaker executing road works which involve-
   (a) breaking up or opening the road, or any sewer, drain or tunnel under it, or
   (b) tunnelling or boring under the road,
shall carry on and complete the works with all such dispatch as is reasonably practicable.

(2) An undertaker who fails to do so commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where an undertaker executing any road works creates an obstruction in a road to a greater extent or for a longer period than is reasonably necessary, the road works authority may by notice require him to take such reasonable steps as are specified in the notice to mitigate or discontinue the obstruction.

(4) If the undertaker fails to comply with such a notice within 24 hours of receiving it, or such longer period as the authority may specify, the authority may take the necessary steps and recover from him the costs reasonably incurred by them in doing so.

126. Qualifications of supervisors and operatives.

(1) It is the duty of an undertaker executing road works involving-
   (a) breaking up the road, or any sewer, drain or tunnel under it, or
   (b) tunnelling or boring under the road,
to secure that, except in such cases as may be prescribed, the execution of the works is supervised by a person having a prescribed qualification as a supervisor.
(1) A road works authority may (unless the case is one excepted from subsection (1)) by notice require an undertaker executing road works—

(a) to notify them of the name of—

(i) the person who is currently the qualified supervisor required under subsection (1); and

(ii) each person who has previously been the qualified supervisor so required; and

(b) to provide them with such evidence of the requisite qualification of the person or, as the case may be, each person named as may be prescribed.

(2) It is the duty of an undertaker executing road works involving—

(a) breaking up or opening the road, or any sewer, drain or tunnel under it, or

(b) tunnelling or boring under the road,

to secure that, except in such cases as may be prescribed, there is on site at all times when any such works are in progress at least one person having a prescribed qualification as a trained operative.

(2A) A road works authority may (unless the case is one excepted from subsection (2)) by notice require an undertaker executing road works—

(a) to notify them of the name of—

(i) a person whose presence on site at any time specified in the notice (being a time when the works were in progress) enabled the undertaker to comply with his duty under subsection (2); or

(ii) each person whose presence on site during the progress of the works enabled the undertaker to comply with his duty under subsection (2); and

(b) to provide them such evidence of the requisite qualification of the or, as the case may be, each person named as may be prescribed.

(2B) A notice under subsection (1A) or (2A) may be given at any time while the works are being executed or within such period after their completion as may be prescribed.

(2C) The undertaker shall comply with a notice under subsection (1A) or (2A) within such period and in such way as may be prescribed.

(3) An undertaker who fails to comply with his duty under subsection (1) or (2), (2) or (2C) commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Regulations made by the Secretary of State for the purposes of this section may include provision with respect to—

(a) the approval of bodies conferring qualifications (and the withdrawal of such approval), and

(b) the circumstances in which a qualification may be conferred and
126A Duty of authorities, undertakers etc. to ensure competence of employees etc.

Each of the authorities and other persons set out in the first column below shall use their or, as the case may be, his best endeavours to ensure that each of that authority’s or, as the case may be, that person’s employees or agents whose duty it is to carry out for that authority or person a function conferred on that authority or person by or under an enactment set out relative to that authority or person in the second column below is competent to perform that duty—

<table>
<thead>
<tr>
<th>Authority</th>
<th>Enactment</th>
</tr>
</thead>
<tbody>
<tr>
<td>A road works authority</td>
<td>Section 112B(1) and (2) of this Act; section 17 of the Transport (Scotland) Act 2004 (asp 00) (duty to provide Road Works Commissioner with certain information).</td>
</tr>
<tr>
<td>A roads authority</td>
<td>Section 112B(3) of this Act.</td>
</tr>
<tr>
<td>An undertaker</td>
<td>Sections 113(1), 114(1) and 116(2) of this Act; section 17 of the Transport (Scotland) Act 2004 (asp 00) (duty to provide Road Works Commissioner with certain information).</td>
</tr>
</tbody>
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127. Facilities to be afforded to road works authority.

(1) An undertaker executing road works shall afford the road works authority reasonable facilities for ascertaining whether he is complying with his duties under this Part.

(2) An undertaker who fails to afford the road works authority such facilities commits an offence in respect of each failure and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

128. Works likely to affect other apparatus in the road.

(1) Where road works are likely to affect another person’s apparatus in the road, the undertaker executing the works shall take all reasonably practicable steps—

(a) to give the person to whom the apparatus belongs reasonable facilities for monitoring the execution of the works, and

(b) to comply with any requirement made by him which is reasonably necessary for the protection of the apparatus or for securing access to it.

(2) An undertaker who fails to comply with subsection (1) commits an offence in respect of each failure and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) In proceedings against a person for such an offence it is a defence for him to show that the failure was attributable—

(a) to his not knowing the position, or not knowing of the existence, of another person’s apparatus, or
(b) to his not knowing the identity or address of the person to whom any apparatus belongs,
and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.

Reinstatement

129. Duty of undertaker to reinstate.

(1) It is the duty of the undertaker by whom road works are executed to reinstate the road.

(2) He shall begin the reinstatement as soon after the completion of any part of the road works as is reasonably practicable and shall carry on and complete the reinstatement with all such dispatch as is reasonably practicable.

(3) He shall before the end of the next working day after the day on which the reinstatement is completed inform the road works authority give the required notice that he has completed the reinstatement of the road, stating whether the reinstatement is permanent or interim.

(4) If it is interim, he shall complete the permanent reinstatement of the road as soon as reasonably practicable and in any event within six months (or such other period as may be prescribed) from the date on which the interim reinstatement was completed; and he shall notify the road works authority give the required notice when he has done so.

(5) The permanent reinstatement of the road shall include, in particular, the reinstatement of features designed to assist people with a disability.

(5A) For the purposes of subsection (3) or (4) an undertaker gives the required notice by—

(a) giving to the Commissioner a notice containing such information as may be prescribed;
and

(b) entering in the SRWR a copy of that notice.

(6) An undertaker who fails to comply with any provision of this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) In proceedings against a person for an offence of failing to comply with subsection (2) it is a defence for him to show that any delay in reinstating the road was in order to avoid hindering the execution of other works, or other parts of the same works, to be undertaken immediately or shortly thereafter.

130. Materials, workmanship and standard of reinstatement.

(1) An undertaker executing road works shall in reinstating the road comply with such requirements as may be prescribed as to the specification of materials to be used and the standards of workmanship to be observed.

(2) He shall also ensure that the reinstatement conforms to such performance standards as may be prescribed—

(a) in the case of interim reinstatement, until permanent reinstatement is effected, and
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(b) in the case of permanent reinstatement, for the prescribed period after the completion of the reinstatement.

This obligation is extended in certain cases and restricted in others by the provisions of section 132 as to cases where a reinstatement is affected by subsequent works.

(3) Regulations made for the purposes of this section may make different provision in relation to different classes of excavation and different descriptions of road, and in relation to interim and permanent reinstatement.

(4) The Secretary of State may issue or approve for the purposes of this section codes of practice giving practical guidance as to the matters mentioned in subsections (1) and (2); and regulations made for the purposes of this section may provide that-

(a) so far as an undertaker complies with such a code of practice he shall be taken to comply with his duties under this section; and

(b) a failure in any respect to comply with any such code is evidence of failure in that respect to comply with those duties.

(5) An undertaker who fails to comply with his duties under this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

131. Powers of road works authority in relation to reinstatement.

(1) The road works authority may carry out such investigatory works as appear to them to be necessary to ascertain whether an undertaker has complied with his duties under this Part with respect to reinstatement.

If such a failure is disclosed, the undertaker shall bear the cost of the investigatory works; if not, the road works authority shall bear the cost of the investigatory works and of any necessary reinstatement.

(2) Where an undertaker has failed to comply with his duties under this Part with respect to reinstatement, he shall bear the cost of-

(a) a joint inspection with the road works authority to determine the nature of the failure and what remedial works need to be undertaken,

(b) an inspection by the authority of the remedial works in progress, and

(c) an inspection by the authority when the remedial works have been completed.

(3) The road works authority may by notice require an undertaker who has failed to comply with his duties under this Part with respect to reinstatement to carry out the necessary remedial works within such period of not less than 7 working days not being shorter than such period as may be prescribed as may be specified in the notice.

If he fails to comply with the notice, the authority may carry out the necessary works and recover from him the costs reasonably incurred by them in doing so.
(3A) Different minimum periods may be prescribed under subsection (3) for different descriptions of remedial works; and cases may be so prescribed in which no minimum period applies.

(4) If it appears to the road works authority that a failure by an undertaker to comply with his duties under this Part as to reinstatement is causing danger to users of the road, the authority may carry out the necessary works without first giving notice and may recover from him the costs reasonably incurred by them in doing so.

They shall, however, give notice to him as soon as reasonably practicable stating their reasons for taking immediate action.

132. Reinstatement affected by subsequent works.

(1) The provisions of this section apply in relation to an undertaker's duty under section 130(2) to ensure that a reinstatement conforms to the prescribed performance standards for the requisite period; and references to responsibility for a reinstatement and to the period of that responsibility shall be construed accordingly.

(2) Where a reinstatement is affected by remedial works executed by the undertaker in order to comply with his duties under this Part with respect to reinstatement and the extent of the works exceeds that prescribed, the subsequent reinstatement shall be treated as a new reinstatement as regards the period of his responsibility.

(3) Where the road works authority carry out investigatory works in pursuance of section 131(1) and the investigation does not disclose any failure by the undertaker to comply with his duties under this Part with respect to reinstatement, then, to the extent that the original reinstatement has been disturbed by the investigatory works, the responsibility of the undertaker for the reinstatement shall cease.

(4) Where a reinstatement is affected by remedial works executed by the road works authority in exercise of their powers under section 131(3) or (4) (powers to act in default of undertaker)

   (a) the undertaker is responsible for the subsequent reinstatement carried out by the authority, and

   (b) if the extent of the works exceeds that prescribed, the subsequent reinstatement shall be treated as a new reinstatement as regards the period of his responsibility.

(5) The following provisions apply where a reinstatement is affected by subsequent works in the road otherwise than as mentioned above.

   (6) If the reinstatement is dug out to any extent in the course of the subsequent works, the responsibility of the undertaker for the reinstatement shall cease to that extent.

   (7) If in any other case the reinstatement ceases to conform to the prescribed performance standards by reason of the subsequent works, the responsibility of the undertaker for the reinstatement is transferred to the person executing the subsequent works; and the provisions of this Part apply in relation to him as they would have applied in relation to the undertaker.

   (8) Where there are successive subsequent works affecting a reinstatement, then as between earlier and later works-
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(a) subsections (6) and (7) apply in relation to the cessation or transfer of the responsibility of the person for the time being responsible for the reinstatement; and

(b) if the reinstatement ceases to conform to the prescribed performance standards by reason of the works or any of them, it shall be presumed until the contrary is proved that this was caused by the later or last of the works.

Resurfacing

132A Power to require undertaker to resurface road

(1) In prescribed circumstances, the road works authority may by notice (a “resurfacing notice”) require an undertaker within subsection (2) to execute such resurfacing works in a road as may be specified in the notice.

(2) An undertaker is within this subsection if—

(a) he has given notice under section 113 or 114 of proposed road works;

(b) he is executing road works; or

(c) he has, within such period ending with the giving of the notice as may be prescribed (or if no period is prescribed, at any time), executed road works,

and the works will involve, involve or (as the case may be) involved the breaking up of any part of the road.

(3) The works specified in the resurfacing notice may relate to any part of the road (including any part not, and not to be, broken up by the undertaker); but regulations made by the Scottish Ministers may restrict the extent of the works that may be so specified.

(4) The resurfacing notice relieves the undertaker to the extent (if any) specified in the notice of his duty under section 129 to reinstate the surface of the road; but regulations made by the Scottish Ministers may restrict the circumstances in which and the extent to which undertakers may be relieved of that duty.

(5) The road works authority may by notice to the undertaker vary or withdraw a resurfacing notice; but regulations made by the Scottish Ministers may restrict the circumstances in which notices may be varied or withdrawn.

(6) A road works authority may serve a resurfacing notice notwithstanding that the authority (in any capacity) are under a duty to undertake any of the works specified in the notice.

(7) In this Part—

“resurfacing notice” has the meaning given by subsection (1);

“resurfacing works” means any works relating to the replacement of the surface of any part of a road;

“surface” includes a paved surface.

132B Power to specify timing etc. of resurfacing

(1) A resurfacing notice may require an undertaker to—

(a) execute the works specified in the notice in stages so specified;

(b) begin the execution of those works (or any stage of them) at or by a date and time so specified;
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(c) execute those works (or any stage of them) at times or on days (or at times on days) so specified;
(d) complete the execution of those works (or any stage of them) by a date and time so specified.

(2) The Scottish Ministers may by regulations make provision restricting, in some or all cases, the power to include requirements within subsection (1), including provision that—

(a) requires a road works authority to consult an undertaker before a prescribed description of requirement is included in a notice;

(b) provides that any date specified in a notice for the beginning, execution or completion of works shall not be earlier than a prescribed period from the date on which the notice is given.

132C Materials, workmanship and standard of resurfacing

(1) An undertaker who has been served with a resurfacing notice shall, when executing the works specified in the notice, comply with such requirements as may be prescribed as to the specification of materials to be used and the standards of workmanship to be observed.

(2) The undertaker shall also ensure that, for the prescribed period after completion of the works, those works conform to such performance standards as may be prescribed.

132D Resurfacing: regulations

(1) The Scottish Ministers may make regulations supplementing sections 132A to 132C.

(2) The regulations may, in particular—

(a) make provision about the information to be contained in a resurfacing notice (including the way in which resurfacing works are to be described);

(b) prescribe, for cases where a resurfacing notice may be served on more than one undertaker, the matters that a road works authority shall take into account when selecting the undertaker to be served with the notice;

(c) impose a requirement on an undertaker, in prescribed circumstances, to give notice to the road works authority of a prescribed event;

(d) prescribe circumstances in which an undertaker is entitled to pay a sum to the road works authority instead of executing the works specified in a resurfacing notice, and make provision about the manner in which such sums are to be calculated;

(e) confer a right of review or appeal against a resurfacing notice or any requirement contained in it, and make provision about the period within which and manner in which any such right may be exercised and about the determination of appeals and the persons who may determine them;

(f) require disputes of a prescribed description (including disputes as to the existence of circumstances prescribed under section 132A(1)) to be determined in such manner and by such persons as may be prescribed;

(g) apply, with or without modifications, any provisions of this Part or of the Roads (Scotland) Act 1984 (c.54) in relation to works specified in a resurfacing notice (and provide that for those purposes the works are to be treated as road works or works of any other description).
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(3) The regulations may create, in respect of any breach of a requirement imposed by a resurfacing notice or of the duty imposed by section 132C, or any contravention of the regulations, an offence punishable on summary conviction—

(a) where the offence consists of a failure to give a notice in accordance with the regulations, with a fine not exceeding level 4 on the standard scale;

(b) in any other case, with a fine not exceeding level 5 on the standard scale.

(4) The first regulations under each of this section and sections 132A to 132C shall not be made unless a draft of them has been laid before and approved by a resolution of the Scottish Parliament.

132E Resurfacing: guidance

(1) The Scottish Ministers may, for the purposes of sections 132A to 132D (including regulations under those sections), issue or approve a code of practice giving practical guidance as to the exercise of powers and the discharge of duties under those sections.

(2) In exercising those powers and in discharging those duties, road works authorities and undertakers shall have regard to the code of practice.

Charges, fees and contributions payable by undertakers

133. Charge for occupation of the road where works unreasonably prolonged.

(1) The Secretary of State may make provision by regulations requiring an undertaker executing road works in a public road to pay a charge to the roads authority where-

(a) the duration of the works exceeds such period as may be prescribed, and

(b) the works are not completed within a reasonable period.

(2) For this purpose "a reasonable period" means such period as is agreed by the authority and the undertaker to be reasonable or, in default of such agreement, is determined by arbitration in the prescribed manner to be reasonable, for completion of the works in question.

In default of agreement, the authority's view as to what is a reasonable period shall be acted upon pending the decision of the arbiter.

(3) The regulations may provide that if an undertaker has reason to believe that the duration of works will exceed the prescribed period he may submit to the authority an estimate of their likely duration-

(a) in the case of works in connection with the initial placing of apparatus in the road in pursuance of a permission granted under section 109 (permission to execute road works), together with his application for permission,

(b) in the case of other works (not being emergency works), together with his notice under section 114 (notice of starting date), or

(c) in the case of emergency works, as soon as reasonably practicable after the works are begun,

and that the period stated in an estimate so submitted shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.
(4) The regulations may also provide that if it appears to the undertaker that by reason of matters not previously foreseen or reasonably foreseeable the duration of the works-
   (a) is likely to exceed the prescribed period,
   (b) is likely to exceed the period stated in his previous estimate, or
   (c) is likely to exceed the period previously agreed or determined to be a reasonable period,
he may submit an estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.

(5) The amount of the charge shall be determined in such manner as may be prescribed by reference to the time taken to complete the works and the extent to which the surface of the road is affected by the works.

Different rates of charge may be prescribed according to the place and time at which the works are executed and such other factors as appear to the Secretary of State to be relevant.

(6) The regulations may make provision as to the time and manner of making payment of any charge.

(7) The regulations shall provide that a roads authority may reduce the amount, or waive payment, of a charge in any particular case, in such classes of case as they may decide or as may be prescribed, or generally.

(8) The first regulations for the purposes of this section shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

134. Inspection fees.

(1) An undertaker executing road works shall, subject to the provisions of any scheme under this section, pay to the road works authority the prescribed fee in respect of each inspection of the works carried out by the authority.

(2) Different fees may be prescribed according to the nature or extent of the excavation or other works, the place where they are executed and such other factors as appear to the Secretary of State to be relevant.

(3) The Secretary of State may by regulations make a scheme under which undertakers pay the prescribed fee only in respect of such proportion or number of excavations or other works as may be determined in accordance with the scheme.

(4) The scheme may make provision-
   (a) as to the periods and areas by reference to which the proportion or number is to be determined, and
(b) as to the intervals at which an account is to be struck between an undertaker and a road works authority and any necessary payment or repayment made; and different provision may be made for different descriptions of undertaker and different descriptions of road works authority.

(5) Nothing in this section applies in relation to inspections in respect of which the undertaker is obliged to bear the cost under section 131(2) (inspections consequent on his failure to comply with his duties as to reinstatement).

135. Liability for cost of temporary traffic regulation.

(1) Where by reason of road works-

(a) the traffic authority makes an order or issues a notice under section 14 of the Road Traffic Regulation Act 1984 (temporary prohibition or restriction of traffic), or
(b) a concessionaire issues a notice under that section by virtue of section 43(4) of this Act,

the authority or concessionaire may recover from the undertaker the whole of the costs incurred by them in connection with or in consequence of the order or notice.

(2) Those costs shall be taken to include, in particular, the cost to the authority or concessionaire-

(a) of complying with any requirement to notify the public of any matter in connection with the making, issuing or operation of the order or notice, and
(b) of providing traffic signs in connection with the prohibition or restriction of traffic by the order or notice.

136. Liability for cost of use of alternative route.

(1) Where by reason of road works the use of a road is restricted or prohibited and the diverted traffic uses as an alternative route a road of a lower classification, the undertaker shall indemnify the roads authority for the latter road in respect of costs reasonably incurred by them-

(a) in strengthening the road, so far as that is done with a view to and is necessary for the purposes of its use by the diverted traffic; or
(b) in making good any damage to the road occurring in consequence of the use by it of the diverted traffic.

(2) For this purpose the order of classification of roads, from higher to lower, is as follows:

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<thead>
<tr>
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<th>Description</th>
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<tr>
<td>1</td>
<td>Trunk roads.</td>
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<tr>
<td>2</td>
<td>Principal roads.</td>
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<tr>
<td>3</td>
<td>Other classified roads.</td>
</tr>
<tr>
<td>4</td>
<td>Other roads.</td>
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(3) In this section, "trunk road" and "classified road" have the meanings given by section 151 of the Roads (Scotland) Act 1984 and "principal road" refers to a road classified as such by the Secretary of State under section 11 of that Act.

137. Contributions to costs of making good long-term damage.

(1) The Secretary of State may make provision by regulations requiring an undertaker executing road works to contribute to the costs incurred or likely to be incurred by a road works authority in works of reconstruction or re-surfacing of the road.

(2) The regulations may provide-

(a) for a contribution to the cost of particular remedial works, or

(b) for a general contribution calculated in such manner as may be prescribed.

(3) In the former case the regulations may contain provision for apportioning the liability where the need for the remedial works is attributable to works executed by more than one person.

(4) In the latter case the regulations may provide for the amount of the contribution to vary according to the nature of the road, the description and extent of the works and such other factors as appear to the Secretary of State to be relevant.

(5) The first regulations under this section shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

137A Contributions to costs of resurfacing by undertaker

(1) Where a road works authority have given a resurfacing notice to an undertaker—

(a) the authority shall pay to the undertaker a proportion, calculated in the prescribed manner, of the costs reasonably incurred by the undertaker in executing the works specified in the notice;

(b) an undertaker to whom subsection (2) applies shall pay to the undertaker referred to in paragraph (a) a proportion, calculated in the prescribed manner, of those costs.

(2) This subsection applies to an undertaker if—

(a) the undertaker has, before the completion of the works specified in the notice, executed road works which involved the breaking up of any part of a road; and

(b) the works specified in the notice include the resurfacing of that part of the road.

(3) The Scottish Ministers may by regulations prescribe exceptions to the duty imposed by subsection (1)(b).

(4) The payments referred to in subsection (1) shall be made in such instalments and manner, and within such period, as may be prescribed.

(5) The Scottish Ministers may by regulations make provision requiring disputes of a prescribed description (including disputes as to whether subsection (2) applies to an undertaker) to be determined in such manner and by such persons as may be prescribed.
(6) For the purposes of this section, any costs incurred by an undertaker (including any costs of a road works authority which are borne by the undertaker) in consequence of a failure by the undertaker to comply with any duty under this Part shall be treated as having been incurred unreasonably.

(7) The first regulations under this section shall not be made unless a draft of them has been laid before and approved by a resolution of the Scottish Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

138. Records of location of apparatus.

(1) An undertaker shall, except in such cases as may be prescribed, record the location of every item of apparatus belonging to him as soon as reasonably practicable after-

(a) placing it in the road or altering its position,

(b) locating it in the road in the course of executing any other works, or

(c) being informed of its location under section 139 below,

stating the nature of the apparatus and (if known) whether it is for the time being in use.

(2) The records shall be kept up to date and shall be kept in such form and manner as may be prescribed.

(3) An undertaker shall make his records available for inspection, at all reasonable hours and free of charge, by any person having authority to execute works of any description in the road or otherwise appearing to the undertaker to have a sufficient interest.

(4) If an undertaker fails to comply with his duties under this section-

(a) he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale; and

(b) he is liable to compensate any person in respect of damage or loss incurred by him in consequence of the failure.

(5) In criminal or civil proceedings arising out of any such failure it is a defence for the undertaker to show that all reasonable care was taken by him, and by his contractors and by persons in his employ or that of his contractors, to secure that no such failure occurred.

(6) An order under section 161 (power to make consequential amendments, repeals, &c.) relating to an enactment or instrument containing provision for the keeping of records of apparatus which appears to the Secretary of State to be superseded by or otherwise inconsistent with the provisions of this section-

(a) shall not be subject to the procedure provided for in Schedule 7, and

(b) may make such transitional and other provision as appears to the Secretary of State appropriate for applying in relation to records compiled under that enactment or instrument the provisions of subsections (2) to (5) above and section 139 below.
139. **Duty to inform undertakers of location of apparatus.**

(1) A person executing works of any description in the road who finds apparatus belonging to an undertaker which is not marked, or is wrongly marked, on the records made available by the undertaker, shall take such steps as are reasonably practicable to inform the undertaker to whom the apparatus belongs of its location and (so far as appears from external inspection) its nature and whether it is in use.

(2) Where a person executing works of any description in the road finds apparatus which does not belong to him and is unable, after taking such steps as are reasonably practicable, to ascertain to whom the apparatus belongs, he shall-

   (a) if he is an undertaker, note on the records kept by him under section 138(1) (in such manner as may be prescribed) the location of the apparatus he has found and its general description; and

   (b) in any other case, inform the road works authority of the location and general description of the apparatus he has found.

(3) Subsections (1) and (2) have effect subject to such exceptions as may be prescribed.

(4) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

140. **Duty to maintain apparatus.**

(1) An undertaker having apparatus in the road shall secure that the apparatus is maintained to the reasonable satisfaction of-

   (a) the road works authority, as regards the safety and convenience of persons using the road (having regard, in particular, to the needs of people with a disability), the structure of the road and the integrity of apparatus of the authority in the road, and

   (b) any other relevant authority, as regards any land, structure or apparatus of theirs;

and he shall afford reasonable authority, as regards any land, structure or apparatus of theirs;

and he shall afford reasonable facilities to each such authority for ascertaining whether it is so maintained.

(2) For this purpose maintenance means the carrying out of such works as are necessary to keep the apparatus in efficient working condition (including periodic renewal where appropriate); and includes works rendered necessary by other works in the road, other than major works for road purposes, major bridge works or major transport works (as to which, see sections 143 and 144 below).

(3) If an undertaker fails to give a relevant authority the facilities required by this section-

   (a) the road works authority may in such cases as may be prescribed, and

   (b) any other relevant authority may in any case,

execute such works as are needed to enable them to inspect the apparatus in question, including any necessary breaking up or opening of the road.
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(4) If an undertaker fails to secure that apparatus is maintained to the reasonable satisfaction of a relevant authority in accordance with this section-

(a) the road works authority may in such cases as may be prescribed, and

(b) any other relevant authority may in any case,

execute any emergency works needed in consequence of the failure.

(5) The provisions of this Part apply in relation to works executed by a relevant authority under subsection (3) or (4) as if they were executed by the undertaker; and the undertaker shall indemnify the authority in respect of the costs reasonably incurred by them in executing the works.

(6) A relevant authority who execute or propose to execute any works under subsection (3) or (4) shall give notice to any other relevant authority as soon as reasonably practicable stating the general nature of the works.

(7) Nothing in subsection (3) or (4) shall be construed as excluding any other means of securing compliance with the duties imposed by subsection (1).

141. Liability for damage or loss caused.

(1) An undertaker shall compensate-

(a) the road works authority or any other relevant authority in respect of any damage or loss suffered by the authority in their capacity as such, and

(b) any other person having apparatus in the road in respect of any expense reasonably incurred in making good damage to that apparatus,

as a result of the execution by the undertaker of road works or any event of a kind mentioned in subsection (2) below.

(2) The events referred to in subsection (1) are any explosion, ignition, discharge or other event occurring to gas, electricity, water or other thing required for the purposes of a supply or service afforded by an undertaker which-

(a) at the time of or immediately before the event in question was in apparatus of the undertaker in the road, or

(b) had been in such apparatus before that event and had escaped therefrom in circumstances which contributed to its occurrence.

(3) The liability of an undertaker under this section arises-

(a) whether or not the damage or loss is attributable to negligence on his part or on the part of any person for whom he is responsible, and

(b) notwithstanding that he is acting in pursuance of a statutory duty.

(4) However, his liability under this section does not extend to damage or loss which is attributable to misconduct or negligence on the part of-
(a) the person suffering the damage or loss, or any person for whom he is responsible, or

(b) a third party, that is, a person for whom neither the undertaker nor the person
suffering the damage or loss is responsible.

(5) For the purposes of this section the persons for whom a person is responsible are his
contractors and any person in his employ or that of his contractors.

(6) Nothing in this section shall be taken as exonerating an undertaker from any liability to
which he would otherwise be subject.

Apparatus affected by road, bridge or transport works

142. Works for road purposes likely to affect apparatus in the road.

(1) This section applies to works for road purposes other than major works for road purposes
(as to which see section 143 below).

(2) Where works to which this section applies are likely to affect apparatus in the road, the
authority executing the works shall take all reasonably practicable steps-

(a) to give the person to whom the apparatus belongs reasonable facilities for
monitoring the execution of the works, and

(b) to comply with any requirement made by him which is reasonably necessary for the
protection of the apparatus or for securing access to it.

(3) An authority who fail to comply with subsection (2) commit an offence in respect of each
failure and are liable on summary conviction to a fine not exceeding level 4 on the standard
scale.

(4) In proceedings against an authority for such an offence it is a defence for them to show
that the failure was attributable-

(a) to their not knowing the position, or not knowing of the existence, of a person's
apparatus, or

(b) to their not knowing the identity or address of the person to whom any apparatus
belongs,

and that their ignorance was not due to any negligence on their part or to any failure to make
inquiries which they ought reasonably to have made.

143. Measures necessary where apparatus affected by major works.

(1) Where an undertaker's apparatus in a road is or may be affected by major works for roads
purposes, major bridge works or major transport works, the roads, bridge or transport
authority concerned and the undertaker shall take such steps as are reasonably required-

(a) to identify any measures needing to be taken in relation to the apparatus in
consequence of, or in order to facilitate, the execution of the authority's works,

(b) to settle a specification of the necessary measures and determine by whom they are
to be taken, and
(c) to co-ordinate the taking of those measures and the execution of the authority's works,
so as to secure the efficient implementation of the necessary work and the avoidance of unnecessary delay.

(2) The Secretary of State may issue or approve for the purposes of this section a code of practice giving practical guidance as to the matters mentioned in subsection (1) and the steps to be taken by the authority and the undertaker.

(3) Any dispute between the authority and the undertaker as to any of the matters mentioned in subsection (1) shall, in default of agreement, be settled by arbitration in the prescribed manner.

(4) If the authority or the undertaker fails to comply with an agreement between them as to any of those matters, or with the decision of the arbiter made under subsection (3) in settlement of a dispute, the authority or undertaker shall be liable to compensate the other in respect of any loss or damage resulting from the failure.

144. Sharing of cost of necessary measures.

(1) Where an undertaker's apparatus in a road is affected by major works for roads purposes, major bridge works or major transport works, the allowable costs of the measures needing to be taken in relation to the apparatus in consequence of the works, or in order to facilitate their execution, shall be borne by the roads, bridge or transport authority concerned and the undertaker in such manner as may be prescribed.

(2) The regulations may make provision as to the costs allowable for this purpose.

Provision may, in particular, be made for disallowing costs of the undertaker-
(a) where the apparatus in question was placed in the road after the authority had given the undertaker the prescribed notice of their intention to execute the works, or
(b) in respect of measures taken to remedy matters for which the authority were not to blame,

and for allowing only such costs of either party as are not recoverable from a third party.

(3) Where the authority have a right to recover from a third party their costs in taking measures in relation to undertaker's apparatus but in accordance with section 143 it is determined that the measures should be taken by the undertaker, the right of the authority includes a right to recover the undertaker's costs in taking those measures and they shall account to the undertaker for any sum received.

(4) The regulations shall provide for the allowable costs to be borne by the authority and the undertaker in such proportions as may be prescribed.

Different proportions may be prescribed for different cases or classes of case.

(5) The regulations may require the undertaker to give credit for any financial benefit to him from the betterment or deferment of renewal of the apparatus resulting from the measures taken.
(6) The regulations may make provision as to the time and manner of making any payment required under this section.

Provisions with respect to particular authorities and undertakings

145. Roads authorities, roads and related matters.

(1) In this Part-
"roads authority" and "local roads authority" have the same meaning as in section 151 of the Roads (Scotland) Act 1984; and

"public road" means a road which a roads authority have a duty to maintain.

(2) In this Part "works for road purposes" means-
(a) works for the maintenance of a road,

(b) works for any purpose falling within the definition of "improvement" in section 151 of that Act,

(c) the erection, maintenance, alteration or removal of traffic signs, or

(d) the construction of a crossing for vehicles across a footway or the strengthening or adaptation of a footway for use as a crossing for vehicles.

(3) In this Part "major works for roads purposes" means works of any of the following descriptions executed by the roads authority in relation to a road which consists of or includes a carriageway-
(a) reconstruction or widening of the road,

(b) substantial alteration of the level of the road,

(c) provision, alteration of the position or width, or substantial alteration in the level of a carriageway, footpath or cycle track in the road,

(d) the construction or removal of a road hump within the meaning of section 40 of the Roads (Scotland) Act 1984,

(e) works carried out in exercise of the powers conferred by section 63 of the Roads (Scotland) Act 1984 (new access over verges and footways),

(f) provision of a cattle-grid in the road or works ancillary thereto, or

(g) tunnelling or boring under the road.

146. Prospective public roads.

(1) Subject to subsection (2), where a local roads authority are satisfied that a road in their area which is not a public road is likely to become a public road, they may make a declaration to that effect.
(2) Subsection (1) does not apply to a road which is under the management or control of a transport authority.

(3) The provisions of this Part apply to a road in respect of which such a declaration has been made as they apply to a public road.

(4) In relation to road works in such a road, the road works authority-

(a) shall secure the performance by undertakers of their duties under this Part, and shall exercise their powers under this Part, in such manner as is reasonably required for the protection of the road managers; and

(b) shall comply with any reasonable request as to securing performance of those duties, or as to the exercise of those powers, which may be made by the road managers.

147. Bridges, bridge authorities and related matters.

(1) In this Part-

(a) references to a bridge include so much of any road as gives access to the bridge and any embankment, retaining wall or other work or substance supporting or protecting that part of the road; and

(b) "bridge authority" means the authority, body or person in whom a bridge is vested.

(2) In this Part "major bridge works" means works for the replacement, reconstruction or substantial alteration of a bridge.

(3) Where a road is carried or crossed by a bridge, any statutory right to place apparatus in the road includes the right to place apparatus in, and attach apparatus to, the structure of the bridge; and other rights to execute works in relation to the apparatus extend accordingly.

References in this Part to apparatus in the road include apparatus so placed or attached.

(4) An undertaker proposing to execute road works affecting the structure of a bridge shall consult the bridge authority before giving notice under section 114 (notice of starting date) in relation to the works.

(5) An undertaker executing such works shall take all reasonably practicable steps-

(a) to give the bridge authority reasonable facilities for monitoring the execution of the works, and

(b) to comply with any requirement made by them which is reasonably necessary for the protection of the bridge or for securing access to it.

(6) An undertaker who fails to comply with any requirement of subsection (4) or (5) commits an offence in respect of each failure and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) Subsections (4) to (6) do not apply to works in relation to which Schedule 6 applies (works in roads with special engineering difficulties).
148. Sewers.

(1) An undertaker proposing to execute road works affecting a sewer vested in a [sewerage ] authority shall consult that authority before giving notice under section 114 (notice of starting date) in relation to the works.

(2) References in this Part to apparatus include a sewer, drain or tunnel.

[(3) References in this Part to an undertaker having apparatus shall, where the apparatus is a sewer, drain or tunnel, be construed-

(a) in the case of apparatus vested in a sewerage authority, as references to that authority; and

(b) in any other case, as references to the authority, body or person having the management or control of the apparatus. ]

(4) Section 128 (provisions as to works likely to affect other apparatus in the road) does not apply by virtue of subsection (2) above in relation to works likely to affect a sewer vested in a [sewerage ] authority if, or to the extent that, Schedule 6 (works in roads with special engineering difficulties) applies.

149. Provisions as to reinstatement of sewers, drains or tunnels.

(1) The duties of an undertaker under this Part with respect to reinstatement of the road extend, in the case of road works which involve breaking up or opening a sewer, drain or tunnel under the road, to the reinstatement of the sewer, drain or tunnel.

(2) The responsible authority may by notice require an undertaker who has failed to comply with his duties under this Part with respect to reinstatement to carry out the necessary remedial works within such period of not less than 7 working days not being shorter than such period as may be prescribed as may be specified in the notice.

If he fails to comply with the notice, the authority may carry out the necessary works and recover from him the costs reasonably incurred by them in doing so.

(2A) Different minimum periods may be prescribed under subsection (2) for different descriptions of remedial works; and cases may be so prescribed in which no minimum period applies.

(3) If it appears to the responsible authority that a failure by an undertaker to comply with his duties under this Part as to reinstatement is causing danger to users of the road, the authority may carry out the necessary works without first giving notice and may recover from him the costs reasonably incurred by them in doing so.

They shall, however, give notice to him as soon as reasonably practicable stating their reasons for taking immediate action.

(4) The responsible authority for the purposes of this section is-

(a) in the case of a sewer vested in a [sewerage ] authority, that authority, and
(b) in the case of any other sewer, drain or tunnel, the authority, body or person having the management or control of it.

150. Transport authorities, transport undertakings and related matters.

(1) In this Part--

(a) "transport authority" means the authority, body or person having the control or management of a transport undertaking; and

(b) "transport undertaking" means a railway, tramway, dock, harbour, pier, canal or inland navigation undertaking of which the activities, or some of the activities, are carried on under statutory authority.

(2) In this Part "major transport works" means substantial works required for the purposes of a transport undertaking and executed in property held or used for the purposes of the undertaking.

(3) References in this Part to a road which crosses or is crossed by property held or used for the purposes of a transport undertaking extend to cases in which the road and the property in question are at different levels.

But the transport authority shall not be treated as a relevant authority as regards undertakers’ works in such a road where the property in question consists only of-

(a) subsoil of the road which is held by the transport authority but is not used, and has not been adapted for use, for the purposes of the undertaking, or

(b) property underground at such a depth that there is no reasonable possibility of the works affecting it.

(4) The provisions of this Part relating to a road which crosses or is crossed by property held or used for the purposes of a transport undertaking apply to a road which is or forms part of a towing-path or other way running along a canal or inland navigation, provided the path or way is held or used, or the subsoil of it is held, for the purposes of the canal or inland navigation undertaking.

151. Special precautions as to displaying of lights.

(1) An undertaker executing road works in a road which crosses, or is crossed by, or is in the vicinity of, a railway, tramway, dock, harbour, pier, canal or inland navigation, shall comply with any reasonable requirements imposed by the transport authority concerned with respect to the displaying of lights so as to avoid any risk of their-

(a) being mistaken for any signal light or other light used for controlling, directing or securing the safety of traffic thereon, or

(b) being a hindrance to the ready interpretation of any such signal or other light.

(2) An undertaker who fails to comply with any such requirement commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
These documents relate to the Transport (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 27 October 2004

(3) In proceedings for such an offence it is a defence for the undertaker to show that all reasonable care was taken by him, and by his contractors and by persons in his employ or that of his contractors, to secure that no such failure occurred.

152. Works affecting level crossings or tramways.

(1) This section applies to road works at a crossing of a railway on the level or which affect a tramway.

In this section "the relevant transport authority" means the authority having the management of the railway or tramway undertaking concerned.

(2) An undertaker proposing to begin to execute works to which this section applies shall give the prescribed notice to the relevant transport authority notwithstanding that such notice is not required under section 114 (notice of starting date).

The provisions of subsections (2) to (7) of that section (contents of notice, when works may be begun, &c.) apply in relation to the notice required by this subsection as in relation to a notice under subsection (1) of that section.

(3) An undertaker executing works to which this section applies shall comply with any reasonable requirements made by the relevant transport authority-

(a) for securing the safety of persons employed in connection with the works, or

(b) for securing that interference with traffic on the railway or tramway caused by the execution of the works is reduced so far as is practicable;

and, except where submission of a plan and section is required, he shall defer beginning the works for such further period as the relevant transport authority may reasonably request as needed for formulating their requirements under this subsection or making their traffic arrangements.

(4) Nothing in subsection (2) or (3) affects the right of an undertaker to execute emergency works.

(5) An undertaker executing emergency works shall give notice to the relevant transport authority as soon as reasonably practicable of his intention or, as the case may be, of his having begun to do so notwithstanding that such notice is not required by section 116 (notice of emergency works).

The provisions of subsections (3) and (4) of that section (contents of notice and penalty for failure to give notice) apply in relation to the notice required by this subsection as in relation to a notice under subsection (2) of that section.

Power of road works authority or district council to undertake road works

153. Power of road works authority or district council to undertake road works.

(1) A road works authority[or district council ] may enter into an agreement with an undertaker for the execution by the authority [or council ]on behalf of the undertaker of any road works.
(2) The agreement may contain such terms as to payment and otherwise as the parties consider appropriate.

(3) Nothing in this section shall be construed as derogating from any powers exercisable by the authority [or council] apart from this section.

(4) This section shall cease to have effect upon such day as the Secretary of State may appoint by order made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Supplementary provisions

154. Offences.

(1) Any provision of this Part imposing criminal liability in respect of any matter is without prejudice to any civil liability in respect of the same matter.

(2) Where a failure to comply with a duty imposed by this Part is continued after conviction, the person in default commits a further offence.

154A Fixed penalties for certain offences under this Part

(1) Any offence under this Part relating to road works which is listed in the first column of Schedule 6A (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Part.

(2) Offences listed in that Schedule which are committed by virtue of section 166 (offences by bodies corporate and partnerships) are not fixed penalty offences.

(3) The Scottish Ministers may by order modify that Schedule so as to provide for offences under this Part relating to road works to become (or cease to be) fixed penalty offences.

(4) No such order shall be made unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.

(5) Schedule 6B (which makes provision about fixed penalties for fixed penalty offences) has effect.

154B Civil penalties for certain offences

(1) The Scottish Ministers may, by regulations, make provision for or in connection with—

(a) the imposition by road works authorities of penalty charges in respect of such offences under this Part of this Act as are specified in the regulations;

(b) the payment of such charges.

(2) The regulations shall include provision specifying the person or persons by whom a penalty charge in respect of an offence is to be paid (who may be or, as the case may be, include a person other than the person who committed the offence).

(3) The regulations shall include provision—

(a) prohibiting criminal proceedings or the giving of a fixed penalty notice in respect of any description of conduct for which a penalty charge may be imposed; or

(b) securing that a penalty charge is not payable or is refunded where the conduct is the subject of criminal proceedings or of a fixed penalty notice.
These documents relate to the Transport (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 27 October 2004

(4) The regulations shall include provision about the standard of proof required to establish the commission of an offence in respect of which a penalty charge may be imposed and may include other provision for or in connection with evidence and procedure.

(5) The regulations may set different levels of penalty charges in respect of different offences and in respect of the same offences committed in different circumstances.

(6) The regulations may include provision for and in connection with—
   (a) the notification of penalty charges to persons appearing to be liable to pay them;
   (b) the enabling and effect of the making of representations to road works authorities by persons who are or may be liable to pay those charges.
   (c) appeals by those persons against the imposition of those charges.

155. Recovery of costs or expenses.

(1) Any provision of this Part enabling an authority, body or person to recover the costs or expenses of taking any action shall be taken to include the relevant administrative expenses of that authority, body or person including an appropriate sum in respect of general staff costs and overheads.

The Secretary of State may prescribe the basis on which such amounts are to be calculated; and different provision may be made for different cases or descriptions of case.

(2) Where a right to payment enuring for the benefit of a person is conferred in respect of the same matter—
   (a) both under this Part and under any enactment or agreement passed or made before the commencement of this Part, or
   (b) by two or more provisions of this Part,
   a payment made in discharge of any of those rights shall be treated as being made in or towards satisfaction of the other or others.

(3) Where under any provision of this Part a person is entitled in certain circumstances to recover costs or expenses incurred by him in executing works or taking other steps, any dispute as to the existence of those circumstances or as to the amount recoverable shall be determined by arbitration in the prescribed manner.

This applies whether the provision is expressed as conferring a right to recover, or as imposing a liability to reimburse or indemnify or to bear the cost, but does not apply in relation to a provision expressed as providing for the charging of a fee or conferring a right to compensation or in relation to section 137 (contribution to the cost of making good long-term damage to the road) or 137A (contributions to costs of resurfacing by undertakers).

156. Service of notices and other documents.

(1) Notices required or authorised to be given for the purposes of this Part shall be given in the prescribed form.

(2) The Secretary of State may make provision by regulations as to the manner of service of notices and other documents required or authorised to be served for the purposes of this Part.
(3) References in this section to notices authorised to be given or served for the purposes of this Part include reference to notices under Schedule 8B to the Roads (Scotland) Act 1984 (c.54) (fixed penalties for certain offences under that Act).

157. Reckoning of periods.

(1) In reckoning for the purposes of this Part a period expressed as a period from or before a given date, that date shall be excluded.

(2) For the purposes of this Part a working day means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday; and a notice given after 4.30 p.m. on a working day shall be treated as given on the next working day.

(3) In subsection (2) a "bank holiday" means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the locality in which the road in question is situated.

157A Regulations prescribing manner of settlement of disputes

Regulations under this Part prescribing the manner in which any question or dispute is to be settled may in particular make provision for the question or, as the case may be, dispute to be settled—

(a) by the Commissioner; or

(b) by arbitration.

158. Arbitration.

(1) Any matter which under this Part is to be settled by arbitration shall be referred for determination by a single arbiter appointed by agreement between the parties concerned or, in default of agreement, by the sheriff.

(2) In any arbitration in accordance with subsection (1) the arbiter may, and if so directed by the Court of Session shall, state a case for the decision of the Court on any question of law arising in the arbitration; and the decision of the Court shall be final unless the Court or the House of Lords give leave to appeal to the House of Lords against the decision.

(3) Leave under subsection (2) may be given on such terms as to expenses or otherwise as the Court or the House of Lords may determine.

159. Agreements inconsistent with the provisions of this Part.

(1) An agreement which purports to make provision regulating the execution of road works is of no effect to the extent that it is inconsistent with the provisions of this Part.

(2) This does not affect an agreement for the waiver or variation of a right conferred on a relevant authority by any of the provisions of this Part which is made after the right has accrued and is not inconsistent with the future operation of those provisions.

160. Effect of this Part on certain existing special enactments or instruments.

(1) Any special enactment passed or made before the commencement of this Part which makes or authorises the making of provision regulating the execution of road works in a
manner inconsistent with the provisions of this Part shall cease to have effect; and unless a contrary intention appears no enactment passed or made after the commencement of this Part shall be construed as making or authorising the making of any such provision.

This subsection does not apply to any provision as to the obtaining of consent for the execution of the works or for any other purpose.

(2) Any special enactment passed or made before the commencement of this Part which requires the consent of a relevant authority (in its capacity as such) to the execution of road works shall cease to have effect, except as mentioned below; and unless a contrary intention appears no special enactment passed or made after the commencement of this Part shall be construed as requiring such consent.

This subsection does not apply to a consent requirement so far as it relates to—

(a) works above the surface level of the road, or

(b) works outside the limits of supply of an undertaker in relation to whom such limits are imposed.

(3) A provision made by way of condition imposed on the giving of a consent for the execution of road works is of no effect in so far as it would have been so by virtue of section 159 if it had been made by an agreement.

(4) If it appears to the Secretary of State—

(a) that by the operation of subsection (1) a person has been or will be deprived of some protection afforded by a special enactment and that corresponding protection is in all the circumstances required, or

(b) that a requirement of consent imposed by a special enactment should be saved from the operation of subsection (2), either as regards all works to which the requirement extends or as regards any description of such works, or

(c) that conditions of any descriptions should be rendered valid notwithstanding subsection (3), or

(d) that uncertainty or obscurity has resulted or is likely to result from the operation on a special enactment of the general provisions of subsection (1), (2) or (3),

he may by order make such provision as he considers appropriate for affording such protection, saving the requirement, rendering the conditions valid or modifying the special enactment, as the case may be.

(5) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament; and the provisions of Schedule 7 have effect with respect to the procedure for making such an order.

(6) The provisions of this section apply in relation to an instrument having effect under or by virtue of an enactment as in relation to an enactment; and references to a special enactment shall be construed accordingly.
161. Effect of this Part on other existing enactments or instruments.

(1) The Secretary of State may by order make such provision amending, repealing, or preserving the effect of, any enactment passed or made before the commencement of this Part (not being a special enactment to which section 160(1), (2) or (3) applies) as appears to him appropriate in consequence of the provisions of this Part.

(2) Subject to any order under this section and (in the case of a public general Act) to any express amendment made by this Act, any such enactment which proceeds by reference to any provision of the [1950 c. 39.] Public Utilities Street Works Act 1950, or any other provision repealed by this Act in consequence of this Part, shall continue to have effect as if the provision referred to had not been repealed.

(3) An order under this section may, in particular, make provision in relation to—

(a) enactments providing for the keeping of records of apparatus, and

(b) enactments providing for the giving of notice of proposed road works.

(4) An order under this section may contain such transitional provisions and savings as appear to the Secretary of State to be appropriate

(5) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Except as mentioned in section 138(6), the provisions of Schedule 7 have effect with respect to the making of an order under this section in relation to a special enactment.

(7) The provisions of this section apply in relation to an instrument having effect under or by virtue of an enactment as in relation to an enactment; and references to a special enactment shall be construed accordingly.

162. Former controlled land.

(1) The following provisions apply with respect to land (not forming part of a road) in which immediately before the commencement of this Part there is apparatus placed by virtue of Schedule 1 to the [1950 c. 39.] Public Utilities Street Works Act 1950 (authorisation of works in certain land abutting a road).

(2) If any person having a sufficient interest in the land gives notice to the undertaker that he objects to the continuance of the powers and rights over the land given by that Schedule, those powers and rights shall cease to have effect at the end of the period of six months from the date on which the notice was given.

For this purpose a person has a sufficient interest in the land if he is an owner, lessee or occupier of the land having an interest greater than that of tenant for a year or from year to year.

(3) The road works authority shall indemnify the undertaker in respect of the costs reasonably incurred by him in or in connection with—

(a) any removal of apparatus rendered necessary by the cessation of his powers and rights under this section, and
(b) the execution of any works or taking of any other measures rendered necessary thereby for the purposes of the supply or service for which apparatus whose removal is rendered necessary was used.

(4) Where the land becomes part of the road after the commencement of this Part, any consent which would have been required for the placing of the apparatus in the road had it been placed there immediately after the land in question became part of the road shall be deemed to have been given unconditionally.

(5) Subject to any exercise of the right conferred by subsection (2), the rights and powers of the undertaker under Schedule 1 to the Public Utilities Street Works Act 1950 continue unaffected by the repeal of that Act.

163. Meaning of "prescribed" and regulations generally.

(1) In this Part "prescribed" means prescribed by the Secretary of State by regulations, which may (unless the context otherwise requires) make different provision for different cases.

(2) Regulations under this Part shall be made by statutory instrument which, unless provision to the contrary is made, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Regulations under this Part may provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.

164. Minor definitions.

(1) In this Part—

"apparatus" includes any structure for the lodging therein of apparatus or for gaining access to apparatus;

"carriageway" and "footway" have the same meaning as in the [1984 c. 54.] Roads (Scotland) Act 1984;

"enactment" includes an enactment contained in subordinate legislation within the meaning of the [1978 c. 30.] Interpretation Act 1978.

"in", in a context referring to works, apparatus or other property in a road or other place includes a reference to works, apparatus or other property under, over, across, along or upon it;

"railway" includes a light railway other than one in the nature of a tramway (see the definition of "tramway" below);

"reinstatement" includes making good;

"special enactment" means an enactment which is not a public general enactment, and includes—

(a) any Act for confirming a provisional order,
(b) any provision of a public general Act in relation to the passing of which any of the Standing Orders of the House of Lords or the House of Commons relating to Private Business applied, and

(c) any enactment to the extent that it is incorporated or applied for the purposes of a special enactment;

"statutory right" means a right (whether expressed as a right, a power or otherwise) conferred by an enactment (whenever passed or made), other than a right exercisable by virtue of a permission granted under section 109;

"traffic" includes pedestrians and animals;

"traffic authority" and "traffic sign" have the same meaning as in the [1984 c.27.] Road Traffic Regulation Act 1984;

"tramway" means a system, mainly or exclusively for the carriage of passengers, using vehicles guided, or powered by energy transmitted, by rails or other fixed apparatus installed exclusively or mainly in a road.

(2) A right to execute works which extends both to a road and to other land is included in references in this Part to a right to execute works in a road in so far as it extends to the road.

(3) A right to execute works which extends to part of the road but not the whole is included in references in this Part to a right to execute works in a road; and in relation to such a right references in this Part to the road in which it is exercisable shall be construed as references to the part to which the right extends

(4) For the purposes of this Part apparatus shall be regarded as affected by works if the effect of the works is to prevent or restrict access to the apparatus (for example, by laying other apparatus above or adjacent to it).

(5) Section 28 of the [1970 c. 44.] Chronically Sick and Disabled Persons Act 1970 (power to define "disability" and other expressions) applies in relation to the provisions of this Part as to the provisions of that Act.

165. Index of defined expressions.

The expressions listed below are defined or otherwise fall to be construed for the purposes of this Part in accordance with the provisions indicated—

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<td>section 145(1)</td>
</tr>
<tr>
<td>special enactment</td>
<td>section 164(1)</td>
</tr>
<tr>
<td>the SRWR</td>
<td>Section 112A(1)</td>
</tr>
<tr>
<td>statutory right</td>
<td>section 164(1)</td>
</tr>
<tr>
<td>surface</td>
<td>Section 132A(7)</td>
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<tr>
<td>traffic</td>
<td>section 164(1)</td>
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<tr>
<td>traffic authority</td>
<td>section 164(1)</td>
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<tr>
<td>traffic sign</td>
<td>section 164(1)</td>
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</tbody>
</table>
These documents relate to the Transport (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 27 October 2004

<table>
<thead>
<tr>
<th>Term</th>
<th>Section Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>tramway</td>
<td>section 164(1)</td>
</tr>
<tr>
<td>transport authority</td>
<td>section 150(1)(a)</td>
</tr>
<tr>
<td>transport undertaking</td>
<td>section 150(1)(b)</td>
</tr>
<tr>
<td>undertaker (in relation to road works or apparatus)</td>
<td>sections 107(4) and (5) and 148(3)</td>
</tr>
<tr>
<td>working day</td>
<td>section 157(2)</td>
</tr>
<tr>
<td>works for road purposes</td>
<td>section 145(2).</td>
</tr>
</tbody>
</table>
FINANCIAL MEMORANDUM

CONTEXT AND OVERVIEW

129. The Scottish Executive Departmental Expenditure Limit (DEL) transport budget for 2004/5 is £823m\(^3\). Local authorities will be awarded £441m from Scottish Executive local government budget in the form of grant aided expenditure (GAE) during 2004/5 financial year. Budgeted expenditure on transport is therefore likely to be £1,264m.

130. On current estimates the provisions within this Bill will generate start up costs of £3.7m during the years 2006 and 2007 with a net additional £0.16m, in cash terms, in ongoing expenditure to the combined Scottish Executive transport budget and the GAE transport element. In the Scottish Executive transport budget additional provision of £96m (2006/7) and £100m (2007/8) has been made for national concessionary travel schemes. That provision is not conditional on the powers of this Bill.

FINANCIAL IMPLICATIONS OF PROVISIONS

PART 1 CHAPTER 1: REGIONAL TRANSPORT PARTNERSHIPS (SECTIONS 1 TO 11)

Background

131. Though the number has not yet been confirmed, as consultation is ongoing, the expectation is that 5 Transport Partnerships will be created. There are currently 4 voluntary regional partnerships\(^4\) covering together most, but not all, of Scotland. One of the existing voluntary regional transport partnerships, WESTRANS, incorporates the Strathclyde Passenger Transport (SPT) area.

132. The new Transport Partnerships will, in their first year of operation, be concentrating on the production of their regional transport strategies and, as part of their considerations, they will be determining what transport functions need to be undertaken at a regional level and what can be retained and effectively discharged by local authorities.

133. The functions that the Transport Partnerships will perform will not be known with precision until the regional transport strategies have been produced.

134. The Scottish Executive propose however that most of the functions currently performed by SPT, including the operation of the Glasgow Underground, will transfer to the successor Transport Partnership covering the west of Scotland. The passenger rail franchise function performed by SPT will transfer to the Scottish Ministers.

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\(^3\) Scottish Executive Annual Evaluation Report 2005-06 (March 2004)

\(^4\) NESTRANS (City of Aberdeen and Aberdeenshire councils); SESTRAN (City of Edinburgh, Perth & Kinross, Stirling, Falkirk, Fife, Clackmannanshire, Scottish Borders, East Lothian, Midlothian and West Lothian councils); HITRANS (Highland, Moray, Western Isles, Orkney Islands, Argyll & Bute and Shetland Islands councils); WESTRANS (City of Glasgow, West Dunbartonshire, East Dunbartonshire, East Renfrewshire, Inverclyde, Renfrewshire, East Ayrshire, North Ayrshire, Argyll & Bute, North Lanarkshire, South Lanarkshire, Dumfries & Galloway and South Ayrshire councils).
Costs on the Scottish Administration

**Staffing and administration costs – start up**

135. The Scottish Executive will fund any additional staff and administrative costs required for the production of regional transport strategies by Transport Partnerships during their first year of operation. There will be a funding commitment for 25 staff (5 staff per each of the new Transport Partnerships and 5 additional staff for the SPT successor body). This will generate a total of approx. **£1m** of which £800,000 relates to staffing costs and £200,000 for associated general administration costs arising as a direct consequence of the Bill. (The Scottish Executive currently provides some funding to support the existing core costs of the voluntary transport partnerships. The policy intention is to continue the provision of this funding to regional Transport Partnerships. The funding would have continued regardless of whether the partnerships were voluntary or statutory and therefore this continuing contribution is not conditional on the provisions of the Bill).

**Members expenses – start up**

136. The Scottish Executive will also fund the expenses incurred by the Transport Partnerships’ members during the period that the Transport Partnership is constructing its strategy. If there are 50 members, nationally, holding meetings fortnightly then the likely expenditure on travel and subsistence will be **£100,000**.

137. External non-local authority members will not receive remuneration for their services.

**SPT transitional costs**

138. It has been assumed that most of the existing SPT staff will transfer, in situ, into the new Transport Partnership covering the west of Scotland and therefore it is not envisaged that there will be any additional accommodation costs associated with this move. There will, however, be cost increases managing the transition of staff, particularly in respect of any staff transferring from SPT to the new transport agency (Policy Memorandum, paragraph 3 refers). The transition costs (for example relocation costs) are estimated at a maximum of **£1m** and will be met by the Scottish Executive.

**Accommodation start-up**

139. The Scottish Executive will fund the additional accommodation charges (rent/rates) and establishment costs for the first year of operation of each of the Transport Partnerships - the Transport Partnership covering the west of Scotland is not included for the reason provided above. The cost is estimated to be in the region of £100,000 per unit. The Scottish Executive has made provision of **£400,000**.

**Financial management**

140. If the strategies of the Transport Partnerships contain capital proposals there is a provision for them to borrow monies for such expenditure with loan charges being met from the income derived from the requisitions from local authorities. The Scottish Ministers may also award grants or loans under section 70 of the Transport Act (Scotland) 2001 for specific initiatives contained within regional strategies.
Costs on local authorities

Ongoing running costs

141. It will not be known until the regional transport strategies are produced and have been approved by the Scottish Ministers what functions the Transport Partnerships intend to perform either solely or concurrently with local authorities. The absolute minimum requirement of a Transport Partnership is to produce a regional transport strategy which is then implemented by the constituent local authorities. In such an instance the Transport Partnership would not need to acquire any functions from its constituent local authorities, its duties would be to measure and monitor progress towards the achievement of the strategy. This function would require only a minimum number of staff to support the members of the Transport Partnership. However, if a Transport Partnership determined that it required a range of functions either solely or concurrently with local authorities then it is reasonable to assume that by taking responsibility for the delivery of a function previously performed by local authorities the associated funding, staff and liabilities will transfer to the Transport Partnership.

142. In transferring functions (and potentially staff) from local authorities to Transport Partnerships there will be inevitable operational and administrative disturbances. It is difficult to estimate what these costs might be since transition is predicated on the production and execution of a regional transport strategy. There is however a duty imposed on Transport Partnerships to consult their constituent local authorities prior to the production of their strategies and it is envisaged that that consultation will involve an assessment of the transitional and on-going changes in the operations of the Transport Partnership and affected local authorities.

143. The net ongoing running costs of Transport Partnerships will be paid by constituent local authorities, whether the Transport Partnerships are just producing the strategy and subsequently performing a monitoring role or, at another level, delivering specific functions. The share of the expenses that each local authority will contribute will be determined by the Transport Partnership and if no agreement is reached then the Scottish Ministers will, by order, make a determination taking into account the population size of each of the constituent local authorities. No increased costs for local authorities are anticipated as a consequence of the establishment of Transport Partnerships.

144. The Transport Partnerships will be encouraged, where practical, to maximise the benefit of shared services utilising, where appropriate, re-charge facilities. A Transport Partnership, for example, might utilise the legal services of one or more of its constituent local authorities rather than maintaining its own in-house service.

145. The transfer of responsibility for the delivery of particular functions may generate some initial transitional implementation costs but should ultimately deliver, through economies of scale or co-ordinated management, financial and operational benefits and thus savings to public expenditure. However, it would be impossible to provide a meaningful estimate of any such savings at this point in time.
Costs on other bodies, individuals and businesses

146. The establishment of Transport Partnerships offers a means of addressing the resolution of significant transport problems confronting local communities and businesses. Whilst the Transport Partnership itself does not have a financial bearing on other bodies, individuals or businesses the execution of its strategy may have financial implications for individuals or businesses (e.g. if an Transport Partnership were to introduce car parking charges where none currently exist). Any potential implications will need to be considered and assessed during the production of the strategy.

147. It is difficult to pre-determine the regional transport strategy of the prospective Transport Partnerships, but the presumption is that the strategy will be positive, striving to achieve a net beneficial effect on local communities and businesses.

PART 1 CHAPTER 2: SCOTTISH MINISTERS’ TRANSPORT FUNCTIONS (SECTION 12)

148. The intention of this section is to enable the transfer of the rail franchise functions of SPT to the Scottish Ministers. The expectation is that staff will transfer with the function. The transitional cost of the transfer has been highlighted above (paragraph 138).

PART 2: ROAD WORKS (SECTIONS 14 TO 36)

Background

149. This part of the Bill comprises provisions to improve the quality and co-ordination of road works in Scotland. The Bill addresses the identified issues by introducing the following specific new measures:

- establishing a Scottish Road Works Commissioner to promote good practice, to promote compliance and monitor performance of statutory undertakers;
- making the Scottish Road Works Register the single national register for planning and co-ordinating all road works;
- tightening the requirements for training of personnel involved in carrying out, supervising or administering road works;
- introducing stricter requirements for reinstating roads and new provisions on resurfacing roads; and
- making changes to the enforcement regime of offences.

Costs on the Scottish Administration

Scottish Road Works Commissioner (sections 14 and 15)

150. The office of the Scottish Road Works Commissioner (SRWC) will be funded by the Scottish Executive. The post will promote good practice, compliance and monitor the performance of statutory undertakers.
151. To assist the Commissioner in the execution of responsibilities a small administrative support unit will be required. Provision has been made by the Scottish Executive for the initial establishment and running costs of the unit, including the salary costs of the Commissioner, of £200,000. Expenditure of the unit will be higher in year one to reflect initial costs such as recruitment, IT, furniture and fittings. In subsequent years the costs are estimated to be in the region of £160,000.

Scottish Road Works Register (section 17)

152. The Scottish Road Works Register (SRWR) is currently in existence and functioning: therefore there will be no set up costs emanating from the provisions of this Bill. The register’s user community consists of approximately 800 operators, comprising all 32 local authorities, 18 statutory undertakers (mainly utility companies), the Scottish Executive (as roads authority for trunk roads) and its trunk road agents.

153. Improvements to the register however will be needed to enable it to meet the new legislative requirements. To design and implement the new software to enable digital mapping and other enhancements will cost £500,000. Provision of an additional £400,000 has been made for the upgrade of local systems to support the enhanced register. The Scottish Executive has agreed to fund these enhancements recognising that additional duties are being placed on road works authorities and statutory undertakers as a result of the provisions of the Bill.

154. The Scottish Ministers appointed Susiephone Ltd as keeper of the register, for 10 years, in 1999. The current operational costs of the SRWR (£450,000) are met by contributions from local authorities, statutory undertakers and the Scottish Executive in the proportions of 28%, 70% and 2%5. It is expected that the pattern of contributions will continue and that the required contribution will not rise appreciably once the enhanced register is operational.

155. The Scottish Executive has made provision of £100,000 for the funding of a number of regional seminars, in 2005/6, to explain the new functionality of the SRWR to operators.

Costs on the Scottish Administration, local authorities and statutory undertakers

Training (sections 24 and 25)

156. In section 24 undertakers are being asked to provide, when required to do so by a road works authority, evidence that their supervisors and operatives (those who perform the road works) have the requisite qualification to perform their duties. The cost impacts are likely to be the posting of evidence by undertakers to road works authorities and the subsequent retention of the notification of evidence by the road works authority. The administrative cost impact for both parties is likely to be minimal.

157. In section 25 each of the road works authorities and the undertakers have a duty to ensure that their staff are competent to perform their duties in line with the new procedures as set out within the provisions of the Bill. There will clearly be some financial implications; however any

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5 Susiephone Ltd 2003/4 Operations Report
associated costs arising from these provisions should derive as part of the ongoing training and awareness that employers provide to their employees.

158. All staff involved with accessing and updating the Scottish Road Works Register will need to be fully apprised of the latest technical enhancements. Since the Scottish Executive is providing direct funding for regionally based training any additional costs arising for local authorities or undertakers are not deemed to be substantial: there is also no expectation for users to provide upgraded IT hardware to support the enhanced software. The expectation is that the software will run on existing hardware but should users have to upgrade it is likely, in all probability, that the hardware will have reached the end of its useable life.

Reinstatement and resurfacing (sections 27 to 30)

159. The objective of these provisions is to ensure that the quality of the road surface is maintained to required standards after road works have been carried out. Where the condition of a road has deteriorated as a result of utility works and reinstatements a road works authority could serve an undertaker with a resurfacing notice. This notice would instruct the undertaker to reinstate an area to either a half or the full width of the carriageway.

160. The extent to which undertakers will be issued with notices will depend on the quality of the road works that have been carried out. The expectation is that undertakers will strive for quality on the initial road works since being served with a resurfacing notice will generate additional costs.

161. There may be an increase in costs for undertakers if notices are served but only if they fail to carry out re-instatements to the required standard. There will also be consequential cost implications for undertakers in respect of their overheads and labour charges, and in managing traffic whilst the work is taking place. The latter point is particularly pertinent since the impact on traffic is likely to be greater on a half or full width resurfacing than for the smaller more standard reinstatement.

162. No additional financial impact is envisaged for road works authorities in respect of serving notices for reinstatement or resurfacing because they currently perform this function. Indeed, the presumption is that, over time, the number of notices will reduce as undertakers realise the financial consequences of failing to carry out our reinstatement to the required standard.

163. A comprehensive regulatory impact assessment in respect of reinstatement and resurfacing will be produced when regulations are laid before the Parliament. Those regulations will specify amongst other matters the materials and standard of workmanship that is to apply in particular circumstances, which will necessarily have financial implications for undertakers.

Enforcement (sections 31 to 36)

164. The Bill makes provision, at section 31, to increase the maximum level of fines for existing offences. Some fines are being raised to level 4 (£2,500) and others to level 5 (£5,000). A description of the offence or offences to which the fines relate is contained within Schedule 2 of the Bill. Any increased costs incurred as a result of these provisions, however, are avoidable if undertakers comply with their statutory duties. It is not expected that in raising the level of fines there will be any impact on any other party engaged in the enforcement and pursuit of offenders.
165. The Bill also introduces, at section 32, fixed penalty notices for certain offences committed by undertakers. These notices will be issued by the roads works authority who will be able to recoup the administrative costs associated with the issuing of the fixed penalty notice from the penalty raised. The net charge of the penalty will revert to the Scottish Consolidated Fund. The precise arrangements and level of retention to cover administrative costs will be established by regulations. If an offender fails to pay the fine by the specified date or chooses not to do so the penalty becomes enforceable as an extract registered decree arbitral and there will only be an impact on the courts if the offender raises a summary application, then the case will be taken to court. In 2003 there were 2355 recorded infringements relating to re-instatement. These infringements now fall within the scope of the fixed penalty regime and it is therefore likely that only a small percentage of future cases will involve the courts and therefore there will be a significant reduction in potential court involvement.

166. The Bill contains provisions, at section 33, to decriminalise offences which means that any dispute about the imposition of a penalty charge would be dealt with on a civil rather than criminal basis and any appeal would be as specified in regulations that will be made by the Scottish Ministers.

**Costs on other bodies, individuals and business**

167. The provisions as implemented will improve the effectiveness of the management of road works and as a consequence benefit the local economy through a reduction in disruption and congestion.

168. It is impossible to approximate the financial benefits that will accrue as a result of improving the effectiveness of the management of road works but even a minor improvement in reducing disruption may bring substantial benefits to business and individuals. A report published in 1992 by the Transport Research Laboratory concluded that disruption resulting from utility companies’ road works cost the UK economy £2.4 billion per annum. Based on that figure even a modest 10% reduction in disruption and consequential congestion caused by road works alone, would benefit the UK economy to the tune of £240m. Since 1992 there has been an increase in utilities requiring access due to the expansion, particularly, of cable television and broadband services. For instance in 1992 there was only 1 telecom operator; now there are in excess of 900 licensees operating within the UK. It is therefore reasonable to assume that the impact on the economy has risen substantially in the intervening years and therefore the benefit to the Scottish economy is likely to be in the tens of millions of pounds.

**PART 3: MISCELLANEOUS**

**National travel concession schemes (section 37)**

*Costs on the Scottish Administration*

169. At present, schemes are run by local authorities and there are 16 schemes run by individual local authorities or groups of local authorities. As previously mentioned, a further £196m is being invested over the financial years 2006/7 and 2007/8 to support concessionary travel. The powers

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6 Susiephone Ltd Quarterly Reports for 2003/4
7 OFCOM website
within the Bill are discretionary, providing flexibility to allow the Scottish Ministers to choose which body should take responsibility for concessionary travel schemes at a later date. Additional administrative costs borne by the Scottish Executive as a result of this provision would depend on what is proposed but would only arise if the Scottish Ministers decide at some later stage to seek the Parliament’s approval of any scheme by draft affirmative order. It is for that reason that no costings can at this stage be provided.

Costs on local authorities

170. The intention is to take powers to enable the Scottish Ministers to run concessionary travel schemes at their own hand. Any transfer, therefore, of concessionary travel schemes to the proposed Transport Agency or the Transport Partnerships would be accompanied by funding provision. That transfer would not result in windfall savings by local authorities.

Costs on other bodies, individuals and businesses

171. A regulatory impact assessment will accompany any such order as the implications for service operators arising from any changed arrangements will need to be established. It is conceivable, depending on what is proposed, that there may indeed be a reduction in the administrative costs of operators. Under the current arrangements, bus operators which operate in the area of more than one local authority often have to take part in more than one set of negotiations about re-imbursement for carrying concessionary passengers and this is particularly burdensome for operators which participate in a number of schemes. If the Scottish Ministers decided to take over the management of concessionary travel from local authorities, then there might be a positive shift in the administrative costs of bus operators.

Pedestrian crossings (section 38)

172. The Scottish Executive receives on average twenty formal notifications per annum\(^8\) from local authorities under section 23(2) of The Road Traffic Regulation Act 1984. The Bill’s provisions will dispense with the need for local authorities to notify the Scottish Executive and as a consequence there will be some marginal administrative savings to local authorities and the Scottish Executive.

Modification of Highlands and Islands Shipping Services Act 1960 and loans for transport related purposes (section 39)

173. This provision has no financial ramifications for the Scottish Executive as it seeks to terminate an administrative obligation that requires Scottish Ministers to obtain Parliamentary approval prior to providing assistance in excess of £10,000 to the provision of sea transport services in the form of grants or loans or entering into contracts for the charter of ships. There will however be financial benefits accruing to shipping operators since there will no longer be a delay between a draft undertaking and its subsequent approval by Parliament.

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\(^8\) Scottish Executive Transport Group
Amendment of procedures for dealing with applications for harbour orders (sections 40 to 42)

174. These sections provide Scottish Ministers with the discretion to determine whether or not to hold a public inquiry when objections are made to a harbour order. Scottish Ministers will in future have the power to deal with objections by written representations or by appointing a person to hold a hearing. This means that where a single or a limited number of objections are raised a proportionate response can be made.

175. Since devolution there have been, or are currently in progress, 5 inquiries. It is likely that had the provisions of this Bill been in place certain objections could have been addressed without recourse to a public inquiry with consequent cost savings to Harbour Authorities and objectors. It is difficult to estimate a precise cost for an individual inquiry but the range of total costs can be from £20-30,000 up to and beyond £100,000.

SUMMARY OF COSTS ON THE SCOTTISH ADMINISTRATION

Start-up costs

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<tr>
<th>Initial start up costs for the Scottish Executive</th>
<th>£m</th>
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<tbody>
<tr>
<td>Initial Staffing and administration costs for Transport Partnerships</td>
<td>1.0</td>
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<tr>
<td>Members’ expenses to attend Transport Partnerships</td>
<td>0.1</td>
</tr>
<tr>
<td>SPT transition costs resulting from creation of successor Transport Partnership</td>
<td>1.0</td>
</tr>
<tr>
<td>Initial accommodation costs for Transport Partnerships</td>
<td>0.4</td>
</tr>
<tr>
<td>Initial Staffing and administration costs for SRWC</td>
<td>0.2</td>
</tr>
<tr>
<td>Software improvements for SRWR</td>
<td>0.9</td>
</tr>
<tr>
<td>Formal training for the improved SRWR</td>
<td>0.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3.7</strong></td>
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</tbody>
</table>

Table 1: Breakdown of start up costs to the Scottish Executive arising from the provisions contained within the Bill

Ongoing costs

<table>
<thead>
<tr>
<th>Ongoing costs to the Scottish Executive</th>
<th>£m</th>
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<tbody>
<tr>
<td>Staffing and administration costs for SRWC</td>
<td>0.16</td>
</tr>
<tr>
<td>Concessionary Travel</td>
<td>(subject to proposals in secondary legislation)</td>
</tr>
</tbody>
</table>

Table 2: Breakdown of ongoing costs to the Scottish Executive arising from provisions contained within the Bill.
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

176. On 27 October 2004, the Minister for Transport (Nicol Stephen MSP) made the following statement:

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

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

177. On 26 October 2004, the Deputy Presiding Officer (Murray Tosh MSP) made the following statement:

“In my view, the provisions of the Transport (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
This document relates to the Transport (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 27 October 2004

TRANSPORT (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

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

BACKGROUND

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

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

POLICY OBJECTIVES OF THE BILL

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

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

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

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

CONSULTATION

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

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

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

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

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

PART 1: REGIONAL TRANSPORT

Policy objectives

Regional Transport Partnerships

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

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

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

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

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

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

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

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

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

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

Strathclyde Passenger Transport’s rail functions

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

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

**Consultation and alternative approaches**

24. The Scottish Executive commissioned an independent review and summary of the responses⁹ to its formal consultation paper¹⁰. The review drew the following conclusions:

- “There was much acknowledgement of what respondents perceived to be the valuable contribution made by the current voluntary regional Transport Partnerships.
- However, many consultees considered that the current voluntary regional Transport Partnerships were reaching the limits of their operation within their existing constitution.
- Current voluntary regional Transport Partnerships were seen by some as possibly lacking in weight and strength, under-resourced, affected by the differing priorities of constituent councils, lacking in accountability, a tendency to lack a strategic outlook, with an inconsistency across different partnerships.”

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

- Joint committees did not attract much support. The main problem identified was their weak budget setting powers.
- Joint boards had more support but were opposed by a significant minority of respondents, mainly local authorities. Problems with applying the joint board model to transport included the inflexibility of boundaries, which meant each authority had to choose one joint board only to cover their transport interests. Other concerns included the potential dominance by the multiple representatives of large councils, the difficulty of carrying out strategic regional as well as local tasks, the threat to local accountability and the transitional and ongoing costs of such bodies.
- The contribution of SPT was recognised by most consultees but there was uncertainty as to whether the model was appropriate for other parts of Scotland. The limited remit of Public Transport Authorities/Public Transport Executives, particularly relating to roads, was also seen as a drawback to this option.

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The option of special bodies attracted limited interest and did not seem to most respondents to be the basis of a way forward in regional transport delivery.

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

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

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

PART 2: ROAD WORKS

Policy objectives

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

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

The Scottish Road Works Register

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

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

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

The Scottish Road Works Commissioner

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

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

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

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

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

Reinstatements

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

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

39. These provisions closely follow those set out in the Traffic Management Act 2004 for
England and Wales.

Enforcement

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

Training

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

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

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

Consultation and alternative approaches

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

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

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

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

PART 3: MISCELLANEOUS

Concessionary travel

Policy objectives

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

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

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

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

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

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

Consultation

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

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

Alternative approaches

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

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

**Pedestrian crossings**

*Policy objectives*

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

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

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

*Alternative approaches*

60. There are only two available options:

- retain existing requirement; or
- repeal.

*Reasons for choosing to remove statutory requirement*

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

Consultation

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

Highlands and Islands shipping

*Policy objectives*

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

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

*Detailed provisions*

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

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

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

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

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

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

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

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

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

Policy objective

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

Detailed provisions

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

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

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

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

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

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

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

MINOR AMENDMENTS

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

Quality bus measures

Policy objectives

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

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

Detailed provisions

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

Meaning of “road”

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

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

Road user charging: appeals

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

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

Local transport strategies: guidance and production by local traffic authorities

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

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

Road user charging

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

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

Equal opportunities

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

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

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

Human rights

94. The Scottish Executive considers that all provisions of the Bill are consistent with the European Convention on Human Rights.

Rural and island communities

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

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

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

Local government

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

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

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

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

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

18
Sustainable development

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

Business

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

3rd Report, 2005 (Session 2)

Stage 1 Report on the Transport (Scotland) Bill
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Report from Subordinate Legislation Committee

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16 November (25th Meeting, Session 2) (2004))
23 November (26th Meeting, Session 2) (2004))
30 November (27th Meeting, Session 2) (2004))
7 December (28th Meeting, Session 2) (2004))
14 December (29th Meeting, Session 2) (2004))
21 December (30th Meeting, Session 2) (2004))
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8 February (6th Meeting, Session 2) (2005))

ANNEXE C: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

16 November (25th Meeting, Session 2) (2004))

Oral Evidence

Mr Jonathan Pryce, Head of Transport Strategy and Legislation Division, Scottish Executive;
Mr Frazer Henderson, Team Leader, Transport Bill Team, Scottish Executive;
Mr Tom MacDonald, Head of Bus and Taxi Policy Branch, Scottish Executive;
Mrs Caroline Lyon, Solicitor, Scottish Executive;
Mr Laurence Sullivan, Solicitor, Scottish Executive;
Bill Barker, Operations Manager, Strategic Waste Policy and Assets, Dumfries and Galloway Council, SCOTS;
Grahame Lawson, Head of Planning and Transportation, North Lanarkshire Council, SCOTS;
Councillor Duncan MacIntyre, Argyll and Bute Council, HITRANS;
Councillor Gordon Mitchell, Shetland Islands Council, HITRANS; and
Howard Brindley, Co-ordinator, HITRANS
Oral Evidence
Marjory Rodger, Director of Government Relations Scotland, Confederation of Passenger Transport;
Jim Lee, Managing Director, Travel Dundee and Chairman, Confederation of Passenger Transport Scottish Council
Robert Andrew, Deputy Managing Director Stagecoach (Scotland), Confederation of Passenger Transport;
George Mair, Managing Director First Aberdeen, Confederation of Passenger Transport;
Councillor Charles Gordon, Leader, Glasgow City Council;
Marshall Poulton, Head of Policy and Planning, Glasgow City Council;
Michael Donnelly, Business Strategy Manager, Glasgow City Council;
Councillor Alistair Watson, Chair, Strathclyde Passenger Transport Authority;
Malcolm Reed, Director General, Strathclyde Passenger Transport Executive;
Douglas Ferguson, Director of Operations, Strathclyde Passenger Transport Executive; and
Valerie Davidson, Head of Financial Services, Strathclyde Passenger Transport Executive

Written Evidence
Confederation of Passenger Transport
Glasgow City Council
Strathclyde Passenger Transport

Supplementary Written Evidence
Glasgow City Council

Oral Evidence
Gordon Dewar, Commercial Director, First Group;
Gavin Scott, Policy Manager, Freight Transport Association;
Robert Samson, Director, Rail Passengers Committee Scotland;
James King, Member, Rail Passengers Committee Scotland;
Neil Greig, Head of Policy, Scotland, AA Motoring Trust

Written Evidence
First Group Plc
Freight Transport Association
7 December (28th Meeting, Session 2) (2004))

Oral Evidence
Councillor Alison Magee, Transport Spokesperson, COSLA;
Councillor Andrew Burns, Transport Spokesperson, City of Edinburgh Council, COSLA;
Councillor Joan Mitchell, Chair, Planning and Environment Committee, Dumfries and Galloway Council, COSLA;
Councillor Alison McInnes, Aberdeenshire Council, COSLA;
James Fowlie, Policy Manager, COSLA;
Findlay Taylor, Co-Chair, Roads Authorities and Utilities Committee (Scotland);
David Morrison, Managing Director, Turriff Contractors Ltd;
Stuart Ross, Operations Manager, Alfred McAlpine Infrastructure Services Ltd;
Jim Shields, Business Development Director, Alfred McAlpine Infrastructure Services Ltd;
Alan Watt, Chief Executive, CECA (Scotland); and
Iain Duff, Chief Economist, Scottish Council for Development and Industry

Written Evidence
COSLA
Road Authorities and Utilities Committee (Scotland)
Civil Engineering Contractors Association
Scottish Council for Development and Industry

14 December (29th Meeting, Session 2) (2004))

Oral Evidence
Roderick McLeod, Member, Mobility and Access Committee for Scotland;
Ewan Jones, Member, Mobility and Access Committee for Scotland
Jess Barrow, Head of Policy and Public Affairs, Age Concern Scotland;
Jim Ferguson, Perth and Kinross Pensioners’ Forum, Age Concern Scotland
Ross Watson MYSP, Chair, Transport, Environment and Rural Affairs Committee, Scottish Youth Parliament;
Morven Neil MSYP, Scottish Youth Parliament;
Stephanie Veitch MSYP, Scottish Youth Parliament;
Kevin Smith, Member, Argyll and Bute Youth Forum
Frank Stewart, Engineering Build Services Manager, THUS plc and Chairman of NJUG;
John Taylor, Government Relations Manager, National Grid Transco;
Rodney Grubb, Scottish and Southern Energy
Domhnall Dods, Head of Regulatory Affairs, THUS and Director, UKCTA;
Tony Cox, Head of Policy and Public Affairs, BT Wholesale; and
Nancy Saunders, Kingston Communications, Board Director, UKCTA
Written Evidence

Mobility and Access Committee Scotland
Age Concern Scotland
Scottish Youth Parliament
National Joint Utilities Group
United Kingdom Communicative Telecommunications Association

Supplementary Evidence

United Kingdom Communicative Telecommunications Association

21 December (30th Meeting, Session 2) (2004))

Oral Evidence

Dr Iain Docherty, School of Business and Management, University of Glasgow
Professor David Begg, Chair, Commission for Integrated Transport
Nicol Stephen MSP, Minister for Transport;
John Ewing, Head of Transport Group, Scottish Executive;
Jim Logie, Divisional Solicitor, Scottish Executive;
Frazer Henderson, Team Leader, Transport Bill Team, Scottish Executive;
and
Richard Hadfield, Policy Officer, Transport Bill Team, Scottish Executive.

Written Evidence

Dr Iain Docherty, School of Business and Management, University of Glasgow
Professor David Begg, Chair, Commission for Integrated Transport

ANNEXE D: OTHER WRITTEN EVIDENCE

Aberdeen City Council
Argyll and Bute Council
Association for Public Service Excellence
Dumfries and Galloway Council
Falkirk Council
Fife Council
Great North Eastern Railways
Living Streets Scotland
National Grid Transco
NESTRANS
NTL
Scottish and Southern Energy
Scottish Water
SESTRANS
SOLACE
Susiephone Ltd
Transform Scotland
West Lothian Council
WESTRANS
Local Government and Transport Committee

Remit and Membership

Remit:
To consider and report on matters relating to local government (including local government finance), cities and community planning and such other matters (excluding finance other than local government finance) which fall within the responsibility of the Minister for Finance and Public Services; and matters relating to transport which fall within the responsibility of the Minister for Transport.

Membership:
Bristow Muldoon (Convener)
Bruce Crawford (Deputy Convener)
Fergus Ewing
Dr Sylvia Jackson
Paul Martin
Mr Michael Mcmahon
David Mundell
Tommy Sheridan
Margaret Smith

Committee Clerking Team:

Clerk To The Committee
Eugene Windsor

Senior Assistant Clerk
Alastair Macfie

Assistant Clerk
Euan Donald
The Committee reports to the Parliament as follows—

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Part 1

1. The Committee welcomes the Bill, although as this report has noted, there are a number of ways in which it can be improved during its progress through its Parliamentary stages. The Committee therefore calls on the Minister to note the contents of this report, to provide further information where requested, and, where appropriate, to bring forward amendments at Stage 2.

2. Subject to this caveat, the Committee recommends to the Parliament that the general principles of the Bill be approved.¹

Consultation

3. The Committee considers that the consultation process on the proposals in the Bill has been satisfactory.

Secondary legislation issues

4. The Committee is concerned by the lack of detail in relation to many specific aspects of the Bill, as the report will indicate in due course. The Committee welcomes the Minister's commitment to make available draft regulations ahead of Stage 2, although it would have preferred them to have been available in draft form at Stage 1. The Committee also notes the comments of the Subordinate Legislation Committee in this regard.

¹ David Mundell dissented.

Fergus Ewing proposed that this paragraph be deleted and replaced by the following words: 'The Committee recognises that there is support for the principle of having RTPs, but without detailed information as to their composition, boundaries, powers and responsibilities and funding, it is not yet possible to reach any firm conclusion as to the general principles of the Bill.' The proposal was disagreed to by division: For: 2 (Bruce Crawford, Fergus Ewing). Against: 6 (Sylvia Jackson, Paul Martin, Michael McMahon, Bristow Muldoon, Tommy Sheridan, Margaret Smith). Abstentions: 1 (David Mundell).
5. The Committee calls on the Scottish Executive to produce relevant draft guidance and regulations for scrutiny no later than fourteen days prior to the start of Stage 2 of the Bill’s progress through its parliamentary stages, in order to allow the Committee, if it chooses to do so, to take evidence in advance of Stage 2.

6. The Committee notes the commitments made by the Executive to consider points raised by the Subordinate Legislation Committee, and requests that a response is provided on each point to the SLC, and to this Committee, in advance of the commencement of Stage 2 of the Bill.

7. The Committee will expect appropriate amendments to be brought forward by the Executive at Stage 2 to give effect to the commitments already made to the Subordinate Legislation Committee.

The need for regional Transport Partnerships (RTPs)

8. Having considered the evidence, the Committee concluded that it supported the introduction of RTPs.²

9. However, the Committee considers that the ability of RTPs to deliver transport improvements will depend largely on the RTPs having strong powers and the required level of funding.

Membership, voting rights and structural issues

10. The Committee acknowledges that the Scottish Executive has tried to balance the need for a voting system which is fair to both large and small local authorities, involves outside members meaningfully and results in a board which is capable of being focussed and is of manageable size. The Committee also understands the difficulties in achieving these objectives within the current local authority structure, which lost its regional aspect at the time of the last local government reorganisation.

11. However, the Committee is not convinced that the balance has been correctly struck, and welcomes the Minister’s commitment to consider these matters again. The Committee also calls on the Minister to consider whether it would be appropriate for appointments to Regional Transport Partnerships to be subject to the approval of the Scottish Parliament.

12. The Committee is also not persuaded that it is appropriate for non-elected members of RTPs to be able to vote alongside their councillor colleagues to, for example, requisition funds from the constituent councils. In practice it is difficult to separate any question of policy from financial issues, and the committee therefore concludes that, whilst the RTPs should find ways of enabling the non-councillor members to express their views, only those board members who are appointed by the constituent councils should be entitled to vote on the Partnership board.

² David Mundell dissented.
Boundaries of the RTPs

13. The Committee acknowledges that the current proposals are for consultation, and may change in the light of that consultation. Nevertheless, the Committee concludes that Dumfries and Galloway's case [to be a single-authority RTP] is a reasonable one. There appears to be very little justification, other than administrative convenience, for Dumfries and Galloway to be included within the Glasgow city-region. Although not a matter of general principle, this argument does have an impact on the principle that every local authority must be a member of a partnership together with at least one other local authority.

14. The Committee therefore concludes that there is a case for a greater degree of flexibility in the approach to the boundaries of RTPs. In particular, the Committee questions whether it is essential for each partnership to have more than one constituent authority. The Committee also questions whether it is essential that the boundaries of the RTPs need to be contiguous with local government boundaries, particularly when it is the case that the future local government boundaries may not remain as they are at present. Finally, the Committee believes consideration needs to be given to the question of whether individual councils may be constituent authorities in more than one RTP, and on whether it would be feasible for local authorities to have 'observer status' at neighbouring RTPs.

15. The Committee asks that the Executive considers these aspects and responds before the commencement of Stage 2, should the Bill complete its passage through the first stage of the Parliamentary process.

RTP functions

Rail

16. The Committee welcomes the assurances that have been given in respect of the successor body to Strathclyde Passenger Transport's (SPT) role in respect of rail. However, the Committee would welcome a clearer commitment to the role of RTPs in rail policy and would call on the Executive to consider an amendment to ensure that this role is enshrined on the face of the Bill.3

Bus Quality Partnerships, Quality Contracts and ticketing schemes

17. The Committee was persuaded by SPT's argument, and remains unconvinced that the proposal for these powers to be held simultaneously by both the proposed RTP and its constituent authorities is sound.

18. The Committee therefore calls on the Minister to consider this again ahead of Stage 2 of the Bill's parliamentary process.

19. Except in respect of the issues discussed above in connection with bus quality partnerships and quality contracts in the west of Scotland RTP, the Committee is content in respect of the proposed functions.

3 David Mundell dissented.
Financial issues

20. The Committee concludes that the information supplied in the Financial Memorandum and by the Scottish Executive in its evidence to the Committee and to the Finance Committee is insufficiently detailed to enable a judgement to be made about the adequacy of the proposed financial arrangements. The Committee therefore calls on the Executive to provide more detailed information, in particular in respect of the points raised by the Finance Committee, at least fourteen days ahead of the start of Stage 2 of the Bill’s parliamentary passage.

Part 2

Causes of congestion

21. Whilst there were arguments as to the precise figures for the causes of traffic congestion, it is clear to the Committee, firstly, that road works are only responsible for a limited proportion of traffic congestion, and so the proposals in the Bill are not a universal solution to this problem. Secondly, the Committee notes that both local authorities and utilities can be responsible for road works which cause congestion.

Equitable treatment of local authorities and utility companies

22. The Committee agrees with the utility companies that there should be a 'level playing field' in relation to fines imposed under the Bill, and recommends that the Executive considers how this can be achieved and amends the Bill accordingly at Stage 2, if the Parliament agrees to the general principles of the Bill. The Committee notes that COSLA and some local authorities did not appear to oppose such a suggestion in principle. There is likely to be an issue regarding how the new arrangements would work in practice, as it would not appear sensible for a local authority to both impose fines and be subject to them. However, the Committee challenges the Executive to bring forward proposals to subject local authorities to the same penalty system as utility companies which also avoids a situation in which local authorities ‘fine themselves’.

Scottish Road Works Commissioner – role

23. The Committee notes the concerns of some witnesses that the powers of the new Scottish Road Works Commissioner might not significantly differ from those currently held by the Road Authorities and Utilities Committee (RAUC(S)). However, the Committee also notes that, unlike the membership of RAUC(S), which comprises local authority and utility company representatives, the Commissioner will be a single independent figure monitoring road works in Scotland. A majority of the Committee supports the creation of the post, subject to reassurances being provided by the Minister that appropriate resources will be allocated to the appointee, and considers that the independent status of the Commissioner will mean that he or she will be able to take an impartial overview of national performance on road works, and, in particular, will have no conflicts of interest in relation to his or her duty to enforce offences under the 1991 Act. A minority of Committee members consider that it would be possible for the proposed functions of the Commissioner to be carried out by RAUC(S), if it were established on a statutory basis.
Scottish Road Works Commissioner – resources

24. Whilst the ability of roads works authorities to recoup the administrative costs of issuing fixed penalty notices is welcomed, this proposal does not really address the concerns raised by SCOTS in relation to cost implications of section 21 of the Bill (duty of roads works authorities to co-ordinate road works). These potential costs are not specifically addressed in the Bill's Financial Memorandum, and the Committee requests a response from the Executive to these concerns in advance of the Stage 1 debate. The Committee also seeks views of the Executive in relation to the budget of the Scottish Road Works Commissioner. The Committee wishes reassurances that sufficient resources exist for the Commissioner to carry out his or her role properly.

Power to restrict road works

25. The Committee supports the general policy intention behind the proposals to better manage road works. However, the Committee is also concerned at the potential economic impact of the proposals. The Committee requests clarification on what exemptions will be permitted to the ‘three year’ rule proposed in Bill. The UK Competitive Telecommunications Association (UKCTA) highlighted, for example, the case of road works where digging is required to meet customer orders or where works are minor and have little impact on traffic. The Committee would also like further information in advance of Stage 2 of the Bill as to how a balance will be struck between the proposals in the Bill to restrict works and the Minister's statement that services such as broadband roll-out will be unaffected by the proposed legislation.

Other utility company concerns

26. The Committee requests a response from the Executive on additional concerns of utility companies set out in this report in relation to emergency works and competition within the telecoms market. In particular, the Committee requests a reassurance from the Minister that road authorities will not be able to use the powers of reinstatement in the Bill to make overly onerous demands on utility companies to reinstate sections of roads which have not been disrupted by road works. The Committee would welcome these responses no later than fourteen days prior to the start of Stage 2 of the Bill's progress through its parliamentary stages.

Enforcement of the provisions in Part 2 the Bill

27. The Committee recommends that, if the Bill is passed, the Executive should monitor the use of the new powers in the Bill to ensure that they are more effectively enforced than those in the 1991 Act.

Part 3

General comments

28. The Committee recognises the difficulties that local authorities, operators and bus users have encountered within the current framework of sixteen different concessionary travel schemes.
29. The Committee was not convinced by the evidence it heard arguing for the management of the schemes to be transferred to the proposed RTPs. The Committee therefore welcomes the Executive’s announcement that a national concessionary fares scheme will be introduced by April 2006.

30. However, the Committee notes the concerns raised by SPT, COSLA and Dumfries and Galloway Council with regard to the possible financial impact of the introduction of the schemes on the provision of services and infrastructure.

31. The Committee therefore asks the Executive to provide details of the assessment it has carried out on the possible wider impact of the new funding being provided for the national concessionary travel scheme in respect of the funding available for the development of other services. The Committee requests that the Minister provides details of the timescale for the completion of this assessment and that it is made available to the Committee.

32. Finally, the Committee welcomes the Commitment made by the Minister to come back before it in order that the Executive’s proposals in respect of the concessionary travel scheme may receive committee scrutiny.

Time restrictions of the scheme
33. The Committee welcomes the Minister’s announcement that the provision of free bus travel for older and disabled people will be non-time-restricted. The Committee also welcomes the announcement of additional funding to be provided to support bus operators in providing free travel and the proposed cap on the total cost of payments to operators.

Rail
34. The Committee is persuaded by the evidence it has heard on this matter and accepts that presently the rail network has insufficient capacity to support a national non-time-restricted concessionary travel scheme, although this might be possible at some future date. It might be more feasible to introduce a nationwide off peak concessionary rail travel scheme, and the Committee encourages the Minister to examine this suggestion further. Additionally, the Committee considers that there may be merit in rail concessions being offered at a local level in certain circumstances. The Committee would therefore suggest that the proposed RTPs may wish to consider whether to offer certain specific rail travel concessions within their own areas.

Other groups
35. The Committee supports the extension of concessionary travel to young people, notes the Minister’s plans to announce the specific details of this scheme in due course, and recommends that this announcement is made in the early part of this year.

Ferry travel
36. The Committee welcomes the Minister’s commitment to provide concessionary travel for young people on ferries and his proposal for older
people and disabled people to have a minimum of two free return journeys to the mainland each year. The Committee acknowledges that this is a minimum standard of provision and welcomes the fact that local enhancements will continue to be able to be provided.

Accessibility issues

37. The Committee notes the evidence from MACS and urges the Executive to ensure that, as far as possible, the concessionary travel schemes available to older and disabled people are genuinely accessible. Furthermore, the Committee would welcome a clear statement from the Executive on what measures it plans to put in place to encourage accessibility of public transport for disabled people ahead of the Disability Discrimination Act coming into force, and what the timescale is for these measures.

REPORT

38. The Transport (Scotland) Bill was introduced to the Scottish Parliament on 27 October 2004, by Nicol Stephen MSP, the Minister for Transport. The Bill is accompanied by a Policy Memorandum and Explanatory Notes.

39. The Bill was referred to the Local Government and Transport Committee as lead committee on a motion of the Parliamentary Bureau. Under Standing Orders Rule 9.6.1, it is for the lead committee to consider and report on the general principles of the Bill.

40. Reports were received on the Bill from the Subordinate Legislation Committee, the Finance Committee and the Enterprise and Culture Committee. These reports can be found at Annexe A.

BACKGROUND

41. The Policy Memorandum states that the Bill makes ‘substantive provision’ in relation to three major policy areas in transport (Transport Partnerships, road works and concessionary travel) and a number of minor provisions in relation to other transport areas. The policy memorandum sets out the contents of each of the three main parts of the Bill:

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

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

4 http://www.scottish.parliament.uk/business/bills/pdfs/b28s2.pdf
5 http://www.scottish.parliament.uk/business/bills/pdfs/b28s2pm.pdf
Part 3 of the Bill makes provision enabling the Scottish Ministers to run concessionary travel schemes at their own hand. It also details a range of miscellaneous provisions: abolishing the requirement on local authorities to inform the Scottish Ministers before a pedestrian crossing is established, altered or removed; amending the procedure for dealing with applications for Harbour Orders; modifying the Highlands and Islands Shipping Services Act 1960; and making minor amendments to the Transport (Scotland) Act 2001.6

42. The overarching objective of the Bill, according to the Policy Memorandum, is ‘to promote economic growth, social inclusion, health and protection of our environment through a safe, integrated, effective and efficient transport system.’7

Consultation

43. The proposals in the Bill have been outlined in a number of consultation documents and policy statements published by the Scottish Executive. The proposals contained in the Bill build on the broad commitments outlined in the ‘Partnership Agreement’ published following the Scottish election in May 2003.8

44. In September 2003, the Scottish Executive consulted on the document ‘Scotland’s Transport: Proposals for a New Approach to Transport in Scotland’.9 This document set out a range of options for transport delivery in Scotland, including a new national transport agency and various regional delivery mechanisms. In October 2003, the Scottish Executive published a consultation document ‘Scotland’s Transport: The Regulation of Utility Company Roadworks’ which concerned how best to regulate utility road works.10 Finally, in June 2004, the Scottish Executive published a White Paper ‘Scotland’s Transport Future’.11

45. The Committee considers that the consultation process on the proposals in the Bill has been satisfactory.

Policy memorandum

46. Under Standing Orders Rule 9.6.3, the Committee is required to report on the Policy Memorandum of the Bill. The Committee considers that the Policy Memorandum contains a satisfactory explanation of the policy intentions behind the Bill.

EVIDENCE

47. The Local Government and Transport Committee took evidence on the Bill on 16, 23 and 30 November 2004, and 7, 14 and 21 December 2004. The Committee took evidence from:

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6 Policy memorandum, paragraphs 5 to 7
7 Policy memorandum, paragraph 4
8 Partnership agreement: http://www.scotland.gov.uk/library5/government/pfbs-00.asp
9 http://www.scotland.gov.uk/library5/enterprise/stnats-00.asp
10 http://www.scotland.gov.uk/consultations/transport/rucr-00.asp
Mr Jonathan Pryce, Head of Transport Strategy and Legislation Division, Scottish Executive;
Mr Frazer Henderson, Team Leader, Transport Bill Team, Scottish Executive;
Mr Tom MacDonald, Head of Bus and Taxi Policy Branch, Scottish Executive;
Mrs Caroline Lyon, Solicitor, Scottish Executive;
Mr Laurence Sullivan, Solicitor, Scottish Executive;

Bill Barker, Operations Manager, Strategic Waste Policy and Assets, Dumfries and Galloway Council, SCOTS;
Grahame Lawson, Head of Planning and Transportation, North Lanarkshire Council, SCOTS;

Councillor Duncan MacIntyre, Argyll and Bute Council, HITRANS;
Councillor Gordon Mitchell, Shetland Islands Council, HITRANS;
Howard Brindley, Co-ordinator, HITRANS;

Marjory Rodger, Director of Government Relations Scotland, Confederation of Passenger Transport (CPT);
Jim Lee, Managing Director, Travel Dundee and Chairman, CPT Scottish Council;
Robert Andrew, Deputy Managing Director Stagecoach (Scotland), CPT;
George Mair, Managing Director First Aberdeen, CPT;

Councillor Alistair Watson, Chair, Strathclyde Passenger Transport Authority;
Malcolm Reed, Director General, Strathclyde Passenger Transport Executive (SPTE);
Douglas Ferguson, Director of Operations, SPTE;
Valerie Davidson, Head of Financial Services, SPTE;

Gordon Dewar, Commercial Director, First Group;
Gavin Scott, Policy Manager, Freight Transport Association;

Robert Samson, Director, Rail Passengers Committee Scotland;
James King, Member, Rail Passengers Committee Scotland;

Neil Greig, Head of Policy, Scotland, AA Motoring Trust;

Councillor Alison Magee, Transport Spokesperson, COSLA;
Councillor Andrew Burns, Transport Spokesperson, City of Edinburgh Council, COSLA;
Councillor Joan Mitchell, Chair, Planning and Environment Committee, Dumfries and Galloway Council, COSLA;
Councillor Alison McInnes, Aberdeenshire Council, COSLA;
James Fowlie, Policy Manager, COSLA;
Findlay Taylor, Co-Chair, Roads Authorities and Utilities Committee (Scotland);

David Morrison, Managing Director, Turriff Contractors Ltd;
Stuart Ross, Operations Manager, Alfred McAlpine Infrastructure Services Ltd;
Jim Shields, Business Development Director, Alfred McAlpine Infrastructure Services Ltd;
Alan Watt, Chief Executive, CECA (Scotland);

Iain Duff, Chief Economist, Scottish Council for Development and Industry;

Roderick McLeod, Member, Mobility and Access Committee for Scotland;
Ewan Jones, Member, Mobility and Access Committee for Scotland;

Jess Barrow, Head of Policy and Public Affairs, Age Concern Scotland;
Jim Ferguson, Perth and Kinross Pensioners’ Forum, Age Concern Scotland;

Ross Watson, Chair, Transport, Environment and Rural Affairs Committee, Scottish Youth Parliament;
Morven Neil MSYP, Scottish Youth Parliament;
Stephanie Veitch MSYP, Scottish Youth Parliament;
Kevin Smith, Member, Argyll and Bute Youth Forum;

Frank Stewart, Engineering Build Services Manager, THUS plc and Chairman of NJUG;
John Taylor, Government Relations Manager, National Grid Transco;
Rodney Grubb, Scottish and Southern Energy;

Domhnall Dods, Head of Regulatory Affairs, THUS and Director, UKCTA;
Tony Cox, Head of Policy and Public Affairs, BT Wholesale;
Nancy Saunders, Kingston Communications, Board Director, UKCTA;

Dr Iain Docherty, School of Business and Management, University of Glasgow;

Professor David Begg, Chair, Commission for Integrated Transport;

Nicol Stephen MSP, Minister for Transport;
John Ewing, Head of Transport Group, Scottish Executive;
Jim Logie, Divisional Solicitor, Scottish Executive; and
Richard Hadfield, Policy Officer, Transport Bill Team, Scottish Executive.

48. In addition, the Committee received written evidence from:

Aberdeen City Council
Argyll & Bute Council
Association for Public Service Excellence (Scotland)
Dumfries and Galloway Council
Falkirk Council
Fife Council
GNER
Living Streets Scotland  
National Grid Transco  
NESTRANS  
ntl  
Scottish & Southern Energy  
Scottish Water  
SESTRAN  
SOLACE  
Susiephone  
TRANSform Scotland  
West Lothian Council  
WESTRANS

49. The Committee is grateful to all those organisations and individuals who provided written and oral evidence to the Committee.

PART 1: REGIONAL TRANSPORT PARTNERSHIPS

50. The Scottish Executive’s proposal for the establishment of Regional Transport Partnerships (RTPs) stems from its wish to ‘build organisational capacity throughout government in Scotland and promote a more strategic approach to the planning and delivery of transport at all levels.’

51. The Policy Memorandum notes that, prior to the reorganisation of local government following the Local Government etc (Scotland) Act 1994, local government transport functions were exercised by the nine regional councils, three island councils and Strathclyde Passenger Transport Executive. Following reorganisation, these functions transferred to the thirty two unitary councils, which in many parts of Scotland are much smaller in area than their predecessors. This has meant, says the Policy Memorandum, ‘that council boundaries often do not reflect travel patterns, with the result that decisions taken in one council can have an impact beyond its borders.’ This situation led to the establishment of four voluntary regional Transport Partnerships - HITRANS, NESTRANS, SESTRANS and WESTRANS which cover 30 out of the 32 local authorities. These partnerships have, since 1999, been supported by the Scottish Executive, for example through direct financial contributions towards the costs of permanent staff and ad-hoc grants towards the cost of regional priority projects.

52. The achievements of the voluntary partnerships, notes the Policy Memorandum, are recognised by the Scottish Ministers, but they believe that ‘there is a need for more formalised, integrated transport bodies at regional level.’ The Bill therefore, if passed, will place a duty on the Scottish Ministers to create statutory regionally-based Transport Partnerships, covering every part of Scotland.

53. It is expected that the first Regional Transport Partnerships will be established in spring of 2006, with the first set of appointments of members being made by the Scottish Ministers on the basis of nominations by the constituent councils. Those memberships are to last only until the next set of local government elections, scheduled for May 2007. Following the elections, the next set of external

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12 Scottish Executive Scotland’s Transport Future, 2003
appointments to the partnerships will be made by the partnership, taking account of ministerial guidance. The appointments will require to be approved by the Scottish Ministers.

54. The partnerships will be expected to produce a ‘Regional Transport Strategy’ within a year of their creation. The strategy is required to ‘make the case for investment and infrastructure in that region to address transport needs and guide and co-ordinate the activities of the individual councils in the delivery of that strategy’. Strategies will require to be have regard to guidance issued by the Scottish Ministers and to be approved by them.

55. The Policy Memorandum notes that the partnerships will have a duty to consult their constituent councils, and will be expected, in time, to ‘take on other transport functions, either solely or in partnership with their constituent local authorities.’

56. In respect of financial arrangements, the Policy Memorandum notes that the RTPs will be ‘able to receive funding directly from the Scottish Executive and other organisations, and will be able, if appropriate functions are conferred upon them, to engage in revenue-raising activities.’ It is however anticipated that the bulk of the partnership funding will be provided by the constituent councils.

57. Ministers plan to transfer the rail functions currently carried out by Strathclyde Passenger Transport Authority (SPTA) to themselves, and it is understood that amendments to this effect are likely to be brought forward at Stage 2, following the making of an order under Section 30 of the Scotland Act 1998.

Secondary legislation issues

58. The Committee noted that the Bill contains a large number of subordinate legislation provisions, and as a result there are large areas where the Bill will, if passed, have considerable impact, but which the Committee has been unable to scrutinise because little or only limited detail has been made available.

59. The Subordinate Legislation Committee has provided the Committee with an extensive report on the subordinate legislation provisions, and this is dealt with later in the report.

60. The Minister, responding to questioning on this issue, told the Committee—

‘I fully understand the committee’s concern about the lack of detail in the bill. By stage 2, we will have made available draft regulations. Although I am always concerned when there is a lack of detail in a bill, sometimes there are good reasons for that. In the present case, there are good reasons. We want to give the RTPs the flexibility to have constitutions and sets of powers that are specific to their circumstances; in other words, we are not opting for a one-size-fits-all solution.’

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13 Policy Memorandum, p4
14 Or Col 1729
61. The Committee is concerned by the lack of detail in relation to many specific aspects of the Bill, as the report will indicate in due course. The Committee welcomes the Minister’s commitment to make available draft regulations ahead of Stage 2, although it would have preferred them to have been available in draft form at Stage 1. The Committee also notes the comments of the Subordinate Legislation Committee in this regard.

62. The Committee calls on the Scottish Executive to produce relevant draft guidance and regulations for scrutiny no later than fourteen days prior to the start of Stage 2 of the Bill’s progress through its parliamentary stages, in order to allow the Committee, if it chooses to do so, to take evidence in advance of Stage 2.

The need for RTPs

63. Most of the evidence received by the Committee welcomed the proposals to establish RTPs, and argued that, in combination with the proposed Executive Agency, Transport Scotland, they would have an important strategic role in the development of transport networks across the country. Glasgow City Council, for example, in its written submission, noted—

‘[...] there was a need to create a structure which aimed to deliver better transport projects and improved integration. The Council also accepted the Executive’s desire to see additional transport investment spent effectively and on time. It therefore concluded that this was best achieved through the development of Regional Transport Partnerships.’\textsuperscript{15}

64. The Scottish Council for Development and Industry (SCDI)—

‘welcomes the decision to increase the power of these bodies [the existing voluntary partnerships] by creating statutory Regional Transport Partnerships through this legislation.’\textsuperscript{16}

65. HITRANS, the existing voluntary transport partnership covering the highlands and islands indicated—

‘The organisational structure needs to be strengthened with dedicated staff and formal powers so that this strategic approach can be firmed up and fed into the delivery plans of Transport Scotland and our regional service providers.’\textsuperscript{17}

66. Some witnesses questioned whether there was a need for the establishment of regional Transport Partnerships, as provided for by the Bill. Strathclyde Passenger Transport, for example, was critical of the Bill’s proposals—

‘In SPT’s view, those parts of the Bill dealing with transport delivery at the regional level, whilst an improvement on last year’s consultation proposals, have little positively to commend them. In substantive terms, they add

\textsuperscript{15} Glasgow City Council, written submission
\textsuperscript{16} SCDI written submission
\textsuperscript{17} HITRANS written submission to Local Government and Transport Committee
nothing that could not be achieved under existing legislation, while introducing profound uncertainties about the scope and method of future transport delivery in the west of Scotland.'

67. West Lothian Council argued—

‘The main concern of this council is whether there is an actual need for the formation of SRTPs in the first place. The council has worked closely with neighbouring authorities as part of the SESTRAN voluntary partnership since its establishment and is of the opinion that SESTRAN has a good record of delivering regional transport projects and initiatives within a voluntary committee structure. This is done by working together and pooling skills and expertise in transport.'

68. West Lothian Council continued—

‘The council is therefore unconvinced of the need to establish SRTPs and would favour the establishment of joint committees. These committees could be supported on a day-to-day basis by a core management / support team. The arrangements for city region planning, which is closely aligned to, if not inseparable from transport, are still under consideration. Current indications are that unlike SRTPs, joint committees are the preferred option for managing city region planning and this should continue to allow for local democratic control.'

69. Glasgow City Council and WESTRANS also expressed a preference for joint boards over the system proposed in the Bill.

70. Some witnesses questioned whether the proposals in the Bill were sufficiently ambitious. Professor David Begg of the Commission for Integrated Transport (CfIT), for example, commented in evidence—

‘The proposals set out in the Transport (Scotland) Bill relating to the establishment of Regional Transport Partnerships are welcomed by CfIT as a positive first step in delivering more joined up transport planning and delivery. The Commission would have wanted to see the proposals go further, ensuring significant powers being transferred to regional bodies, however, it recognises the wider context within which decisions on the pace and direction of change are taken.'

71. Dr Iain Docherty of Strathclyde University went further—

‘It is also true that when consultation on the bill started about 18 months ago, there was a general feeling that we would end up with meaty and strong regional structures. However, there is general disappointment that the bill does not propose the strong regional authorities that many of us had hoped to see. In particular, it is not clear that the basic level of powers that most of

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18 SPT written submission to Local Government and Transport Committee
19 West Lothian Council, written submission to Local Government and Transport Committee
20 Ibid.
21 CfIT written submission to Local Government and Transport Committee
the new regional transport partnerships are likely to take up—at least in the short term—will make much difference to delivery of transport policy throughout Scotland. That is a major problem that the committee will want to probe further.

It is one thing to create strong regional structures to deliver transport policy, but if we are going to do that—I believe that it is the right thing to do—we must ensure that we get the political and decision-making structures of those bodies correct. Some of the proposals in the bill, particularly the form of political representation that is proposed for the new bodies, are quite weak and might constrain the new regional transport partnerships from being as effective as they might be.”

72. He also noted in his written evidence—

‘The arguments in favour of a stronger system of some sort of regional governance structure for transport in Scotland are well known. Indeed, within the last 18 months, the Scottish Executive commissioned independent research into best practice in transport governance across Europe. This research concluded that strong regional systems, with substantial autonomy from central government and their own funding streams, were the best means to deliver real transport improvements.’

73. Having considered the evidence, the Committee concluded that it supported the introduction of RTPs.

74. However, the Committee considers that the ability of RTPs to deliver transport improvements will depend largely on the RTPs having strong powers and the required level of funding.

Membership, voting rights and structural issues

75. A number of issues were raised by witnesses in relation to the ‘democratic accountability’ of the proposed new bodies. Witnesses expressed concern over the provision in the Bill under which only one councillor from each constituent authority would be allowed to be a member of the partnership, and the related provision that voting within the partnership will be weighted so that the vote of a councillor members may count for up to four votes, broadly in line with the relative population of the council area.

76. Councillor Charles Gordon, the leader of Glasgow City Council, told the Committee—

‘To limit the number of the council’s votes to four will not properly reflect the population range in the west of Scotland regional transport area, nor will it reflect the level of budget that Glasgow City Council can expect to contribute or the weight of the city council’s transport responsibilities. We need a high level of safeguard on the extent and scale of majority voting in the new RTP

22 OR Col 1699
23 Dr Iain Docherty, written submission to Local Government and Transport Committee
24 David Mundell dissented.
in order to redress any potential democratic deficit and to ensure best value from spending of what is, after all, the public pound.'

77. The Bill provides that two thirds of the voting members shall be councillors from the constituent councils. Councillor Alison McInnes, speaking on behalf of COSLA, noted in evidence that the proposed membership arrangements could lead to an unsatisfactory situation in the North East Scotland area—

‘[...] it will have a particular impact on the proposal for the north-east of Scotland regional transport partnership, which will be composed of only two councils. Under the bill, we would create a board of possibly only three people.’

78. A similar point was made in written evidence by FirstGroup PLC—

‘We believe that the requirement to have two-thirds representation from the local authority may impose an artificial constraint on the numbers of other members, particularly in the smaller RTPs such as NESTRANS. Subject to the principle above of efficiency, there may be a case to reconsider this requirement although agree that the majority of voting members should be drawn from local authorities.’

79. Dr Iain Docherty told the Committee—

‘It might be interesting to consider the model for the passenger transport authorities and executives in England. Those bodies are in essence joint boards, but their political representation, which is drawn from member councils, involves some form of political proportionality. Not only is funding proportionate to the size of the councils, but representation is proportionate, too, and there is a requirement on organisations to try to reflect the politically partisan as well as the geographical nature of the areas that they cover. The authorities in England cover relatively small areas compared with the larger regions in Scotland that we are talking about. However, there is a case for considering the traditional joint board model more carefully, to ascertain whether we could construct partnerships that would be more reflective of wider regional priorities.’

80. Some witnesses questioned whether non-councillor members of the RTP should be allowed to vote on matters relating to the spending of public money. Councillor Charles Gordon of Glasgow City Council for example told the Committee—

‘[...] I have a difficulty with unelected persons voting to spend taxpayers' money, be it national taxpayers' money or local taxpayers' money.’

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25 OR Col 1468.
26 OR Col 1545
27 FirstGroup PLC written submission
28 OR col 1705
29 OR Col 1473
81. The Committee questioned the Minister on these issues. On the question of ‘proportionality’ and the perception that larger councils would not receive the number of votes which would reflect their population, he noted—

‘I understand that argument, and exactly the opposite argument has been made to me by Shetland Islands Council and Orkney Islands Council. They have small populations and they are extremely concerned about being outvoted on the proposed Highlands and Islands regional transport partnership by the mainland councils—Argyll and Bute Council and Highland Council. They believe that they should have some sort of blocking vote to ensure that nothing is imposed on the islands that their communities would not want to happen. They want a more significant vote than they are being offered, which is the reverse of the other argument.’ 30

82. The Minister appeared to rule out the possibility of joint boards—

We are not following the joint boards example. Having joint boards would mean that island communities in the Highlands and Islands area would be even more considerably outvoted. We are trying to offer a compromise solution and a balanced way forward. You are right to say that Glasgow and the other larger authorities, such as the City of Edinburgh Council, will not receive their full share of votes, but my view is that we do not want any authority to be dominant in any of the regional partnerships. We want a genuine partnership approach. I think that it is reasonable to offer the larger authorities up to four votes, which gives them significant power. It would have been difficult to convince the west of Scotland partnership to go for a one-authority-one-vote approach. […]’ 31

83. The Minister concluded—

‘Having considered all those issues, I made the proposals that are in the bill, but they are not absolute. If sensible, constructive suggestions are made for how we can address some of the issues, I will consider them carefully, but I do not want to end up with huge regional transport partnerships with significant memberships. Outside representation on RTPs is important and we need to encourage it—it has been successful in the voluntary partnerships in which it has happened; however, the RTPs need to be able to make decisions and need to be of a size that will work, which suggests to me that the overall size of the membership must be kept sensible.’ 32

84. Dr Iain Docherty highlighted the tensions involved in the creation of the new partnerships—

‘A fundamental problem with such a reform process is that we have inherited a set of local government boundaries that were of their political time and were—particularly in central Scotland—designed to institute unhelpful competition between local authorities and to break up the regional councils.

30 OR col 1732
31 OR Col 1732
32 Ibid
That set-up stopped the regional strategic approach to service delivery of the kind that is set out in the bill. It is difficult to try to stitch that fragmented system back together to deliver joined-up working instead of competition.\(^33\)

85. Professor David Begg put the same point more bluntly—

\[\text{We are here only because the former regions were wound up—that is why the Transport (Scotland) Bill is being put on the statute book. The abolition of the regions in 1996 created a vacuum in strategic transport planning that has not yet been filled.}\(^34\)

86. The Committee acknowledges that the Scottish Executive has tried to balance the need for a voting system which is fair to both large and small local authorities, involves outside members meaningfully and results in a board which is capable of being focussed and is of manageable size. The Committee also understands the difficulties in achieving these objectives within the current local authority structure, which lost its regional aspect at the time of the last local government reorganisation.

87. However, the Committee is not convinced that the balance has been correctly struck, and welcomes the Minister’s commitment to consider these matters again. The Committee also calls on the Minister to consider whether it would be appropriate for appointments to Regional Transport Partnerships to be subject to the approval of the Scottish Parliament.

88. The Committee is also not persuaded that it is appropriate for non-elected members of RTPs to be able to vote alongside their councillor colleagues to, for example, requisition funds from the constituent councils. In practice it is difficult to separate any question of policy from financial issues, and the committee therefore concludes that, whilst the RTPs should find ways of enabling the non-councillor members to express their views, only those board members who are appointed by the constituent councils should be entitled to vote on the Partnership board.

**Boundaries of the RTPs**

89. It is acknowledged by the Committee that a separate consultation process is underway on the proposed boundaries of the RTPs, and that the specific boundaries are not matters of general principle in relation to the Committee’s formal role in the legislative process.

90. Nevertheless, there are issues of principle surrounding these matters upon which the Committee feels it is appropriate to comment, and inevitably these will touch on the Executive’s specific proposals.

91. The current proposals from the Scottish Executive provide for five RTPs—
92. One of the difficulties which the Executive appears to have faced in this process is that of reconciling the existing local government political boundaries with the need to have RTP areas which reflect realistic travel patterns.

93. Dr Iain Docherty summed up the difficulties in his oral evidence to the Committee—

‘The Executive might have made a rod for its own back by stipulating that all of Scotland must be part of a partnership and that any partnership must have more than one local authority as a member. For example, Dumfries and Galloway does not sit easily anywhere. There is obvious disquiet in the region about being part of a large partnership in the west in which decisions on local bus transport might be made in Glasgow. Equally, because of its position at the corner of three regions, Stirling does not sit easily anywhere in a local government sense. However, if we consider transport flows, the majority of strategic movement to and from Stirling involves Edinburgh, Glasgow and the rest of the central belt. As a result, there is no credibility in the claim that an area that starts 10 miles outside Glasgow city centre and ends in Montrose in the north-east is a coherent region for transport planning.’

94. The Committee heard particular concerns from Dumfries and Galloway Council, which, in the Executive’s consultation, was placed within the West and South West RTP. Councillor Dr Joan Mitchell, speaking as part of the COSLA delegation giving evidence on the Bill, put the council’s concerns to the Committee—

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35 OR Col 1703.
‘The first reason is the geography of the area. […] We do not fit into any city region or any travel-to-work area of any city in Scotland. We are a large rural area. […] The area is sparsely populated and rural and has little commonality with central belt travel-to-work areas.

 […] Dumfries and Galloway Council has a successful record of delivering the transport function locally. We have a consistent track record of delivering transport against national expenditure programmes and priorities, in consultation with partners. […] We have no problem with partnership working. We believe and have an acknowledged record in community planning, because we have the great advantage—of which I am sure the committee has often heard—of coterminosity within our boundaries. We work closely with agencies and communities in our boundaries. We also have partnership links in transport with the private sector, with Northern Ireland, through our north channel partnership, and across the border to England. The authority is not one that does not work in partnership.[…]’

The most important point is that we are being uniquely targeted as the only authority that will suffer compulsory removal of its transport function, staff and budget to an established statutory agency—SPT. […]

95. Councillor Mitchell concluded—

‘The committee will hear no strategic transport or service delivery justification for the proposal, because there is none. Agencies that we have worked with support the Dumfries and Galloway case. The committee will hear no governance or accountability argument for the proposal, because the proposal goes in the opposite direction. The only justification that members will hear for uniquely targeting a local authority is bureaucratic convenience and conformity. For a country as diverse as Scotland, that is unacceptable.’

96. The Committee did not hear specific representations from other parts of the country on the proposed boundaries, but noted some possible anomalies, particularly in the Central and Tay and South East RTP proposals. In the former, the Stirling area would appear to have little in common with the Dundee area, whilst Fife has links perhaps equally as strong with the Dundee area as it has with the Edinburgh area, yet has been placed solely in the South East RTP area.

97. The Committee acknowledges that the current proposals are for consultation, and may change in the light of that consultation. Nevertheless, the Committee concludes that Dumfries and Galloway’s case is a reasonable one. There appears to be very little justification, other than administrative convenience, for Dumfries and Galloway to be included within the Glasgow city-region. Although not a matter of general principle, this argument does have an impact on the principle that every local authority must be a member of a partnership together with at least one other local authority.

36OR Col 1546
37Ibid.
98. The Committee therefore concludes that there is a case for a greater degree of flexibility in the approach to the boundaries of RTPs. In particular, the Committee questions whether it is essential for each partnership to have more than one constituent authority. The Committee also questions whether it is essential that the boundaries of the RTPs need to be contiguous with local government boundaries, particularly when it is the case that the future local government boundaries may not remain as they are at present. Finally, the Committee believes consideration needs to be given to the question of whether individual councils may be constituent authorities in more than one RTP, and on whether it would be feasible for local authorities to have ‘observer status’ at neighbouring RTPs.

99. The Committee asks that the Executive consider these aspects and responds before the commencement of Stage 2, should the Bill complete its passage through the first stage of the Parliamentary process.

RTP functions

100. The Bill provides that it is the duty of each RTP to draw up a strategy for transport within its region. It also provides that Ministers may, by order, transfer additional functions, previously carried out by another body, including the Scottish Ministers, to an RTP. An RTP may, following consultation with its constituent councils, and having regard to such guidance as may be issued by the Scottish Ministers, request the transfer of such functions.

101. In October 2004, the Executive published a consultation document\(^38\) Scotland’s Transport Future: Proposals for Statutory Regional Transport Partnerships in which it set out three possible models for the proposed RTPs. These are described in the consultation document as:

Model 1: Regional Strategy and Limited Transport Powers

Model 2: Regional Strategy and Some Transport Powers Transferred

Model 3: Regional Strategy and Significant Public Transport Powers Transferred.

102. The guidance suggests that it will be helpful to have a ‘reasonably consistent approach’ across Scotland, although it will be possible to ‘evolve’ from one model to another.

103. The ‘base function’ of every RTP will be to produce a regional transport strategy. The strategy is intended to ‘identify regional priorities, how these are to be achieved with what resources and who should achieve them.’

104. The consultation document provides some examples of possible functions which could be undertaken by the RTPs, including developing and promoting Quality Bus Corridors, entering into quality partnerships and quality contracts. Under the higher level models, RTPs could be given responsibility for developing a regional centre of expertise in relation to bus contracts, developing parking policy

\(^38\) Scottish Executive Scotland’s Transport Future: Proposals for Statutory Regional Transport Partnerships, 2004
and enforcement and integrated ticketing schemes. Some functions could be concurrently held by RTPs and local authorities.

105. At the highest level, the consultation document envisages an RPT model which ‘reflects the current arrangements in the SPT area in west-central Scotland.’³⁹

106. Most witnesses indicated that they were content with the proposals in the Bill and the models set out in the consultation document. However, the Society of Chief Officers of Transportation in Scotland (SCOTs) urged caution. In its written submission to the Committee it argued—

‘The provisions regarding the transfer of transport functions from one body to another require careful consideration. SCOTS believes that Councils currently would be unwilling to cede powers upwards to partnerships unless there was also a positive indication that the Executive was willing to transfer powers to the partnerships.’⁴⁰

107. WESTRANS, the current voluntary partnership in the west of Scotland, argued that—

‘The basic principle which should be adopted in considering options for transport delivery is that services should be delivered at the lowest appropriate level. The proposed new national transport agency for Scotland is to be welcomed, as is the production of a national transport strategy. Whilst that agency will have responsibility for promoting national transport projects, there is no reason why delivery on any aspect should not be devolved to regional partnerships or local authorities, where appropriate.’⁴¹

108. CfIT argued that the RPT in the west and south west should also assume responsibility for roads—

‘In addition, there is significant debate over whether the new West and South West RTP should seek to adopt the roads powers of its constituent authorities. Whilst such a move would present the opportunity to achieve substantial integration of transport policy between modes, some observers have argued that the priority afforded to public transport would diminish under such a structure. CfIT believes such a proposal to be, on balance, beneficial with RTPs taking highway authority powers.’⁴²

109. The Roads and Utilities Committee (RAUC(S)) on the other hand argued—

‘[…] we believe that the strategic role envisaged for the Transport Partnerships means that it would not be appropriate for Scottish Minister to use their powers under the Bill to transfer Road Authorities’ powers/functions to RTPs. It is our view that splitting responsibility for overseeing road works

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³⁹ Ibid.
⁴⁰ SCOTs written submission to Local Government and Transport Committee
⁴¹ WESTRANS written submission to Local Government and Transport Committee
⁴² CfIT written submission to Local Government and Transport Committee
between a number of different bodies would not be a sensible course of action.\footnote{43}

110. The Committee questioned witnesses on whether congestion charging schemes could be pursued by RTPs. Dr Iain Docherty told the Committee—

‘Part of the balancing act of any regional reform is recognising that if an innovative and dynamic local authority wants to take difficult decisions—whatever they may be—it may be easier to have such decisions accepted locally within one boundary than under a regional system. The danger with congestion charging in a regional system is that councils that do not have strong and pressing congestion problems might seek to delay implementation of that policy. We must live with that. That does not mean that dealing with the matter from a regional perspective does not make sense.’\footnote{44}

111. This view was backed by Professor David Begg, who argued that—

‘[…] congestion charging is a key measure in achieving modal shift. However, the principle is much more important. If we are talking about strong regional transport partnerships that have strategic control of roads, railways, buses, planning and economic development, we must include congestion charging.’\footnote{45}

112. Questioned on the same issue by the Committee, the Minister did not rule out the transfer of congestion charging powers to RTPs, stating—

‘If any regional partnership wants to examine congestion charging, they should get the issue on to their agenda as soon as possible next year while they are developing their thinking. For the moment, the position is clear, and that position will not change for the existing proposal. However, I should not say anything more about that because I will have to give formal consideration to that proposal if it comes to me in due course.’\footnote{46}

\textit{Rail}

113. The Committee notes that under the Bill, the rail powers currently held by Strathclyde Passenger Transport are to be transferred to the Scottish Ministers, following the making of a Section 30 order at Westminster under the Scotland Act 1998.

114. SPT has expressed some concerns over this proposed transfer of powers to the Scottish Ministers. It has however received assurances from the Scottish Transport Minister and from the Parliamentary Under-Secretary of State at the Scotland Office that SPT or a successor Regional Transport Partnership will continue to have a role in the development, management and monitoring of the franchise in the west of Scotland.

\footnote{43}The Roads Authorities & Utilities Committee Scotland (RAUC(S)) written submission to Local Government and Transport Committee
\footnote{44}OR Col 1706
\footnote{45}OR Col 1715
\footnote{46}OR Col 1733
115. The Committee welcomes the assurances that have been given in respect of the successor body to SPT’s role in respect of rail. However, the Committee would welcome a clearer commitment to the role of RTPs in rail policy and would call on the Executive to consider an amendment to ensure that this role is enshrined on the face of the Bill.\footnote{David Mundell dissented}

116. The Rail Passengers Committee Scotland (RPC) told the Committee that one of the measures proposed in the UK Railways Bill was the dissolution of the regional passenger committees and their accession by a UK rail passenger body.

117. Robert Samson of RPC Scotland suggested to the Committee that, following the demise of the RPC Scotland, the Transport (Scotland) Bill should be amended to establish an all encompassing public transport user group for Scotland. He suggested that such a body would be capable of influencing the proposed RTPs

118. In response to questioning from the Committee the Minister acknowledged the importance of representation for Scottish public transport users—

‘I am quite clear that, in Scotland, passenger representation should continue to have an important role and that there should be some sort of Scottish passenger council. We will consider the best arrangements for achieving that. As the new powers pass to Scottish ministers, we will take the opportunity to make known our views on the proposed rail passengers council.

If we are serious about integrated transport, it is important that we do not end up having a rail passengers committee, a ferry passengers committee, a bus passengers committee and, in due course, a tram passengers committee. It is important that we ensure that there is a more integrated approach. I will examine those proposals carefully as we move forward. We do not have detailed proposals at present, but when we establish the agency and the regional partnerships, it is important that the voices of passengers and freight users are heard. We should not lose sight of the importance of freight to our transport strategy.’\footnote{OR Col 1742}

119. The Committee notes the proposal to establish a nationwide public transport user group and welcomes the Minister’s agreement to consider the proposal.

\textit{Bus Quality Partnerships, Quality Contracts and ticketing schemes}\n
120. Under the Transport (Scotland) Act 2001, local authorities have powers to enter into quality bus partnerships and quality bus contracts with bus operators, and to initiate ticketing schemes. However, in the Strathclyde Passenger Transport area, these powers currently lie with the SPTA, and are not extended to the individual local authorities.

121. Under the Bill as introduced, it is proposed that these powers are extended to individual local authorities within the SPT area. The Policy Memorandum notes
that ‘many of the constituent authorities have received funding from the Scottish Executive to improve bus infrastructure, and it is logical to give them powers to include this infrastructure in a statutory QP scheme.’\textsuperscript{49}

122. In the rest of Scotland, it will be for each RTP to decide whether to seek, under Section 10, the transfer to it of functions held by individual councils. In some areas, RTPs may decide, following consultation with their constituent authorities, to seek transfer of the quality partnerships and quality contracts function. However, in the STP area, the RTP will inherit all the existing powers of the SPTA, with the exception of its rail powers, which are transferred to the Scottish Ministers. This will mean that both the proposed RTP and the constituent authorities will hold the same powers at the same time.

123. SPT, in its submission to the Committee, was highly critical of this aspect of the Bill—

‘SPT is disappointed that this provision has been included. So far as SPT is aware, there is no support from the councils within the SPT area for such a change, and it is at variance with the logic of the remainder of the White Paper, which emphasises Best Value and the achievement of economies of scale at the regional level. To legislate to create a situation where individual councils within the SPT area with no existing public transport functions and expertise might have to staff up to discharge complex bus responsibilities which remain more appropriately exercised at the regional level is therefore entirely contrary to the White Paper’s stated approach.

Furthermore, for the Scottish Executive to claim, as it does in paragraph 6.9 of the White Paper, that this change is to give effect to the original intentions of the Transport (Scotland) Act 2001 is entirely disingenuous – if this was indeed the legislative intent, it was a very closely guarded secret, as it was the only part of that Act’s proposals that was not consulted upon.’\textsuperscript{50}

124. The Committee was persuaded by SPT’s argument, and remains unconvinced that the proposal for these powers to be held simultaneously by both the proposed RTP and its constituent authorities is sound.

125. The Committee therefore calls on the Minister to consider this again ahead of Stage 2 of the Bill’s parliamentary process.

126. Except in respect of the issues discussed above in connection with bus quality partnerships and quality contracts in the west of Scotland RTP, the Committee is therefore content in respect of the proposed functions.

Financial issues

127. According to the Policy Memorandum, the Bill provides that—

‘The Transport Partnerships will be able to receive funding directly from the Scottish Executive and other organisations, and will be able, if appropriate

\textsuperscript{49} Policy Memorandum, p16
\textsuperscript{50} SPTA and SPTE, written submission to Local Government and Transport Committee
functions are conferred upon them, to engage in revenue-raising activities. Other funding, to support running costs, including the cost of borrowing, will be provided by the constituent councils from their mainstream revenues, including Aggregate External Funding (AEF). It is anticipated that the majority of a partnership’s funds will be provided by its constituent councils. The Scottish Executive proposes that the partnership itself will be responsible for agreeing how much each council should contribute. However, the Scottish Ministers would be able to intervene if an agreement cannot be reached.151

128. Some evidence received by the Committee argued that the Scottish Executive should provide 100% funding of any ‘new burdens’ under the Bill. Fife Council for example argued in its written submission—

‘Fife Council has serious concerns about the funding section of the consultation document. The Scottish Executive currently funds half of the current voluntary SESTRAN’s administration and the Partnership has made several successful bids to the Executive for PTF schemes and Preparatory Pool feasibility studies. Once the RTP’s become statutory, there is a strong argument that the Executive should not only fund their full administration costs to ensure a stable and secure source of funding, but also continue to be a funding partner in the development of projects and initiatives to ensure their delivery. Delivery is, after all, the Executive’s key objective for the restructuring of Scotland’s Transport.’52

129. SESTRANS also made a similar point—

‘The Scottish Executive currently fund 50% of SESTRAN’s administrative costs. Once more formal and statutory RTPs are introduced there are strong arguments for 100% funding from the Scottish Executive based on an agreed structure for transport delivery. The new RTPs are additional to existing transport delivery structures and only when staff/functions move from Local to Regional level can a case be made for commensurate transfer of funding from the local to regional level. The new and additional costs of a core policy team should therefore be funded on a continuous basis directly by the Scottish Executive.’53

130. WESTRANs however took a different view—

‘[…] in the interest of local democratic accountability, the Joint Committee sees no alternative to all of the running costs of the new organisation being funded by requisitions from constituent authorities.’54

131. The Executive intends that ‘RTPs will receive the majority of their running costs through requisition from their constituent councils.’55 The contribution to be made by each constituent council is to be decided by the RTP, but in the event

51 Policy Memorandum, p4
52 Fife Council, written submission to Local Government and Transport Committee
53 SESTRANS, written submission to Local Government and Transport Committee
54 WESTRANS, written submission to Local Government and Transport Committee
55 Scottish Executive, 2004
that the RTP is unable to decide, the contribution will be determined by the
Scottish Ministers by order.

132. The Executive’s consultation document acknowledges that—

‘[…] requisition is not popular with councils. Nevertheless, requisition ensures
that there is a proper democratic link to the spending decisions of the RTP -
in particular that its constituent councils, through councillor members, have
the major say on which transport projects or services are pursued by the
RTP. It also avoids the situation where one council could have a power of
veto over projects or refuses to co-operate in funding the implementation of
the regional transport strategy - the discretionary funding arrangements
currently supporting SPT have been a source of instability for the
organisation.’

133. Strathclyde Passenger Transport, in its written submission to the Finance
Committee, is particularly critical of the requisition powers—

‘The Scottish Executive’s current consultation on RTPs suggests that the
power of requisition will overcome such funding difficulties in future and thus
avoid problems of the type that SPT has experienced. But this proposal
appears to rest on a misreading of the current legislation and a
misunderstanding of its application. SPT already possesses the power of
requisition: what the consultation document actually seems to describe is the
power of precept. Even this, however, would almost certainly result in a
system of informal political negotiation which would in practice limit RTPs’
ability to fund a needs-based budget through a draw on their contributing
councils.’

134. A number of witnesses had criticisms of the proposed level of interim funding
to be supplied by the Executive in connection with the initial start-up and running
costs of RTPs. HITRANS, for example, noted—

[…] the current operating cost of HITRANS is about £250,000 and we
estimate that, if it carries on as a model 1 partnership, the cost might become
something between £400,000 and £500,000. If the Scottish Executive’s share
of that cost is removed, the current share of about £100,000 that is borne by
the local authorities would be multiplied by five. How the authorities divvy that
up between them will vary if it is done by population share, but if the cost has
to be borne from current local government finance without any additionality,
the money will have to come from another pot.

135. The Finance Committee considered the Bill’s Financial Memorandum. In its
report to the Local Government and Transport Committee, the Finance Committee
recommends that—

56 Scottish Executive Scotland’s Transport Future: Proposals for Statutory Regional Transport
Partnerships, 2004
57 Scottish Executive, Scotland’s transport future: proposals for statutory regional transport
partnerships (2004), paragraphs 44-5.
58 SPT written submission to the Finance Committee
59 OR Col 1446
‘[…]' the Local Government and Transport Committee seeks further clarification from the Minister as to how local government will “secure the necessary resources”, and whether any mechanism will be put in place to ensure that this happens;¹⁶⁰ and

‘[…]' the Local Government and Transport Committee considers further evidence sent to the Committee by the SPT, which was received too late for consideration in this report. This submission (contained in the appendix) highlighted the SPT’s concerns about concurrent bus powers and any costs associated with these; and the costs associated with the introduction of the national concessionary travel scheme in April 2006.¹⁶¹

136. The Finance Committee also notes in its conclusions—

‘It is clear that there is considerable disagreement between the Scottish Executive and SPT on the costs associated with this Bill, and the Committee believes that these should have been more fully discussed before the Financial Memorandum was presented. A number of organisations have highlighted a lack of consultation on the Financial Memorandum produced to accompany the Bill, and the Committee believes that this is a major oversight given the very large sums of money that are being committed to future transport spending.’¹⁶²

137. The Local Government and Transport Committee concludes that the information supplied in the Financial Memorandum and by the Scottish Executive in its evidence to the Committee and to the Finance Committee is insufficiently detailed to enable a judgement to be made about the adequacy of the proposed financial arrangements. The Committee therefore calls on the Executive to provide more detailed information, in particular in respect of the points raised by the Finance Committee, at least fourteen days ahead of the start of Stage 2 of the Bill’s parliamentary passage.

PART 2: ROAD WORKS

Background

138. The Scottish Executive states that one of the key aims of Part Two of the Bill is to improve the quality and co-ordination of road works in Scotland. According to the Executive, the standard of road works has been a particular issue in recent years, following the growth of utilities and new services such as broadband and cable television.

139. The main legislation governing the co-ordination of road works in Scotland is currently the New Roads and Street Works Act 1991. Under the Act, roads authorities are responsible for the co-ordination of road works. The key planning tool currently used by road works authorities to meet this responsibility is the Scottish Road Works Register (SRWR) which was established by the RAUC(S) to

¹⁶⁰ Finance Committee report, paragraph 25
¹⁶¹ Finance Committee report, paragraph 30
¹⁶² Finance Committee report, paragraph 29
meet the requirement for road works authorities to keep a register of road works as set out in the 1991 Act.

140. At the moment road works authorities have chosen to keep a central register for Scotland rather than each road works authority maintaining its own register. This is an administrative rather than a statutory arrangement.

141. According to the Scottish Executive, there are two principal problems with the current arrangements. Firstly, not all undertakers participate in maintaining the SRWR, whilst some participating undertakers do not comply with their obligation to provide information regularly. As a result, the Executive considers that it has been difficult for road works authorities to fulfil their co-ordination role, because the information held on SRWR can be incomplete or inaccurate. Secondly, the Executive considers that the quality and level of information held on SRWR could be enhanced to make it a more useful planning tool.

Proposals in the Bill

142. The Bill contains a number of new provisions in relation to road works.

143. First, a new public position is created in the Bill: the Scottish Roadworks Commissioner (SRWC). According to the Scottish Executive, the Commissioner will aim to improve and monitor national performance in relation to road works, by promoting good practice and ensuring that all parties comply with relevant legislation. An important role of the Commissioner will be direction-making power under sections 118 (General duty of road works authority to co-ordinate works) and 119 (General duty of undertakers to cooperate) of the 1991 Act. This means that utility companies can be fined for not meeting the requirements of the legislation, and roads authorities can be directed to carry out improvements to their practices.

144. Second, a single national register for planning and co-ordinating road works is created in the Bill: the Scottish Road Works Register (SRWR). This register has the same name as the existing register for road works in Scotland, but it is proposed that there will be differences between the two registers. It is proposed that the Commissioner will oversee and regulate the new SRWR. The Commission will also be able to carry out ad hoc inspections of the SRWR, and will carry out and publish an annual national level audit of the Register. The Bill places a statutory requirement on road works authorities, and those undertaking work, to provide the Commissioner with information.

145. Third, the Bill strengthens the regulations relating to the timing of road works and the reinstatement of the road following road works. The Bill also changes the enforcement regime of offences under the New Roads and Street Works Act 1991 to include fixed penalty notices (for example, section 119 relating to the duty of undertakers to co-operative in relation to road works). In addition, the Bill strengthens requirements in relation to training for those carrying out, supervising or administering road works. The Bill also amends the 1991 Act to strengthen the obligation on undertakers to satisfactorily finish road works, and provides new powers for road works authorities to require full or half-width resurfacing of the road when this is necessary to protect the road surface quality.
Impact of the Bill on local authorities and utilities companies

146. The Committee took evidence on how the provisions in the Bill would affect road works carried out by local authorities and by utilities companies. Some witnesses from the utilities sector complained that the provisions in the Bill relating to road works treated the private sector and local authorities differently. The Committee notes, however, that there did appear to be some confusion on this point. The Civil Engineering Contractors Association (CECA) (Scotland), for example, told the Committee that—

‘In the proposed legislation, the Local Authorities do not seem to be obliged to use the Scottish Roadworks Register to record their own works.’

147. However, the Minister for Transport clarified that local authorities would be obliged to use the SRWR. He told the Committee that—

‘We need to invest in the register and to ensure that it works effectively, placing a duty not only on the utilities companies, but on local authorities to use it. That way, we will develop a better picture of the road works that are taking place and we will be able to achieve better co-ordination. It is difficult to co-ordinate road works if we do not let people know about them through the register.’

148. It was clear, however, that the provisions in the Bill relating to the enforcement of the 1991 Act would apply differently to local authorities and utility companies, with new financial penalties being imposed on the ‘undertaker’ of the road works but not the roads authority. The written submission from the National Joint Utilities Group (NJUG) argued that—

‘Given that utilities and local authorities are equally responsible for unavoidable road works, NJUG has always argued that they should both be subject to the same rules. For Scotland to fully benefit from the enhanced co-ordination that these proposals aim to deliver, works must be treated in an equitable fashion.’

149. The utility companies argued that a ‘level playing field’ should be established. The UK Competitive Telecommunications Association (UKCTA) told the Committee in its written submission that—

‘The Executive should […] go further in levelling the playing field by extending the various provisions that penalise private sector companies that infringe the Act to those in the public sector. Only by imposing the same penalties to both the private and public sectors when the Act is breached, can any degree of accountability be delivered.’

150. COSLA appeared to support this position. In evidence, a COSLA spokesperson agreed with the proposition that regardless of who is involved in

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63 CECA written submission to the Local Government and Transport Committee
64 OR Col 1750
65 NJUG written submission to the Local Government and Transport Committee
66 UKCTA written submission to the Local Government and Transport Committee
road disruption, there should be a system to provide for the earliest and highest-quality reinstatement, and that, if a fine system or a penalty system was introduced, it should be even handed and applied to local authorities as well as to private operators. The Leader of Glasgow City Council appeared to agree, telling the Committee—

‘We do not want a double standard. Glasgow City Council often undertakes road works on its own behalf. We should be subject to the same standards as utilities.’

151. In its report to this Committee, the Parliament’s Enterprise and Culture Committee reached the following conclusion—

‘The Committee considers that there would be benefit in ensuring that the public and private sectors are treated equally in terms of penalties for infringement of the Act.’

152. In response to the evidence on this issue, the Minister for Transport told the Committee that—

‘We have proposed that there should be significant powers in the hands of the new road works commissioner to take action that involves the local authorities, but we have stepped back from and fallen short of giving powers to introduce fines and fixed-penalty notices for roads authorities or the Executive. There are issues around whether fining a public authority to take money to another public authority is a sensible use of time and a sensible way forward.’

153. The Executive officials put this issue in context—

‘We are indeed looking at a bill that does not put the utility companies on the same basis as the road works authorities. That is inevitable, as the road works authorities are the owners of the asset. They are the owners of the road and [...] they have a statutory duty to deliver best value and to ensure the smooth operation of the traffic on those roads. The incentives for the utility companies, strong though they may be, are rather different. Because of that aspect, the road works authorities and the utility companies have a different background to their reason for being on the road and carrying out road works. The bill is not just about the carrying out of the road works; it also places a duty on the road works authority to co-ordinate the works that take place on its roads.’

154. The Committee explored whether or not local authorities’ duty to deliver ‘best value’, referred to by Executive officials, would encourage good working practices in relation to road works. The Executive officials told the Committee that the Accounts Commission could ‘come down hard’ on a local authority if it was not
delivering best value. However, in follow-up evidence, the Executive confirmed that if local authorities failed to carry out road works within a set time frame or to a set standard—

‘The Accounts Commission does not have power to extract civil penalties in this manner. The Accounts Commission can consider any report on the performance of a local authority (e.g. Best Value Audits, Statutory Performance Indicator). If they think it is necessary then the Accounts Commission can hold a hearing into any matter that is raised in that report. Thereafter the Accounts Commission may make appropriate recommendations to the Scottish Ministers. There is no instance known where the Scottish Ministers have intervened in respect of a road works related issue.’72

Analysis

155. The Committee sought evidence on the NJUG claim that utilities and local authorities were equally responsible for unavoidable road works. There was a lack of clear-cut information on this point. However, the Committee did receive information that 129,690 notices were entered on the SRWR in 2003-04, and that 114,620 (88.9 per cent) related to utility companies and 15,070 related to local authorities. However, the non-statutory nature of the current SRWR means these figures should be treated with caution.73

156. The Committee also heard evidence from the Executive that 10 per cent of congestion was caused by road works, and works carried out by utility companies contributed to 6 to 7 per cent of congestion.74 CECA estimated that the figure for utilities was about 5 per cent.75 RAUC(S) backed this figure of 5 per cent, which it claimed was contained in a report by the Transport Research Laboratory, which was quoted in the ‘Highways Agency Business Plan 2002-03’. It is understood that this study was carried out in 1992.

157. **Whilst there were arguments as to the precise figures for the causes of traffic congestion, it is clear to the Committee, firstly, that road works are only responsible for a limited proportion of traffic congestion, and so the proposals in the Bill are not a universal solution to this problem. Secondly, the Committee notes that both local authorities and utilities can be responsible for road works which cause congestion.**

158. **The Committee agrees with the utility companies that there should be a level playing field in relation to fines imposed under the Bill, and recommends that the Executive considers how this can be achieved and amends the Bill accordingly at Stage 2, if the Parliament agrees to the general principles of the Bill. The Committee notes that COSLA and some local authorities did not appear to oppose such a suggestion in principle. There is likely to be an issue regarding how the new arrangements would work in practice, as it would not appear sensible for a local authority to both

72 Letter from Scottish Executive, 13 December 2004
73 Letter from Scottish Executive, 13 December 2004
74 OR Col 1413
75 CECA written submission to the Local Government and Transport Committee
impose fines and be subject to them. However, the Committee challenges the Executive to bring forward proposals to subject local authorities to the same penalty system as utility companies which also avoids a situation in which local authorities ‘fine themselves’.

Scottish Road Works Commissioner – role

159. The Committee heard different views on the merits of the proposal in the Bill to establish a new post of a Scottish Road Works Commissioner (SRWC).

160. A number of organisations, including the AA, Fife Council, and National Grid Transco, welcomed the creation of the post. The Confederation of Passenger Transport (CPT), for example, told the Committee that—

‘If having a commissioner will be a more effective way of sorting the problem, we will support that. We want resolution. We have not made a distinction in our submission between utilities road works and road works on trunk and local roads, because those are political definitions. We are just highlighting our perspective of how the passengers see the situation, which is detrimental to the image of public transport and to us as operators. We are saying that big problems exist and that effective action must be taken.’76

161. Glasgow City Council told the Committee that—

‘There are issues with the quality of reinstatement, for which better arrangements could be made. I guess that the commissioner could examine the performance of local authorities and utilities after the fact. By making it clear that the commissioner would apply sanctions, we could perhaps raise standards. It is worth a try, but I do not have complete faith that it will work.’77

162. The AA supported the creation of the new post, provided that the SRWC worked for the benefit of road users—

‘The detail of the targets that are set for the commissioner will be all-important to us. If those are customer-driven targets, such as reducing the amount of time wasted at road works, rather than simply targets for the number of fixed penalties issued, for example, that would go a long way towards allowing us to say that we think that it is a good idea.’78

163. However, the Committee heard some criticism of the proposed new post. In particular, there was concern that the post would duplicate the work of the Roads Authorities and Utilities Committee (Scotland). RAUC(S) is a national committee made up of members representing all major utilities, all 32 roads authorities and the Scottish Joint Utilities Group. The remit of RAUC(S) is to help all parties co-ordinate road works in the most effective manner and ensure that the utilities comply with the New Roads and Street Works Act 1991.

164. In a written submission, RAUC(S) stated that—

76 OR Col 1464
77 OR Col 1474
78 OR Col 1529
‘We are concerned that the creation of a Scottish Road Work Commissioner duplicates the current role of RAUC(S) without any added benefit certainly in terms of dispute resolution.’

165. In evidence to the Committee, the co-chair of RAUC(S) argued—

‘The right way forward is to have a single body, rather than a single person who tells everyone else what is required of them. RAUCS is the best body for the utilities and we would like the roads authorities' work to come under the same umbrella.’

166. Various other witnesses, including the Aberdeen City Council, ntl, West Lothian Council and the Society of Chief Officers of Transportation in Scotland (SCOTS), suggested that the Road Works Commissioner would duplicate the work of RAUC(S). SCOTS also suggested in a written submission that the new Commissioner might not have sufficient powers to make a difference to the management of road works—

‘The Commissioner does not appear to have significantly different powers than Roads Authorities currently have and would thus appear have the same difficulties in getting New Roads and Street Works Act 1991 offences prosecuted.’

167. The Minister was more upbeat, saying that the new powers which the Bill proposes to give to local authorities and the Commissioner would be significant.

168. The Committee notes the concerns of some witnesses that the powers of the new Scottish Road Works Commissioner might not significantly differ from those currently held by RAUC(S). However, the Committee also notes that, unlike the membership of RAUC(S), which comprises local authority and utility company representatives, the Commissioner will be a single independent figure monitoring road works in Scotland. A majority of the Committee supports the creation of the post, subject to reassurances being provided by the Minister that appropriate resources will be allocated to the appointee, and considers that the independent status of the Commissioner will mean that he or she will be able to take an impartial overview of national performance on road works, and, in particular, will have no conflicts of interest in relation to his or her duty to enforce offences under the 1991 Act. A minority of Committee members consider that it would be possible for the proposed functions of the Commissioner to be carried out by RAUC(S), if it were established on a statutory basis.

Scottish Road Works Commissioner – resources

169. An issue which emerged during evidence taking was whether or not sufficient resources would be allocated to the Scottish Road Works Commissioner to enable the Commissioner to carry out his or her work.

170. The Financial Memorandum states—

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79 RAUC(S), written submission to the Local Government and Transport Committee
80 OR Col 1569
‘To assist the Commissioner in the execution of responsibilities a small administrative support unit will be required. Provision has been made by the Scottish Executive for the initial establishment and running costs of the unit, including the salary costs of the Commissioner, of £200,000. Expenditure of the unit will be higher in year one to reflect initial costs such as recruitment, IT, furniture and fittings. In subsequent years the costs are estimated to be in the region of £160,000.’81

171. SCOTS raised concerns about the funding available to the Commissioner and stated—

‘We are concerned that, given that the commissioner will have a very small and lean staff, most of the work will be done by utilities companies and roads authorities on the commissioner’s behalf, which will create a burden for which some councils are not resourced.’82

172. SCOTS indicated that this was a particular issue in relation to the provision in the Bill to strengthen the general duty of road works authorities to co-ordinate road works.83 In written evidence, SCOTS stated that—

‘Whilst strengthening co-ordination is to be welcomed, a number of councils have concerns about the resource implications of this duty.’

173. In evidence, the Minister reassured the Committee that—

‘We must also ensure that the local authorities are properly resourced and encouraged to make use of their new powers. That is partly why we are seeking to ensure that local authorities have the power to retain their administrative costs when they impose and deal with fixed-penalty notices.’84

174. The Financial Memorandum explained the Minister’s comments further—

‘The Bill also introduces, at section 32, fixed penalty notices for certain offences committed by undertakers. These notices will be issued by the roads works authority who will be able to recoup the administrative costs associated with the issuing of the fixed penalty notice from the penalty raised. The net charge of the penalty will revert to the Scottish Consolidated Fund. The precise arrangements and level of retention to cover administrative costs will be established by regulations.’85

175. Whilst the ability of roads works authorities to recoup the administrative costs of issuing fixed penalty notices is welcomed, this proposal does not really address the concerns raised by SCOTS in relation to cost implications of section 21 of the Bill (duty of road works authorities

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81 Paragraph 151
82 OR Col 1440
83 The Explanatory Notes state that, in practice, this means that the road works authority should update and use the SRWR as its daily planning tool for co-ordinating road works and fulfilling its traffic management functions. The Commissioner can issue a direction to the road works authority on how the authority should discharge its duty.
84 OR Col 1746
85 Paragraph 165
to co-ordinate road works). These potential costs are not specifically addressed in the Bill’s Financial Memorandum, and the Committee requests a response from the Executive to these concerns in advance of the Stage 1 debate. The Committee also seeks views of the Executive in relation to the budget of the Scottish Road Works Commissioner. The Committee wishes reassurances that sufficient resources exist for the Commissioner to carry out his or her role properly.

**Power to restrict road works**

176. Section 20 of the Bill amends section 117 of the 1991 Act which allows road works authorities to impose restrictions on works following substantial road works. It increases the length of time during which road works authorities may restrict works to up to 3 years.

177. This proposal was supported by some witnesses, including the SCOTS, SESTRAN, Fife Council, West Lothian Council and Scottish Water. SCOTS, for example, told the Committee in a written submission that—

‘The extension to 3 years is good news for road works authorities, but there are a significant number of exemptions for undertakers in the existing section 117 of the New Roads and Street Works Act 1991.’

178. However, NJUG objected to the proposed 3 year restriction, and stated in a written submission that—

‘NJUG has serious concerns regarding a power in the Bill that would enable local authorities to restrict all digging in a street for up to three years following substantial road works. There appears to be no accompanying explanation as to why the duration has increased by 300%. Utilities must be allowed to undertake unforeseen emergency works, works to restore severed services and to provide new customer connections.’

179. UKCTA told the Committee that, although the Bill contained exemptions to allow a road to be dug up again within 3 years to allow emergency work to take place, there should be an additional exemption in cases where digging is required to meet customer orders or where works are minor and have little impact on traffic. UKCTA noted that the roll out of broadband and other communication technologies may lead to demands for roads to be dug up more frequently than once every three years, to meet consumer and business demands for new services.

180. The Enterprise and Culture Committee backed the position of the utilities companies.

‘The Committee notes that, from the evidence it has received, overall economic growth and competitiveness may be affected by the use of this provision [...] The Committee recommends that the Executive should ensure that the power to restrict road works contains sufficient checks and balances
to ensure that there is no reduction in competition in the telecoms industry in particular.\textsuperscript{86}

181. The Minister reassured the Committee that—

‘Utility companies will retain their statutory and emergency powers. The assumption behind all our proposals is that those companies will continue to dig up our roads to access their services, because that work is necessary to deliver, improve and expand on those services. Broadband is a key example in that respect.’\textsuperscript{87}

182. The Committee supports the general policy intention behind the proposals to better manage road works. However, the Committee is also concerned at the potential economic impact of the proposals. The Committee requests clarification on what exemptions will be permitted to the ‘three year’ rule proposed in Bill. UKCTA highlighted, for example, the case of road works where digging is required to meet customer orders or where works are minor and have little impact on traffic. The Committee would also like further information in advance of Stage 2 of the Bill as to how a balance will be struck between the proposals in the Bill to restrict works and the Minister’s statement that services such as broadband roll-out will be unaffected by the proposed legislation.

Other utility company concerns

183. The utility companies raised a number of other concerns over provisions in the Bill relating to road works.

184. NJUG raised concerns about the Bill’s proposals in relation to the timing of road works and the placing of apparatus in roads. NJUG told the Committee that—

‘The bill does not seem to make any provision for emergency work being done on, for example, gas leaks and large water bursts, for which we could go in and do a repair as quickly as possible. Currently, if there is a serious gas leak or large water burst, we can go in immediately, without notice, to try to rectify the situation, although we must give retrospective notice. The bill seems to take away that right. We are also concerned about the bill’s possible impact on customer connections. Our fear is that the bill’s provisions would mean that we would have to tell customers that we could not give them a service for six months or whatever. That approach just does not work in the modern world.’\textsuperscript{88}

185. UKCTA’s suggested that the new powers in the Bill could place Scotland at a competitive disadvantage to the rest of the UK. UKCTA’s submission stated that—

‘That proposals to give local authorities power to direct utilities as to where and when they may install their infrastructure may have the effect of distorting competition in the telecoms market. The Executive has in the past

\textsuperscript{86} Enterprise and Culture Committee report, paragraphs 16 and 20

\textsuperscript{87} OR Col 1748

\textsuperscript{88} OR Col 1631
complained about the comparative lack of competition in Scotland when compared with England, but these powers have the potential to damage what competition has taken hold in Scotland’

186. Finally, the utility companies raised concerns over the new power in the Bill which would give road authorities the power to require utility companies to resurface a road in certain circumstances. UKCTA’s submission argued that—

‘Similar provisions were introduced in England and Wales and are causing widespread concern. It is difficult to calculate the impact of such a move but best estimates have suggested that a full width reinstatement of a road would increase the cost of a telecoms installation by some 385% - costs which would be passed on to the customer.’

187. During the evidence session with the Minister for Transport, there was not an opportunity to put these specific points him. The Committee therefore requests a response from the Executive on each of these concerns no later than fourteen days prior to the start of Stage 2 of the Bill’s progress through its parliamentary stages. In particular, the Committee requests a reassurance from the Minister that road authorities will not be able to use the powers of reinstatement in the Bill to make overly onerous demands on utility companies to reinstate sections of roads which have not been disrupted by road works.

Enforcement of the provisions in Part 2 the Bill

188. The Committee considers that the new provisions in the Bill will only have an impact if they are enforced adequately. If this is not the case, local authorities and utility companies will have little incentive to co-ordinate road works effectively. As background information, the Committee made inquiries as to the number of prosecutions which have taken place under the previous regime, set out in the New Roads and Street Works Act 1991.

189. The Solicitor General for Scotland told the Parliament in November 2004 that in the past two financial years, 22 charges were reported to procurators fiscal under the 1991 Act, of which four were prosecuted. Information is not held on prosecution rates prior to 2002.89 The Solicitor General for Scotland provided further information in a written parliamentary answer on 15 December 2004, which stated that—

‘Of the four cases in which criminal proceedings were taken under the New Roads and Street Works Act 1991 between 2002 and 2004, three were for contraventions of section 38 (1) (which relates to refusal to pay a toll) and one was for a contravention of section 124 (1) (a) & (b) (which relates to failure to ensure adequate guarding or lighting around road works).’90

89 Meeting of the Parliament, 25 November 2004:
http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-04/sor1125-02.htm
90 The location of the three offences under section 38(1) of the act was the Skye Bridge and all three cases involve allegations that the accused deliberately refused to pay the toll on the bridge.
190. The Convener wrote to the Lord Advocate on behalf of the Committee to seek his views on why there appear to have been few prosecutions under the 1991 Act. In his response, the Lord Advocate declined to speculate on this issue. However, he went on to state that—

‘The Solicitor General referred to the proposed new provisions in the Transport (Scotland) Bill and the expectation that these would contribute to improving enforcement by separating out the administrative failings of utility companies, for which fixed penalties would be applied, from the more serious offences, which would attract an increased fine on conviction. In my view, this is a helpful step. It should mean that when the procurator fiscal receives a report of a criminal offence from the reporting agency, he or she will be aware that the reporting agency considers the offence to be at the more serious end of the scale and that a civil remedy is inappropriate. Of course, the procurator fiscal may disagree with the reporting agency’s assessment, but he or she will have more information on which to base their decision.’

191. In evidence, the Minister expressed his confidence that the new powers in the Bill would be much more widely used than those in the 1991 Act. He stated that he wanted to encourage ‘a far more effective enforcement system in respect of utility companies and their contractors’.

192. The Committee notes the comments of the Lord Advocate and the reassurances offered by the Minister. The Committee recommends that, if the Bill is passed, the Executive should monitor the use of the new powers in the Bill to ensure that they are more effectively enforced than those in the 1991 Act.

PART 3 OF THE BILL

193. Section 37 of the Bill provides Scottish Ministers with discretionary powers to establish national concessionary travel schemes. These powers will be exercised by the making of an order establishing a scheme. The Policy Memorandum explains that—

‘This order will include provision for the: administration of the scheme; reimbursement of operators; right of operators to participate; right of the Scottish Ministers to require participation; and appeals by operators about compulsory participation.’

In one case the accused was found guilty and was fined £50. One case has been marked “no further proceedings” by the Procurator Fiscal and the remaining case has been continued without plea until 20 December 2004 at Dingwall Sheriff Court. The case involving a contravention of section 124 of the act was heard at Banff Sheriff Court and related to an allegation of inadequate use of warning signs around a section of the A98 road under redevelopment. The accused pled guilty and was fined £400.

91 Letter from the Lord Advocate, 10 December 2004
92 OR Col 1741
93 OR Col 1742
94 Policy Memorandum page 10
194. Currently, under the terms of the Transport Act 2001, free bus travel is provided for older people and people with disabilities by 16 different travel schemes. There are variations in the specific details of each scheme.

195. In an announcement on 22 December 2004, Nicol Stephen, Minister for Transport, informed the Parliament that, under powers to be conferred upon Scottish Ministers by the Transport (Scotland) Bill, a new national concessionary bus travel scheme would, subject to the successful passage of the Bill, be introduced for older and disabled people in April 2006—

‘Today, I can confirm that we will sweep away the local scheme boundaries. Older and disabled people will be able to travel free by bus, anywhere in Scotland. Passengers will be able, as at present, to travel free in their local area; they will also be able to travel free by bus to anywhere else in the country and to travel free on local buses at their destination. The new scheme will open up exciting new opportunities and it will dramatically improve the quality of life of those involved. The scheme will connect people and communities throughout Scotland.’

General views

196. The Executive’s plan to establish a nationwide free bus travel scheme for older people and people with disabilities was supported by the majority of witnesses. Local authorities, bus operators and bus users favoured a simple and consistent national concessionary fares scheme rather than the current sixteen schemes or the proposed five schemes managed by RTPs.

197. CPT argued for the establishment of a national concessionary bus travel scheme, suggesting that there would be limited benefit in reducing the number of concessionary schemes from the current figure of sixteen to five. CPT was concerned that in reducing the number of schemes to five, the variations in benefits, definitions and entitlements, as experienced within the framework of 16 schemes, would remain. Marjory Rodger of CPT told the Committee that—

‘There must be one clear set of definitions and benefits and one set of reimbursement negotiations. We must have a standard for Scotland, so that we can manage the risk and so that everybody knows where we are going and how to deal with things. We support one national scheme.’

198. Robert Andrew of CPT suggested that having five concessionary schemes, administered by the proposed regional Transport Partnerships would be likely to generate problems in relation to changes from the current boundaries. Robert Andrew gave the Committee the example of Moray Council—

‘I am thinking of, for instance, where Moray Council fits into HITRANS. Moray Council has a joint concession scheme with Aberdeenshire Council, which will be in NESTRANS. That could open a whole new can of worms.’

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95 OR Col 13167
96 OR Col 1465
97 OR Col 1466
199. A number of the witnesses argued that a national scheme would be a much less complex system than the present schemes and easier for bus users to understand. George Mair of CPT recounted to the Committee the difficulties he faces in explaining to older bus users in Aberdeen why they have a less favourable concessionary scheme than those in Aberdeenshire. A nationwide concessionary scheme would, he believed, end such anomalies.

200. In supporting the move to a national scheme, Age Concern Scotland also highlighted the complex and confusing nature of the current framework of 16 schemes. Age Concern Scotland echoed the views of CPT in relation to the difficulties that older people have encountered in making journeys which cross current scheme boundaries. Jess Barrow of Age Concern Scotland told the Committee that a national scheme would provide older people with a simpler and more user friendly system.

201. Marjory Rodger of CPT told the Committee that there would also be financial benefits from adopting a national concessionary scheme rather than five regional schemes—

‘There would be savings in management time on all sides. An incredible amount of time is being spent on the issue and I cannot see that there would be big savings with a reduction to five schemes.’

202. Whilst the majority of witnesses welcomed the move toward a nationwide concessionary scheme, a number of witnesses raised concerns about the possible adverse effects of the introduction of such a scheme.

203. SPT raised a number of concerns in relation to the proposed national concessionary scheme. Malcolm Reed of SPT cautioned the Committee that the allocation of the resources necessary to support a national travel concession scheme could have an impact on the provision of services for other users—

‘I made the point in evidence to the Parliament during the last session that any concession scheme can be only as good as the public transport system on which it is available. One of my concerns is that by giving so much priority to concessionary travel we are neglecting the core network. If money is pumped into concessionary travel at the expense of support for main line bus services for all users we are storing up a problem for ourselves. I would like to see any rolling out of a national concessionary scheme supported by more robust measures for financing the network for passengers who still have to pay a fare.’

204. Councillor Mitchell of Dumfries and Galloway Council, appearing as part of the COSLA delegation, highlighted the Council’s concerns about the financial impact of the establishment of a national concessionary fares scheme. She told the Committee—

98 Col 1466
99 Col 1470
‘I want to raise an issue that we spoke about in Stranraer. I remind members of the concerns that we in Dumfries and Galloway have about the proposed concessionary scheme. Some of the funding that was used to establish an earlier, generous scheme in that area supports uneconomic rural services. We would be concerned if we lost that funding and ended up with free transport but no buses.’\textsuperscript{100}

205. COSLA also raised concerns in its written submission about the financial impact of concessionary fares schemes on local authorities—

‘Financial support must continue to allow councils to subsidise bus services on non-commercial routes. Without this assistance, there will simply be no buses for all the new concessionary travellers to use.’\textsuperscript{101}

206. In evidence to the Committee, Dr Iain Docherty intimated his support for regionalised management of concessionary fares schemes to enable passengers to make seamless journeys. Whilst not arguing against the adoption of a national scheme he did not see it as wholly necessary to ensure a cohesive and consistent system.

207. The Committee recognises the difficulties that local authorities, operators and bus users have encountered within the current framework of sixteen different concessionary travel schemes.

208. The Committee was not convinced by the evidence it heard arguing for the management of the schemes to be transferred to the proposed RTPs. The Committee therefore welcomes the Executive’s announcement that a national concessionary fares scheme will be introduced by April 2006.

209. However, the Committee notes the concerns raised by SPT, COSLA and Dumfries and Galloway Council with regard to the possible financial impact of the introduction of the schemes on the provision of services and infrastructure.

210. The Committee therefore asks the Executive to provide details of the assessment it has carried out on the possible wider impact of the new funding being provided for the national concessionary travel scheme in respect of the funding available for the development of other services. The Committee requests that the Minister provides details of the timescale for the completion of this assessment and that it is made available to the Committee.

211. Finally, the Committee welcomes the Commitment made by the Minister to come back before it in order that the Executive’s proposals in respect of the concessionary travel scheme may receive committee scrutiny.

\textsuperscript{100} Col 1567
\textsuperscript{101} COSLA, written submission to Local Government and Transport Committee
Time restrictions of the scheme

212. The Bill provides that a concessionary travel scheme shall specify the days and times during which travel concessions are provided. In his announcement to the Parliament on 22 December 2004, the Minister stated that the proposed scheme would not be time-restricted and would allow older people and people with disabilities to travel free by bus at any time of day.

213. This proposal had been supported in evidence by a number of witnesses who favoured the non-time-restricted scheme recently introduced in Wales. COSLA, for example, supported a non-time-restricted scheme although it indicated it had not costed such a scheme.

214. In response to questions, FirstGroup PLC told the Committee that it did not think it would be able to provide a non-time-limited travel scheme if compensation levels did not change. However, FirstGroup suggested that should compensation levels be increased to a level comparable to those in Wales it might support a non-time-restricted scheme.

Impact of the proposed scheme on operators

215. The Committee considered the possible impact of the proposed scheme on bus operators.

216. Gordon Dewar of FirstGroup outlined to the Committee the method of recompensing operators in respect of concessionary travel in Wales, and explained how it enables operators to re-invest in the provision of bus services. He told the Committee that—

‘[...] in Wales there is one formula that is well understood by all local authorities and operators. The formula takes into account the number of people who travel because a journey is free, as opposed to the number who would have travelled if they had had to pay. The formula also includes the costs to operators of having to put in additional resources. There is compensation to take account of lost fares and an adjustment to take account of people who are now travelling who would not previously have travelled. Compensation is based on the average adult fare. The formula is realistic and covers operators' costs with a bit of a margin. Operators are therefore in a position to invest further, to gear up to carry people, and to ensure that the fleet is kept up to date.’102

217. Professor David Begg, while suggesting that perhaps the Welsh model offered bus operators too high a level of subsidy, indicated that it had achieved positive results in that bus services had improved and people were using them. Professor Begg told the Committee—

‘Interestingly, it could be argued that the Welsh scheme has been too generous and has left bus operators a bit better off. However, that has produced a desired result. It has changed the economics of the bus industry in Wales and meant that private operators have invested much more and

102 OR Col 1503
shown decent levels of patronage growth, not only among people who pay concessionary fares but among full-fare paying passengers.\textsuperscript{103}

218. In its written CfIT was more cautious of supporting the Welsh scheme and advised the Committee of the potential for abuse of the system by operators—

‘However, CfIT would also point out that the scheme does have the potential to be abused by operators should they choose to do so. For example, on some Welsh routes fee paying passengers are in the minority meaning that, in theory, operators are no longer constrained by the potential loss of passengers if fares are raised. CfIT understands that the Welsh Assembly Government is about to commission a study which will examine some of the returns particularly where the costs have gone up significantly to determine whether this is due to volume increase or perhaps due to some especially high fare increases.’\textsuperscript{104}

219. In the announcement on 22 December 2004 the Minister told the Parliament—

‘The national scheme will have a single payment rate for all operators on all journeys. The rate will be 73.6 per cent of the average adult single fare. That is the same rate as the one that applies in Wales, where it is widely accepted as being fair to the operators and to the taxpayer. The rate will form the basis of our new approach. It will compensate for the revenue that passengers would have paid through the fare box if there had been no scheme and for any additional costs that the operator might incur, for example by putting on extra services.’\textsuperscript{105}

220. The Minister added that total payments would be capped at £159 million in 2006-07 and £163 million in 2007-08. This, the Parliament was told, would mean that the Executive and the taxpayer would be able to afford the scheme. He also announced that—

‘If in any year it becomes clear that the cap will be reached, there will be a mechanism involving the bus operators to adjust payments accordingly.’\textsuperscript{106}

221. The Committee welcomes the Minister’s announcement that the provision of free bus travel for older and disabled people will be non-time-restricted. The Committee also welcomes the announcement of additional funding to be provided to support bus operators in providing free travel and the proposed cap on the total cost of payments to operators.

Local enhancements to schemes

222. COSLA supported the creation of a national concessionary fares scheme but argued that local variations and enhancements should continue to be possible.
223. The Minister indicated in his announcement to Parliament on 22 December that local authorities would continue to be able to offer local enhancements such as concessionary fares on dial-a-taxi, dial-a-bus or rail services. He also indicated that further discussions would be held with COSLA in relation to the funding currently used to support the existing sixteen schemes.

*Rail*

224. Concessionary rail travel was not amongst the proposals announced by the Minister for Transport on 22 December 2004.

225. Most witnesses who gave evidence to the Committee did not consider that a free nationwide and non-time-restricted concessionary rail travel scheme to be viable.

226. Gordon Dewar of FirstGroup, for example, told the Committee that he did not consider the extension of free travel for older and disabled people on rail services to be practicable. He estimated that under a free scheme customer demand would generate twice as many journeys compared to the current fares regime. The rail Industry would not have adequate resources, including infrastructure and rolling stock, to meet the demand.

227. The RPC also questioned the viability of extending free travel to rail services. Robert Samson of the RPC suggested that the capacity of the railways would be insufficient to meet the levels of demand at peak times if free travel were introduced. Robert Samson did argue however that concessionary travel should be offered on rail services during off peak times.

228. James King of the RPC told the Committee—

> 'Someone has to pay for the scheme. Mr Dewar's evidence made good sense in relation to where the pressure for payment comes from. We would generally favour some form of payment so that only those who needed to make the journey would make it and the operators would get some form of recompense.' 'Yes, you have to strike a balance between, on one hand, encouraging those who are entitled to the concessionary fare to use the service and, on the other, charging to use it, which could be restrictive.'

229. The evidence presented to the Committee was predominantly opposed to the introduction of a nationwide free rail travel scheme for older and disabled people. The Committee is persuaded by the evidence it has heard on this matter and accepts that presently the rail network has insufficient capacity to support a national non-time-restricted concessionary travel scheme, although this might be possible at some future date. It might be more feasible to introduce a nationwide off peak concessionary rail travel scheme, and the Committee encourages the Minister to examine this suggestion further. Additionally, the Committee considers that there may be merit in rail concessions being offered at a local level in certain circumstances. The Committee would therefore suggest that the proposed RTPs may wish to consider whether to offer certain specific rail travel concessions within their own areas.

107 OR Col 1524
Other groups

230. In its written submission to the Committee, the Scottish Youth Parliament argued for the extension of concessionary fares schemes to young people—

‘Young Scots should be encouraged to use public transport by the provision of free local and education related bus travel for all those under the age of 16 and concessionary fares for those under the age of 25 in full time education. Reduced price rail travel should also be available at all times of the day to people in full-time education.’\(^\text{108}\)

231. David Begg argued that instead of introducing free travel for older people, the Executive should—

‘[...] extend 50 per cent concessionary travel to excluded groups, to 16 to 18-year-olds who are in full-time education and to people who receive means-tested benefit.’\(^\text{109}\)

232. The Minister for Transport indicated in his announcement to the Parliament that a travel concession scheme for young people would also be introduced in April 2006—

‘We are doing further work on the scheme for young people, which is more complex and involves operators of a variety of transport services, such as ferries and trains as well as buses. However, I hope to confirm the 2006 implementation date when I make the announcement to Parliament in the spring.’\(^\text{110}\)

233. The Committee supports the extension of concessionary travel to young people, notes the Minister’s plans to announce the specific details of this scheme in due course, and recommends that this announcement is made in the early part of this year.

Ferry travel

234. A number of witnesses supported the extension of the proposed scheme to cover ferry travel.

235. The Scottish Youth Parliament, in its written submission to the Committee, argued—

‘With this all in consideration we would like to propose, that alongside a concessionary fares scheme on land-based public transport, that CalMac offer a discount to under-25s carrying a valid Young Scot card on their person when travelling as a foot passenger on any CalMac service.’\(^\text{111}\)

\(^{108}\) Scottish Youth Parliament written submission to the Local Government and Transport Committee  
\(^{109}\) OR Col 1723  
\(^{110}\) OR Col 1713  
\(^{111}\) Scottish Youth Parliament written submission to the Local Government and Transport Committee
236. Argyll and Bute Council argued that concessionary ferry travel being extended to older and disabled people was a higher priority than providing concessionary travel to young people—

‘Clearly, given the likely high costs of this provision, the highest priority should be given to achieving the aim of introducing a satisfactory, national scheme for the elderly and disabled before diluting effort on the introduction of a national scheme for young people.’\textsuperscript{112}

237. Dr Iain Docherty considered that extending concessionary fares to ferry services could have adverse economic effects on the communities that they serve—

‘On ferries, there is always an interesting argument about a two-way street. If we encourage people to travel out of remote communities, especially island communities, and to service their needs elsewhere, subsidised by public money, that will always have a knock-on effect on the level of service provision at local level at the remote end of the journey link. If we decide to subsidise ferry links to the extent that has been suggested, we must be careful about the economic impact that that will have on people who do not want to travel from the islands or other remote communities to consume services.’\textsuperscript{113}

238. Professor David Begg, however, whilst acknowledging a possible economic impact on island communities, did not consider this impact significant enough to rule out an extension of the scheme.

239. In his statement to the Parliament, the Minister for Transport indicated that concessionary fares would be extended to ferry travel for young people—

‘The concessionary travel commitment for young people will enable them to use ferries and trains, as well as buses, at a reduced rate, which will be good for their education and their ability to access all parts of Scotland. Too many young people have rarely travelled away from their local communities and areas; they ought to get the opportunity to see all Scotland.’\textsuperscript{114}

240. The Minister for Transport also announced that older and disabled people on Scotland’s islands would be entitled to a minimum of two free return journeys to the mainland by ferry each year. In making this commitment the Minister indicated that this would not effect any local concessionary ferry travel schemes currently offered.

241. The Committee welcomes the Minister’s commitment to provide concessionary travel for young people on ferries and his proposal for older people and disabled people to have a minimum of two free return journeys to the mainland each year. The Committee acknowledges that this is a minimum standard of provision and welcomes the fact that local enhancements will continue to be able to be provided.

\textsuperscript{112} Argyll and Bute Council written submission to the Local Government and Transport Committee
\textsuperscript{113} OR Col 1710
\textsuperscript{114} OR Col 1722
Accessibility issues

242. The Mobility and Access Committee for Scotland (MACS) saw accessibility as higher priority than travel concession schemes.

243. Ewan Jones of MACS argued that concessionary schemes were being assessed in terms of those who used them rather than giving consideration to those who did not currently use the services available to them. He noted—

‘In work in which I have been involved in the past, much consideration has been given to the mechanics of concessionary fares schemes and to whether they work. In my view, that has concentrated on assessing whether such schemes work for the people who use them rather than on asking how we get to the people who do not use them. That theme has come through in the work that I have been doing in Scotland for the past 10 to 20 years. I still come into regular contact with community transport groups that organise services for people who are entitled to concessionary fares, but have no services to access. They end up paying to use community transport, for example, when they could use a free scheme if there were services on which they could use their concessionary passes.’

244. MACS argued that in order to increase disabled and elderly people’s access to transport, concessionary travel should be offered on more accessible means of transport. Ewan Jones invited the Committee to consider recommending an extension of the scheme to such services as dial-a-ride and car schemes.

245. The Minister announced to the Parliament that the Executive would be carrying out a survey into disability issues during 2005, and that issues of access to transport would form part of this work. In the meantime he also informed parliament that support would be given to accessible transport schemes such as dial-a-ride schemes.

246. The Committee notes the evidence from MACS and urges the Executive to ensure that, as far as possible, the concessionary travel schemes available to older and disabled people are genuinely accessible. Furthermore, the Committee would welcome a clear statement from the Executive on what measures it plans to put in place to encourage accessibility of public transport for disabled people ahead of the Disability Discrimination Act coming into force, and what the timescale is for these measures.

SUBORDINATE LEGISLATION

247. The Committee has discussed a number of issues relating to secondary legislation in the body of this report, particularly in relation to the lack of detail on the face of the Bill regarding the proposed new regional Transport Partnerships.

248. The Subordinate Legislation Committee (SLC) reported to this Committee on the Bill. The full report of the SLC is attached at Annexe A. However, the

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115 OR Col 1609
Committee notes that the Executive has accepted a number of the SLC’s recommendations and has agreed to bring forward amendments at Stage 2 of the Bill on the following issues—

- **Section 17 (the Scottish Road Works Register):** The SLC noted that section 112 of the 1991 Act enabled regulations under that section to provide for the charging of a fee for registration, whereas it was not provided for in the new section 112B as it currently stands. This was not an intended omission and the Executive has undertaken to bring forward an appropriate amendment.

- **Sections 18 and 19 (directions as to timing of road works and placing of apparatus in roads):** Section 115 of the 1991 Act is amended by section 18 of the bill to bring that section partly into line with new section 115A. The SLC, however, noted that it is not amended to include a provision on the lines of subsection 5 of section 115A, which provides for appeals. The Executive has undertaken to bring forward an appropriate amendment to address this omission.

- **Section 32 (fixed penalty offences):** The SLC noted that this new section does not state that an order made under it will be made in the form of a statutory instrument and asked the Executive if it intended to make an appropriate amendment. The Executive has agreed to consider an amendment to the 1991 Act to clarify this.

249. The Committee will expect appropriate amendments to be brought forward by the Executive at Stage 2 to give effect to these commitments.

250. In its report, the Subordinate Legislation Committee also noted that the Executive had agreed to consider various other points identified by the Committee. These were as follows—

- **Section 10 (other transport functions of RTPs):** The SLC noted that the transfer of functions is currently one-way to an RTP and that there did not appear to be any provision in the bill that would allow for functions to be transferred back, unless an RTP is dissolved under section 2. The SLC considered that this needed to be addressed by the Executive and drew to the attention of the lead Committee the Executive’s undertaking to consider the matter further.

- **Section 29 (resurfacing):** The Committee noted that new section 132D(3) allows criminal offences to be created in regulations rather than by the Act itself. The Committee was also of the view that no power is conferred on Ministers to alter the level of the fine, only a power to create an offence. The Executive has given an undertaking to consider this matter.

- **Section 33 (civil penalties for certain offences):** The Committee considered that, as this section allows Ministers to decriminalise offences by subordinate legislation, it should be subject to affirmative rather than negative procedure. The Executive in response has drawn the Committee’s attention to similar schemes where negative procedure is used. However, the Executive has
also stated that it is considering the Committee’s point and may amend the form of procedure currently adopted.

- Section 35 (fixed penalty offences under the Roads (Scotland) Act 1984): The Committee considered that this section, where it gives Ministers the power by regulations to select relevant offences from those listed in the new Schedule 8A, should be subject to affirmative procedure rather than the negative procedure contained in the bill. The Executive is considering the point raised.

- The Committee considered that this provision raises issues similar to those raised under section 33. The Committee considers that it is a wide power and asked the Executive for comment as to whether it should be subject to affirmative rather than negative procedure. The Executive, similarly to points raised on section 33, has undertaken to consider the issue and has indicated that it may amend the form of procedure outlined.

251. The Committee notes the commitments made by the Executive to consider points raised by the Subordinate Legislation Committee, and requests that a response is provided on each point to the SLC, and to this Committee, no later than fourteen days prior to the start of Stage 2 of the Bill’s progress through its parliamentary stages.

FINANCIAL MEMORANDUM

252. Under Standing Orders, Rule 9.6.3, the Committee is required to consider and report on the Bill’s Financial Memorandum. The Committee has made various comments on the Financial Memorandum in the body of this report.

CONCLUSION

253. The Committee has considered the Transport (Scotland) Bill at some length, and believes it has been subjected to an appropriate degree of scrutiny. The Committee acknowledges the considerable efforts of all its witnesses who provided evidence, and of the Minister for Transport and his officials, who co-operated fully with the Committee’s Stage 1 inquiry.

254. The Committee welcomes the Bill, although as this report has noted, there are a number of ways in which it can be improved during its progress through its Parliamentary stages. The Committee therefore calls on the Minister to note the contents of this report, to provide further information where requested, and, where appropriate, to bring forward amendments at Stage 2.

255. Subject to this caveat, the Committee recommends to the Parliament that the general principles of the Bill be approved.116

116 David Mundell dissented. Fergus Ewing proposed that this paragraph be deleted and replaced by the following words: ‘The Committee recognises that there is support for the principle of having RTPs, but without detailed information as to their composition, boundaries, powers and responsibilities and funding, it is not
yet possible to reach any firm conclusion as to the general principles of the Bill. The proposal was 
disagreed to by division: For: 2 (Bruce Crawford, Fergus Ewing). Against: 6 (Sylvia Jackson, Paul 
Martin, Michael McMahon, Bristow Muldoon, Tommy Sheridan, Margaret Smith). Abstentions: 1 
(David Mundell).
ANNEXE A

REPORT BY THE ENTERPRISE AND CULTURE COMMITTEE

The Committee reports to the Local Government and Transport Committee as follows—

Introduction

1. On 3 November 2004 the Parliament agreed to appoint the Enterprise and Culture Committee as a secondary committee on the Transport (Scotland) Bill. We took written and oral evidence on 14 December 2004 from:
   - Confederation of British Industry (CBI) Scotland;
   - British Telecom;
   - Federation of Small Businesses (FSB) Scotland;
   - National Joint Utilities Group (NJUG);
   - Scottish Water;
   - UK Competitive Telecommunications Association (UKCTA);
   - Civil Engineering Contractors Association (CECA) Scotland;
   - Scottish Airports Park and Ride Association (SIAPRA); and
   - MacRoberts Solicitors (supporting SIAPRA).

2. On 18 January 2005 we took written and oral evidence from BAA plc and Glasgow Prestwick International Airport plc.

3. We took evidence on a broad range of important issues, including those of congestion and the creation of Regional Transport Partnerships. However, we were asked to focus specifically on those issues of direct relevance to the Bill itself. Therefore, we have focused on:
   - ensuring a level playing field;
   - road management issues; and
   - airport access charges.

Level playing field

4. Several witnesses told us that to gain full benefit from the Bill it would be important for the public and private sectors to be treated equally. In written evidence, UKCTA welcomed the fact that the Commissioner would ensure that all road works were included in the register, and further stated that the Executive should:

   ‘go further in levelling the playing field by extending the various provisions that penalise private sector companies that infringe the Act to those in the public sector. Only by imposing the same penalties to both the private and public sectors when the Act is breached, can any degree of accountability be delivered.’ (bold as original submission)\(^{117}\)

5. The Committee considers that there would be benefit in ensuring that the public and private sectors are treated equally in terms of penalties for infringement of the Act.

\(^{117}\) UKCTA, written submission
Level of detail

6. A number of witnesses told us that there was not enough detail in the Bill as to how various elements of it would work in practice. The Scottish Executive published a consultation document on the detail of the Bill after the Bill proposals were published. CBI Scotland told us that:

“The best example of the skeletal nature of the bill is the question of reinstatement. There is no meat in respect of how long a utility company will have to wait before getting a bill through the post, which might say, “Please pay for the work that you carried out 20 years ago.” As was said earlier, there is no detail given on who will assess which company should pay the bills.

Further, there is no meat in respect of how decriminalisation will work, how local authorities will deal with the new powers that they will be given and who will pound the beat, for want of a better phrase.”

7. The Committee considers that it would have been more helpful for those responding to the Bill to have been able to have done so with a fuller awareness of the proposals for the detailed implementation and operation, particularly for example with relation to the provisions on resurfacing.

Road Management

Sections 14-16: The Scottish Road Works Commissioner

8. There was strong support from business representatives for the creation of a Scottish Road Works Commissioner. We heard that the existence of an arbitration route might help all parties involved to reach agreement more quickly.

9. The Committee welcomes the creation of the Scottish Road Works Commissioner.

Section 17: The Scottish Road Works Register

10. There is currently a voluntary register, known as the susiephone, which has been established by industry. Utilities representatives welcomed the recognition of the usefulness of this data source. They were keen to ensure, however, that the register would be used by local authorities as well as utilities, to provide a true picture of the reasons for road works across Scotland.

11. The Committee welcomes the establishment of the Scottish Road Works Register, which builds on the good practice developed by the industry and which will include records of all road works, whether originating from the public or private sector.

Section 20: Restriction on works following substantial road works

12. Several witnesses referred to the importance of utilities infrastructure for Scotland’s competitiveness, and we ourselves have previously reported to Parliament on the importance on the roll-out of broadband. Witnesses called for a balance to be struck between the need to reduce congestion and the need to ensure that development is not held back by lack of appropriate infrastructure.

13. One witness raised a particular anti-competitive issue in relation to the provisions in the Bill on restriction on works following substantial road works. The UK Competitive Telecommunications Association (UKCTA) told us in written evidence that:

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118 see for example UKCTA written submission, NJUG written submission
119 Official Report, Enterprise and Culture Committee, 14 December 2004, cols 1437-38
"If companies are barred from digging in a particular street outright or are delayed in so doing, customers are likely to cancel their orders and move to the company with ubiquitous network coverage, BT, thereby undermining the effectiveness of the market and reinforcing the market dominance of the former monopoly provider."

14. BT also told the Committee:

"If we consider the matter dispassionately, we can see that there is a potential impact on competitiveness. Consider the situation when a company—whichever company, it need not necessarily be BT—provides a service to a particular customer: if the customer wants to consider alternatives for their physical infrastructure but restrictions on road works mean that the new service would be delayed or could be provided only at substantial additional cost, that would impact on the competitiveness of the industry."

15. The Committee recommends that the Executive should ensure that the power to restrict road works contains sufficient checks and balances to ensure that there is no reduction in competition in the telecomms industry in particular.

16. In relation to competitiveness more generally, CBI Scotland told us that:

"The reality is that companies have met difficulties in situations in which local authorities have decided to impose a one-year moratorium on street works to prevent disruption. You can see the logic behind such a decision from the point of view of someone sitting behind a desk who has spent a lot of money on resurfacing or whatever. However, the marketplace does not operate in that sort of long-term, structured way. Customers want changes to their premises, accidents happen, new water supplies and gas mains are required and so on. The poor state of the water infrastructure in Scotland will mean that a great deal of work will be required in years ahead. It would therefore seem illogical to have moratoriums that would prevent that work being done."

17. We heard one example of a local authority which breached its own moratorium:

"A local authority to the west of the city had imposed a voluntary moratorium on works—to which we all agreed—because it had resurfaced a road. During that period, it said, "We are delighted to award you a contract for a big, fat telecoms pipe to connect our offices and upgrade our infrastructure." We said, "We would love to help you but can we discuss the contract in a year's time when the moratorium has expired?" The answer came back, "Never mind that—we need the work done now," and the moratorium was waived. Commercial concerns are well understood when they affect local authorities themselves. We would like to see some safeguards; we are not saying that there should be no powers whatsoever, but there have to be checks and balances in the system."

18. We also heard concerns about moratoria preventing urgent work to reconnect services. Scottish Water told us that:

"Clarity is required when using the word "emergency", because under the New Roads and Street Works Act 1991 "emergency" refers to life and limb-threatening situations. Utilities have a lot of urgent works to restore services. There is a need for clarification in the bill as to the meaning of "emergency"." 

19. The Committee notes that, from the evidence it has received, overall economic growth and competitiveness may be affected by the use of this provision. Again the Committee

120 UKCTA, written submission
121 Official Report, Enterprise and Culture Committee, 14 December 2004, col 1442
122 Official Report, Enterprise and Culture Committee, 14 December 2004, cols 1427-28
123 Official Report, Enterprise and Culture Committee, 14 December 2004, col 1448
124 Official Report, Enterprise and Culture Committee, 14 December 2004, col 1450
recommends that the Executive should ensure appropriate checks and balances are in place to ensure development is not hindered by the use of this provision.

Sections 28-30: Resurfacing

20. The utilities representatives raised concerns about the Bill in relation to the proposals for resurfacing. NJUG told us that the proposals in the Bill if enacted:

“would lead to a perpetual contingent liability on utilities when they dig anywhere in a street, thus increasing regulatory and balance sheet uncertainty. This would force all utility companies to make financial provision for the possibility of being required to resurface any part of a street (not even necessarily the part where they had dug) for all time.”

21. CBI Scotland concurred, giving the example of:

“a utility company that digs up 10 yards of the Royal Mile outside the Parliament. Under the bill as currently drafted, that company could in theory be liable to restore the whole of the Royal Mile in five years’ time. Another example is that companies that dug up the road 20 years ago could be asked to cover the costs of the restoration of the Royal Mile. How can a business do any forward planning on that basis? How does one decide which companies should share the costs?”

22. BT told us that:

“We are certainly not saying that a utility company that digs up a road and then puts it back together should not be held responsible for any failure of restoration. However, the guarantee period must be reasonable, because the quality of a road surface can be affected not just by the digging of holes but by all sorts of factors, such as the amount of traffic that flows over it.”

23. In addition, BT raised concerns about:

“half-lane and perhaps full-lane reinstatement, whereby we might be required to resurface a whole stretch of road, far beyond the hole that we needed to dig to provide or restore our service. We would incur much greater costs and there would be much greater congestion while we resurfaced the much greater area of road, to the discomfort of all.”

24. UKCTA gave evidence on the potential costs involved:

“a study [in England] showed that, where my company did that on a voluntary basis, the eventual cost was 385 per cent of what it would otherwise have been. That will have an extreme impact on marginal business cases for rolling out broadband networks, especially in Scotland, which has more remote territory.”

25. The Committee considers that there is clearly an urgent need for more detail on how this section of the Bill would be enforced.

Sections 31-33: Enforcement of 1991 Act

26. CBI Scotland told us that:

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125 NJUG, written submission
126 Official Report, Enterprise and Culture Committee, 14 December 2004, col 1426
127 Official Report, Enterprise and Culture Committee, 14 December 2004, col 1432
128 Official Report, Enterprise and Culture Committee, 14 December 2004, col 1433
129 Official Report, Enterprise and Culture Committee, 14 December 2004, col 1448
“One instinctively thinks that decriminalisation should be welcomed, but experience shows that if local authorities, which claim to be operating on a tight spending allocation, are given powers to levy charges, that income will be an incentive for those whose job it is to find ways to levy charges. For example, if a company has said that it will be digging at 100 Arcadia Avenue when in fact the company typist should have typed 110 Arcadia Avenue, the person whose job it is to impose the fine for the mistake would do so. There is a concern that unless the decriminalisation of road works offences is properly monitored by the new commissioner, the proposed measure could lead to local authorities using it as a means to increase revenue.”

27. Scottish Water also told us that:

“there are concerns that local authorities might consider that fixed-penalty notices offer an income stream when their budgets are restricted. From a utilities point of view, we need to make sure that the imposition of fixed-penalty notices is done in an independent manner. We therefore suggest that the commissioner is best placed to impose fixed penalties.”

28. UKCTA cited the experience in England and Wales, where:

“The fixed-penalty schemes are not for generating revenue, but they are raising money that is then being spent on the scheme itself.”

29. UKCTA told the Committee that increased costs to utilities arising from these penalties would be passed on to contractors and consumers.

30. The Committee considers that there would be merit in the Scottish Road Works Commissioner monitoring the implementation of the decriminalisation of road works offences.

Airport Park and Ride

31. Scottish Airports Park and Ride Association SIAPRA told the Committee in written evidence that:

“Under section 63 of the Airports Act 1986, private companies, including airport management companies, have the power to make byelaws relating to airport land. These byelaws must be approved by Scottish Ministers.”

32. SIAPRA went on to state that:

“In recent years, there have been attempts to introduce new bye-laws at least one Scottish airport to facilitate access charging for competing operators, none of whom carry on business within the facility.”

33. SIAPRA told the Committee in oral evidence that:

“SIAPRA members acknowledge that, in being able to bring passengers to an airport in an environmentally friendly way and in a way that enables the passengers to take advantage of off-site parking at a more modest price, they accept that their passengers are getting a service. That service is being provided by the airport and there is no objection whatever from

130 Official Report, Enterprise and Culture Committee, 14 December 2004, col 1425
131 Official Report, Enterprise and Culture Committee, 14 December 2004, col 1451
132 Official Report, Enterprise and Culture Committee, 14 December 2004, col 1451
133 SIAPRA, written submission
134 Ibid
any member of SIAPRA to paying for those services. However, they see payment for access as being the thin end of a decidedly undesirable wedge.”

34. SIAPRA told us that its members:

“seek a minor piece of legislative tidying up to be done in the bill to ensure that any future intention to charge for access would be subject to approval by the relevant local authority. That process would provide proper democratic accountability.”

35. We agreed to take written and oral evidence from BAA plc and Glasgow Prestwick International Airport plc at our meeting on 18 January 2005, to enable them to address these concerns.

36. Glasgow Prestwick International Airport plc’s (GPIA’s) written statement rejects the need for an amendment to the Bill on the grounds that existing EU competition law sufficiently addresses the matter. GPIA also contest SIAPRA’s position on the environmental benefits of park and ride facilities at airports as follows:

“Large car parks close to airports do not have the environmental benefits claimed for them by the Park and Ride Associations. They are not genuine park and ride facilities, which typically reduce car use by enabling early transfer to public transport, usually from outskirts to urban centres. Extensive supplies of cheap airport parking promote car use over longer journeys, at the expense public transport. As such, they are probably counter-productive to the Scottish Executive’s proposals under the Integrated Transport Bill.”

37. BAA plc’s written statement says that:

“BAA Scotland has no plans to introduce such a charge at any of its airports but will continue to charge for the high-quality facilities which are developed and built for the benefit of passengers and those who provide passenger services.”

38. BAA plc state that airport byelaws “are in place simply to ensure that airport forecourts can be managed safely and securely, free of congestion.”

39. The Committee considers that it is not appropriate for this issue to be addressed as part of the Transport (Scotland) Bill.

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135 Official Report, Enterprise and Culture Committee, 14 December 2004, col 1457
136 ibid
137 GPIA plc, written submission
138 BAA plc, written submission
139 ibid
REPORT BY THE FINANCE COMMITTEE

The Committee reports to the Local Government and Transport Committee as follows—

Introduction

1. Under Standing Orders, Rule 9.6, the lead committee in relation to a Bill must consider and report on the Bill’s Financial Memorandum at Stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee in relation to the Financial Memorandum of the Transport (Scotland) Bill, for which the Local Government and Transport Committee has been designated by the Parliamentary Bureau as the lead committee at Stage 1.

Background

3. At its meeting on 23 November 2004, the Committee took oral evidence from Dr Malcolm Reed, Director General; Valerie Davidson, Head of Financial Services; and Hilary Howatt, Policy Development Manager, Strathclyde Passenger Transport; and from Councillor Andrew Burns, Transport Spokesman for City of Edinburgh Council; and James Fowlie, Policy Manager, COSLA.

4. It also took limited oral evidence at this meeting from Scottish Executive officials - Jonathan Pryce, Head, Transport Strategy and Legislation Division; Frazer Henderson, Bill Team Leader; and Claire Dunbar-Jubb, Group Accountant, Roads Policy and Group Finance Division, Scottish Executive Enterprise, Transport and Lifelong Learning Department. The Committee took more detailed evidence from the same officials on 14 December 2004, after it had received additional written evidence from them.

5. The Committee also received written evidence from COSLA, Scottish Power, HITRANS, Stagecoach Scotland, CBI Scotland, Cable and Wireless, National Joint Utilities Group, NESTRANS, Strathclyde Passenger Transport, Susiephone Ltd, Lothian Buses plc, Scottish Water and WESTRANS. The Committee thanks all those who took the time to comment on the Bill.

Financial Memorandum

6. The Policy Memorandum sets out the policy objectives of the Bill: Part 1 provides a statutory basis for Transport Partnerships and enables them to receive and exercise transport functions transferred by the Scottish Ministers. Part 2 makes provision to improve the co-ordination and quality of road works carried out on Scotland’s roads. Part 3 of the Bill makes provision enabling the Scottish Ministers to run concessionary travel schemes at their own hand. It also details a range of miscellaneous provisions: abolishing the requirement on local authorities to inform the Scottish Ministers before a pedestrian crossing is established, altered or removed; amending the procedure for dealing with applications for Harbour Orders; modifying the Highlands and Islands Shipping Services Act 1960; and making minor amendments to the Transport (Scotland) Act 2001.

7. The costs on the Scottish Administration (which have been identified so far) are set out at the end of the Financial Memorandum:

Table 1: Breakdown of start up costs to the Scottish Executive arising from the provisions contained within the Bill

<table>
<thead>
<tr>
<th>Description</th>
<th>£m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial start up costs for the Scottish Executive</td>
<td></td>
</tr>
<tr>
<td>Initial Staffing and administration costs for Transport Partnerships</td>
<td>1.0</td>
</tr>
<tr>
<td>Members’ expenses to attend Transport Partnerships</td>
<td>0.1</td>
</tr>
<tr>
<td>SPT transition costs resulting from creation of successor Transport Partnership</td>
<td>1.0</td>
</tr>
<tr>
<td>Initial accommodation costs for Transport Partnerships</td>
<td>0.4</td>
</tr>
<tr>
<td>Initial Staffing and administration costs for SRWC</td>
<td>0.2</td>
</tr>
</tbody>
</table>
Table 2: Breakdown of ongoing costs to the Scottish Executive arising from provisions contained within the Bill.

<table>
<thead>
<tr>
<th>Ongoing costs to the Scottish Executive</th>
<th>£m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staffing and administration costs for SRWC</td>
<td>0.16</td>
</tr>
<tr>
<td>Concessionary Travel</td>
<td>(subject to proposals in secondary legislation)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3.7</strong></td>
</tr>
</tbody>
</table>

**Written evidence**

8. The written evidence which the Committee received highlighted some concern about the provision to improve the co-ordination and quality of road works. ScottishPower’s submission suggested that there are likely to be ongoing annual costs for the Statutory Undertakers, in the region of £500,000 per annum, and warned that “utility companies will seek to recover any imposed additional costs of new regulations, which if approved by our Regulator, will inevitably lead to higher electricity prices”. Similarly, the National Joint Utilities Group stated that while it could not reliably estimate all costs associated with the Bill until it had seen the relevant secondary legislation, it would “expect the costs to be extremely large by any standard of measurement”.

**Oral evidence**

9. In taking oral evidence, the Committee’s discussion focussed primarily on the financial implications of the proposed Regional Transport Partnerships (RTPs), although there was some questioning of the operation of concessionary travel schemes, particularly the measures that will be put in place to combat fraud.

10. While the Bill is concerned simply with making provision to enable the Scottish Ministers to run concessionary travel schemes at their own hand, the Committee is nevertheless keen to stress that it will support every effort made by the Executive to prevent fraudulent claims.

11. Strathclyde Passenger Transport (SPT) outlined a series of fundamental criticisms of the functioning and financing of the proposed RTPs and how these are discussed in the Financial Memorandum. SPT witnesses even questioned the actual need for the Bill - and the evaluation process that was carried out – claiming that some of the proposed functions of RTPs are ones which could be assumed by the voluntary partnerships under existing powers or legislation. SPT’s written submission claimed that the £7m cost of establishing RTPs and the Transport Agency could be more effectively spent on actual transport provision.

12. While COSLA was more positive about the concept of RTPs and regional transport strategies, it shared some of the SPT’s concerns. For example, both organisations were clear that the transitional funding from the Executive for the establishment of RTPs should last for more than one year:

“My is no question but that they [RTPs] will result in significant changes to regional delivery of transport and to local government delivery of transport infrastructure and provision. However, it will take much more than one year to work through the financial requirements that will be imposed by the changes, especially on the local authorities that will make up the RTPs.”

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140 Burns, Official Report, 23 November 2004, Col 1953
13. SPT claimed its own experiences show that going to councils for such extra funding would mean being in competition for resources for front-line services\(^{141}\) and that funding for transport may not even be available from local authorities.\(^{142}\)

14. Councillor Burns, Transport Spokesman for City of Edinburgh Council, was sceptical of the possible economies to be gained from RTPs sharing services or pooling resources, as envisaged in the Financial Memorandum. While he acknowledged that there is an example of this having been achieved by a local transport initiative in Edinburgh, he supported Dr Reed’s view that there are some specialised services - for example legal services - which the RTPs will need but which cannot be provided by individual local authorities.

15. Both organisations said that it was difficult to be explicit about the full costs associated with the Bill, as there are certain key aspects which are still out to consultation, for example the structure of RTPs and the method by which their funding and governance will be determined.

16. While the question of allocations within RTPs remain to be determined, Dr Reed said that the system of requisitioning from member local authorities will continue to operate, but that this is a flawed system:

   “It is very difficult to get a budget that exceeds the willingness of the least wealthy partner to pay. There have been situations when some councils in the SPT area have indicated a willingness to pay more but, because we have to operate with all 12 councils, our increase has been held back to what the smallest, or least well-resourced, council can afford.”\(^{143}\)

17. A more specific concern of the SPT relates to a matter that it believes has not even been considered in the Financial Memorandum. It claims that one effect of the Bill could be that most councils in the SPT area will now be able to exercise certain bus-related functions which have hitherto been the sole preserve of the SPT\(^{144}\). The Committee notes the Executive’s reply that “since the local authorities in the SPT area would have discretion in whether to use the proposed concurrent powers on bus measures there is no requirement on them to incur any additional expenditure”\(^{145}\), and trusts that there will be no subsequent costs which have been omitted from the Financial Memorandum.

18. The Committee shares the concerns raised by several organisations, that as there are major parts of this bill still out to consultation, this means respondents are unable to discuss fully the associated costs of this legislation. The Committee believes that this is one of the contributory reasons for there being a relatively large degree of dissatisfaction with this Financial Memorandum.\(^{216}\)

   Once again, the Committee highlights the Executive’s financial guidance note 2003/01 on the preparation of financial memoranda states:

   "Where a Bill proposes powers, or implementation is dependent on the detail in secondary legislation (or further primary legislation), it may not be possible to be precise. In these cases, the Memorandum should say so. But this should be supported by an outline of what the current intentions of the Executive are, what the financial implications of these intentions will be, and what the effect of varying the major assumptions will be."

**RTP Funding**

19. An example of the uncertainty which the ongoing consultations has helped create, is the question of the transitional costs needed by RTPs. As noted, COSLA and SPT both believe that funding will be needed for more than one year. However, the Executive has made it clear that this first year funding is solely for the purpose of meeting additional costs associated with RTPs producing their transport strategies (i.e. a new duty for them). Assuming that an RTP simply assumes the most basic functions possible, it will not need any greater resources than it does at

\(^{141}\) Davidson, Official Report, 23 November 2004, Col 1955  
\(^{142}\) Reed, Official Report, 23 November 2004, Col 1951  
\(^{143}\) Reed, Official Report, 23 November 2004, Col 1960  
\(^{144}\) Submission from SPT.  
\(^{145}\) Scottish Executive submission.
Local Government and Transport Committee, 3rd Report, 2005 (Session 2)
ANNEXE A

present because the Executive already provides funding to the existing voluntary partnerships for their key functions and will continue to provide similar funding to the new statutory partnerships.

20. The Executive officials were also clear that there is potential for additional funding for RTPs in future years, as long as any benefits are demonstrated to the Scottish Executive:

“We are prepared only to put in transitional resources upfront to get the framework up and running...If regional transport partnerships devise good regional transport strategies that make strong cases for projects, they should be able to access some of the increased Scottish Executive spend on transport that will be available through the spending review as well as any additional resource that they might need for staffing in order to deliver those good strategies.”146

21. While the Committee understands the reasoning behind the Executive not committing additional funding to RTPs until they are seen to be functioning effectively, its approach does lend weight to SPT’s complaint that this Bill is not necessary if powers to develop transport partnerships already exist; why would the Executive go to the effort of giving statutory weight to RTPs but not provide them with their full powers immediately?

22. On a related point, the Committee attempted to reconcile the statement in the Financial Memorandum that “no increased costs for local authorities are anticipated as a consequence of the establishment of Transport Partnerships (paragraph 143)”, with the fact that the Executive is committed to a very ambitious new transport programme which will impact on local government beyond the transitional year147.

23. While the Bill may not lead directly to additional RTP (or local authority) expenditure, it seems to the Committee that increased expenditure by local authorities is inevitable, given the major planned increases in transport expenditure; the intention to provide an extra £96m in 2006-07 and £100m in 2007-08 for concessionary travel schemes148, and the current delivery problems acknowledged by the Minister for Transport in a separate meeting:

“...deliverability is the biggest challenge for transport in Scotland, and it is my biggest responsibility as the Minister for Transport. To be frank, we do not currently have the capability or the resource to ensure delivery, which is why we are establishing an agency and why we accept that we must recruit new people with engineering and project management skills.”149

24. Executive officials confirmed that there will be a financial impact on local government:

“I emphasise that it is inevitable that an increase in transport activity and project delivery at local government level will lead to additional spending by local government. There will therefore be scope for local government to secure the necessary resources from the Executive.”150

25. The Committee recommends that the Local Government and Transport Committee seeks further clarification from the Minister as to how local government will “secure the necessary resources”, and whether any mechanism will be put in place to ensure that this happens.

Funding
26. If RTPs are established and assume transport functions from their constituent local authorities, Members are keen that this novel level of decision-making should not create any confusion. For example, the Committee outlined the potential pitfalls of allowing RTPs to borrow prudentially:

146 Pryce, Official Report, 14 December 2004, Col 2134
147 McNulty, Official Report, 14 December 2004, Col 2135
148 Correspondence from the Scottish Executive.
149 Stephen, Official Report, 14 December 2004, Col 2120
150 Pryce, Official Report, 14 December 2004, Col 2135
“A council might have already borrowed prudentially on the basis of its support from the Executive and then the transport partnership might decide to borrow prudentially and assume that various member councils will have enough spare cash to contribute. There is scope for the borrowing to be less prudential than it should be.”

27. Executive officials agreed that a dialogue between RTPs and constituent local authorities would be vital in order to avoid such assumptions being made. The Committee remains concerned however, that other aspects of the financial arrangements are still the subject of consultation, for example how RTPs will determine the share of their expenses that is to be paid by constituent councils.

Conclusions

28. The Committee highlights the difficulties in being certain about the financial costs associated with this Bill given the ongoing consultations. We believe that there will be future increased spending on transport projects by RTPs, but we cannot say what this figure will be because the Bill only creates the framework for powers to be transferred to them.

29. It is clear that there is considerable disagreement between the Scottish Executive and SPT on the costs associated with this Bill, and the Committee believes that these should have been more fully discussed before the Financial Memorandum was presented. A number of organisations have highlighted a lack of consultation on the Financial Memorandum produced to accompany the Bill, and the Committee believes that this is a major oversight given the very large sums of money that are being committed to future transport spending.

30. We also recommend to the Local Government and Transport Committee that it considers further evidence sent to the Committee by the SPT, which was received too late for consideration in this report. This submission (contained in the appendix) highlighted the SPT’s concerns about concurrent bus powers and any costs associated with these; and the costs associated with the introduction of the national concessionary travel scheme in April 2006.

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The Committee reports to the Local Government and Transport Committee as follows—

Introduction

1. The Subordinate Legislation Committee at its meetings on 11 January and 18 January 2005 considered the delegated powers provisions in the Transport (Scotland) Bill. The Committee submits this report to the Local Government and Transport Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

2. The Executive provided the Committee with a memorandum on the delegated powers provisions in the Bill, which is reproduced at Appendix 1.

3. The Executive's response to points which the Committee raised during its consideration is reproduced at Appendix 2.

Delegated Powers

4. The Committee considered each of the delegated powers provisions in the Bill. Having considered the following delegated powers with the assistance of the Executive's memorandum, the Committee approves them without further comment: sections 3, 7, 12, 13, 16, 24, 26, 27, 28, 30, 34, 43, 46 and schedules 5 and 7.

5. The Committee makes recommendation on the following powers—

Section 1 Establishment of Regional Transport Partnerships (RTPs)

Section 2 Dissolution of Regional Transport Partnerships (RTPs)

6. The Committee was concerned that section 2 contained a power that could enable Ministers, either directly or indirectly as read with section 1, by dissolving all the RTPs, to repeal section 1 and render the other provisions of Part 1 ineffective. The Committee also felt that it was not clear whether, if an RTP is dissolved under section 2, by virtue of section 1 subsection (1) Ministers must establish a new RTP.

7. The Executive has explained that it is not the policy intention nor does it consider that it would be competent to dissolve all transport partnerships rendering Part 1 ineffective. With regard to the establishment of new RTPs, the Executive explained that the Bill provides for the mandatory division of Scotland into regions and the mandatory creation of an RTP for each region.

8. The Committee acknowledged the full explanation given by the Executive but felt there were still concerns in relation to the provisions for the establishment and dissolution of RTPs. The Committee was particularly concerned as to whether Ministers are obliged to make a new order under section 1 immediately an order is revoked under section 2 and the consequences of any potential delay. The Committee considers that the drafting of these sections requires greater clarity and draws them to the attention of the lead Committee on these grounds.

Section 5 Formulation and content of regional transport strategies

9. The Committee asked the Executive whether it considered that any of the guidance issued under section 5 subsection (3) should be laid before the Parliament or subject to some form of Parliamentary scrutiny, given that RTPs are to be under a duty to have regard to such guidance when preparing their transport strategies.

10. The Executive does not intend to lay the guidance before Parliament, although it will be published and a copy lodged with SPICe. The Committee, however, considered that it was important to include a provision to lay the guidance in order that sufficient notice is given to
Parliament to scrutinise the document. It therefore recommends to the lead Committee that a laying power should be included in the bill for general guidance issued under section 5 subsection 3.

Section 6 Procedure before and after the drawing up of transport strategies

11. The Committee noted that this section did not include any detail of Parliamentary involvement in the finalisation of a transport strategy and therefore asked the Executive for its views on securing scrutiny and proper publication of any strategy. The Executive explained that publication of any transport strategy would be left to individual transport partnerships and outlined the requirements for them to consult on their content.

12. Whilst the Committee recognises that the strategies will be local in nature, it notes that in some instances this would cover considerable areas and involve significant amounts of expenditure. The Committee considered that this, together with the powers granted to Ministers for the approval of these strategies, should lead to a recommendation that the Parliament's attention is drawn to any strategy. The Committee therefore recommends to the lead Committee that the transport strategies should be required to be laid before Parliament.

Section 8 Duty of Constituent Councils and other Public Bodies in respect of Transport Strategies

13. The Committee asked for clarification on the type of public bodies covered by this provision and was content with the Executive's response.

Section 10 Other Transport Functions of RTPs

14. The Committee was concerned at the width of the Henry VIII power under this section, which at subsection (1) allows the Executive to amend primary legislation. The Committee in this instance did not consider that affirmative procedure provided an appropriate level of scrutiny, given the width of the power, and suggested that the Executive might examine adopting super-affirmative procedure. The Executive was of the view that affirmative procedure would provide adequate scrutiny and achieve the same ends.

15. The Committee, however, remains concerned at the width of the power granted by this section and recommends that the Executive adopts super-affirmative procedure. This procedure would allow the laying of proposals in draft, enabling the Parliament to suggest amendments before the draft order itself is laid before the Parliament for approval.

16. The Committee noted that the transfer of functions is currently one-way to an RTP and that there did not appear to be any provision in the bill that would allow for functions to be transferred back, unless an RTP is dissolved under section 2.

17. The Committee considers that this needs to be addressed by the Executive and draws the Executive's undertaking to consider the matter further to the attention of the lead Committee.

Section 11 Manner of performance of RTPs’ functions

18. The Committee noted that paragraph (b) obliges the RTP to comply with the directions of Scottish Ministers and considered that, when general directions, these would have a degree of legislative effect.

19. The Executive did not agree with the Committee’s proposal that any directions should be included in a formal legislative document. However, given what it considers to be the legislative effect of these directions, the Committee recommends to the lead Committee that a formal process, subject to a degree of Parliamentary scrutiny, should be attached to the ministerial directions when general in nature.
Section 17  The Scottish Road Works Register

20. The Committee noted that section 112 of the 1991 Act enabled regulations under that section to provide for the charging of a fee for registration, whereas it was not provided for in the new section 112B as it currently stands. This was not an intended omission and the Executive has undertaken to bring forward an appropriate amendment. The Committee therefore draws the attention of the lead Committee to the Executive’s undertaking to bring forward an amendment.

Section 18  Directions as to timing of road works

Section 19  Directions as to placing of apparatus in roads

21. Section 115 of the 1991 Act is amended by section 18 of the bill to bring that section partly into line with new section 115A. The Committee, however, noted that it is not amended to include a provision on the lines of subsection 5 of section 115A, which provides for appeals.

22. The Executive has undertaken to bring forward an appropriate amendment to address this omission. The Committee therefore draws the attention of the lead Committee to the Executive’s undertaking to bring forward an amendment.

Section 23  Enforcement of section 119 of 1991 Act

23. Section 23(2) inserts section 119A(1) to the 1991 Act to enable the Scottish Ministers to make regulations about the notification, enforcement, level and payment of penalties as well as the appeals process against the imposition of penalties by the Scottish Road Works Commissioner, effectively replacing criminal sanctions with civil penalties. The Committee asked the Executive how it was planned that this would work in practice and for explanation as to why all of the penalties are to be set out in subordinate legislation.

24. The Executive explained that it considers this provision to be a last resort and that the penalty would only apply where long term failure to comply with road works authority has occurred. The Executive also pointed out the establishment of a working group, part of whose remit would be to consider appropriate penalties.

25. The Committee, particularly given that this represents decriminalising to some degree, is content with the Executive’s explanation of this power.

Section 29  Resurfacing: regulations and guidance

Section 132D

26. The Committee noted that new section 132D(3) allows criminal offences to be created in regulations rather than by the Act itself. The Committee was also of the view that no power is conferred on Ministers to alter the level of the fine, only a power to create an offence.

27. The Executive has given an undertaking to consider this matter and the Committee therefore draws this provision to the attention of the lead Committee as needing further explanation from the Executive.

Section 132E

28. The Committee examined the authority this provision gives Scottish Ministers to issue or approve a code of practice for the exercise of powers and the discharge of duties under sections 132A to 132D. The Committee noted that there is no procedure attached to the issue or approval of the Code and considered that there is a case for procedure.
29. The Executive informed the Committee that the Code at this section is in addition to other Codes of Practice under the 1991 Act, none of which are subject to any form of procedure, and that it therefore did not consider that this Code should be treated any differently.

30. The Committee, however, did not accept the Executive’s view and recommends to the lead Committee that the Code should be subject to some form of procedure, for example laying before Parliament, in order to promote the scrutiny of its content.

Section 32  Fixed Penalty Offences

31. The Committee noted that this new section does not state that an order made under it will be made in the form of a statutory instrument and asked the Executive if it intended to make an appropriate amendment. The Executive has agreed to consider an amendment to the 1991 Act to clarify this.

32. The Committee therefore draws this provision to the attention of the lead Committee as requiring an amendment to the 1991 Act to provide for orders under section 32 to be made in the form of a statutory instrument.

Section 33  Civil Penalties for certain offences under the 1991 Act

33. The Committee considered that, as this section allows Ministers to decriminalise offences by subordinate legislation, it should be subject to affirmative rather than negative procedure. The Executive in response has drawn the Committee’s attention to similar schemes where negative procedure is used. However, the Executive has also stated that it is considering the Committee’s point and may amend the form of procedure currently adopted.

34. The Committee recommends that this section is subject to affirmative rather than negative procedure and draws the attention of the lead Committee to the Executive’s response.

Section 35  Fixed Penalty Offences under the Roads (Scotland) Act 1984

35. The Committee considered that this section, where it gives Ministers the power by regulations to select relevant offences from those listed in the new Schedule 8A, should be subject to affirmative procedure rather than the negative procedure contained in the bill.

36. The Executive is considering the point raised and the Committee draws this consideration to the attention of the lead Committee together with the recommendation that affirmative procedure should be adopted for this provision.

Section 36  Civil penalties for certain offences under the Roads (Scotland) Act 1984

37. The Committee considered that this provision raises issues similar to those raised under section 33. The Committee considers that it is a wide power and asked the Executive for comment as to whether it should be subject to affirmative rather than negative procedure.

38. The Executive, similarly to points raised on section 33, has undertaken to consider the issue and has indicated that it may amend the form of procedure outlined.

39. The Committee draws the attention of the lead Committee to the Executive’s undertaking to consider the points raised and recommends that affirmative procedure is adopted.

Section 37  National Travel Concession Scheme

40. The Committee asked for clarification of the interaction between subsections (4)(e) and (6), as it was concerned that there was some overlap between these provisions.
41. The Executive explained that these provisions are intended to address different circumstances. Subsection 4(e) relates to participation by an operator in a national travel concession scheme which would cover voluntary or compulsory membership by operators. Subsection (6) relates to compliance with a scheme by operators which are part of the scheme and prosecution would cover the possibility that an operator might seek to evade obligations. The Committee is content with the Executive’s response and draws this issue to the attention of the lead Committee for information only.

42. The Committee noted that affirmative procedure is proposed for subsection (1), whereas negative procedure is proposed for subsection (7) and considered that the difference in procedure could cause serious difficulties with the exercising of the powers. The Committee draws this issue to the attention of the lead Committee as requiring clarification from the Executive.

Conclusion

43. The Executive has accepted points made by the Committee and undertaken to bring forward appropriate amendments at Stage 2 in relation to the following sections—

Section 17 The Scottish Road Works Register
Section 18 Directions as to timing of road works
Section 19 Directions as to placing of apparatus in roads
Section 32 Fixed penalty offences

44. The Committee however noted the Executive’s undertaking to consider points raised on the following sections—

Section 10 of functions) Other Transport Functions of RTPs (section 10 (1) in relation to the transfer
Section 29 Resurfacing: regulations and guidance (132D)
Section 33 Civil Penalties for certain offences under the 1991 Act
Section 35 Fixed Penalty Offences under the Roads (Scotland) Act 1984
Section 36 Civil Penalties for certain offences under the Roads (Scotland) Act 1984

45. The Committee wishes to draw the attention of the lead Committee to the above considerations still to be taken forward by the Executive and draws its attention to the concerns raised, with a view to informing stage 2 consideration.
Present:

Bruce Crawford JP (Deputy Convener) Fergus Ewing
Dr Sylvia Jackson Paul Martin
Michael McMahon Bristow Muldoon (Convener)
David Mundell Tommy Sheridan

Apologies: Iain Smith MSP

The meeting opened at 2.10 pm.

1. **Transport (Scotland) Bill (in private):** The Committee agreed its approach to its consideration of the Bill at Stage 1.

The meeting closed at 5.54 pm.
Present:

Bruce Crawford JP (Deputy Convener) Fergus Ewing
Michael McMahon Bristow Muldoon (Convener)
David Mundell Tommy Sheridan
Iain Smith

Apologies: Dr Sylvia Jackson MSP and Paul Martin MSP

The meeting opened at 2.04 pm.

2. Transport (Scotland) Bill: The Committee took evidence at Stage 1 from—

   Mr Jonathan Pryce, Head of Transport Strategy and Legislation Division, Scottish Executive;

   Mr Frazer Henderson, Team Leader, Transport Bill Team, Scottish Executive;

   Mr Tom MacDonald, Head of Bus and Taxi Policy Branch, Scottish Executive;

   Mrs Caroline Lyon, Solicitor, Scottish Executive;

   Mr Laurence Sullivan, Solicitor, Scottish Executive;

   Bill Barker, Operations Manager, Strategic Waste Policy and Assets, Dumfries and Galloway Council, SCOTS;

   Grahame Lawson, Head of Planning and Transportation, North Lanarkshire Council, SCOTS;

   Councillor Duncan MacIntyre, Argyll and Bute Council, HITRANS;

   Councillor Gordon Mitchell, Shetland Islands Council, HITRANS; and

   Howard Brindley, Co-ordinator, HITRANS

The meeting closed at 5.33 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

26th Meeting, 2004 (Session 2)

Tuesday 23 November 2004

Present:

Fergus Ewing      Dr Sylvia Jackson
Paul Martin        Michael McMahon
Bristow Muldoon (Convener)  David Mundell
Iain Smith

Apologies: Bruce Crawford JP MSP (Deputy Convener) and Tommy Sheridan MSP

The meeting opened at 2.10 pm.

2. **Transport (Scotland) Bill**: The Committee took evidence at Stage 1 from——

Marjory Rodger, Director of Government Relations Scotland, Confederation of Passenger Transport;

Jim Lee, Managing Director, Travel Dundee and Chairman, Confederation of Passenger Transport Scottish Council

Robert Andrew, Deputy Managing Director Stagecoach (Scotland), Confederation of Passenger Transport;

George Mair, Managing Director First Aberdeen, Confederation of Passenger Transport; Councillor Charles Gordon, Leader, Glasgow City Council;

Marshall Poulton, Head of Policy and Planning, Glasgow City Council;

Michael Donnelly, Business Strategy Manager, Glasgow City Council;

Councillor Alistair Watson, Chair, Strathclyde Passenger Transport Authority;

Malcolm Reed, Director General, Strathclyde Passenger Transport Executive;

Douglas Ferguson, Director of Operations, Strathclyde Passenger Transport Executive; and

Valerie Davidson, Head of Financial Services, Strathclyde Passenger Transport Executive

The meeting closed at 4.12 pm.
Present:
Bruce Crawford JP (Deputy Convener) Fergus Ewing
Dr Sylvia Jackson Paul Martin
Michael McMahon Bristow Muldoon (Convener)
David Mundell Tommy Sheridan MSP

Apologies: Iain Smith MSP

The meeting opened at 2.06 pm.

1. **Transport (Scotland) Bill**: The Committee took evidence at Stage 1 from—
   
   Gordon Dewar, Commercial Director, First Group;
   
   Gavin Scott, Policy Manager, Freight Transport Association;
   
   Robert Samson, Director, Rail Passengers Committee Scotland;
   
   James King, Member, Rail Passengers Committee Scotland; and
   
   Neil Greig, Head of Policy, Scotland, AA Motoring Trust

The meeting closed at 4.34 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

28th Meeting, 2004 (Session 2)

Tuesday 7 December 2004

Present:

Bill Butler (Committee Substitute)  Bruce Crawford JP (Deputy Convener)
Fergus Ewing              Dr Sylvia Jackson
Michael McMahon    Bristow Muldoon (Convener)
David Mundell              Tommy Sheridan
Iain Smith

Apologies: Paul Martin MSP

The meeting opened at 2.08 pm.

3. **Transport (Scotland) Bill:** The Committee took evidence at Stage 1 from—

   Councillor Alison Magee, Transport Spokesperson, COSLA;
   Councillor Andrew Burns, Transport Spokesperson, City of Edinburgh Council, COSLA;
   Councillor Joan Mitchell, Chair, Planning and Environment Committee, Dumfries and Galloway Council, COSLA;
   Councillor Alison McInnes, Aberdeenshire Council, COSLA;
   James Fowlie, Policy Manager, COSLA;
   Findlay Taylor, Co-Chair, Roads Authorities and Utilities Committee (Scotland);
   David Morrison, Managing Director, Turriff Contractors Ltd;
   Stuart Ross, Operations Manager, Alfred McAlpine Infrastructure Services Ltd;
   Jim Shields, Business Development Director, Alfred McAlpine Infrastructure Services Ltd;
   Alan Watt, Chief Executive, CECA (Scotland); and
   Iain Duff, Chief Economist, Scottish Council for Development and Industry

The meeting closed at 5.35pm.
The meeting opened at 2.10 pm.

4. **Transport (Scotland) Bill:** The Committee took evidence at Stage 1 from

   Roderick McLeod, Member, Mobility and Access Committee for Scotland;
   Ewan Jones, Member, Mobility and Access Committee for Scotland;
   Jess Barrow, Head of Policy and Public Affairs, Age Concern Scotland;
   Jim Ferguson, Perth and Kinross Pensioners’ Forum, Age Concern Scotland;
   Ross Watson, Chair, Transport, Environment and Rural Affairs Committee, Scottish Youth Parliament;
   Morven Neil MSYP, Scottish Youth Parliament;
   Stephanie Veitch MSYP, Scottish Youth Parliament;
   Kevin Smith, Member, Argyll and Bute Youth Forum
   Frank Stewart, Engineering Build Services Manager, THUS plc and Chairman of NJUG;
   John Taylor, Government Relations Manager, National Grid Transco;
   Rodney Grubb, Scottish and Southern Energy;
   Domhnall Dods, Head of Regulatory Affairs, THUS and Director, UKCTA;
   Tony Cox, Head of Policy and Public Affairs, BT Wholesale; and
   Nancy Saunders, Kingston Communications, Board Director, UKCTA

The meeting closed at 6.36pm.
Present:

Bruce Crawford JP (Deputy Convener) Fergus Ewing
Dr Sylvia Jackson Paul Martin
Michael McMahon Bristow Muldoon (Convener)
David Mundell Iain Smith

Apologies: Tommy Sheridan MSP

The meeting opened at 2.08 pm.

2. Transport (Scotland) Bill: The Committee took evidence at Stage 1 from—

Dr Iain Docherty, School of Business and Management, University of Glasgow
Professor David Begg, Chair, Commission for Integrated Transport
Nicol Stephen MSP, Minister for Transport;
John Ewing, Head of Transport Group, Scottish Executive;
Jim Logie, Divisional Solicitor, Scottish Executive;
Frazer Henderson, Team Leader, Transport Bill Team, Scottish Executive; and
Richard Hadfield, Policy Officer, Transport Bill Team, Scottish Executive.

The meeting was suspended from 3.38 pm to 3.43 pm.

The meeting closed at 5.23 pm.
Present:

Fergus Ewing  Dr Sylvia Jackson
Paul Martin  Michael McMahon
Bristow Muldoon (Convener)  David Mundell
Iain Smith  Tommy Sheridan

Apologies: Bruce Crawford JP (Deputy Convener)

The meeting opened at 2.01 pm.

5. **Transport (Scotland) Bill (in private):** The Committee considered the possible contents of its report.

The meeting closed at 3.59 pm.
Present:

Bruce Crawford JP (Deputy Convener)  Fergus Ewing
Dr Sylvia Jackson   Paul Martin
Michael McMahon   David Mundell
Bristow Muldoon (Convener)   Tommy Sheridan
Ms Margaret Smith

Also present: Brian Monteith MSP

The meeting opened at 2.03 pm.

5. Transport (Scotland) Bill (in private): The Committee agreed the contents of its report subject to specified changes being made. During its consideration of the report the Committee voted on the following amendment to the report—

Fergus Ewing proposed that paragraph 209 of the draft report be deleted:

‘Subject to this caveat, the Committee recommends to the Parliament that the general principles of the Bill be approved.’

And the following text inserted:

‘The Committee recognises that there is support for the principle of having RTPs, but without detailed information as to their composition, boundaries, powers and responsibilities and funding, it is not yet possible to reach any firm conclusion as to the general principles of the Bill.’

The proposal was disagreed to by division: For: 2 (Bruce Crawford, Fergus Ewing). Against: 6 (Sylvia Jackson, Paul Martin, Michael McMahon, Bristow Muldoon, Tommy Sheridan, Margaret Smith). Abstentions: 1 (David Mundell).

The meeting closed at 4.24 pm.
Scottish Parliament
Local Government and Transport Committee

Tuesday 16 November 2004

[THE CONVENER opened the meeting at 14:04]

Transport (Scotland) Bill: Stage 1

The Convener (Bristow Muldoon): I call today’s meeting of the Local Government and Transport Committee to order. The main item on the agenda is stage 1 consideration of the Transport (Scotland) Bill and, as is normally the case with an Executive bill, our first panel of witnesses consists of representatives of the Scottish Executive. I welcome to the committee Jonathan Pryce, who is the head of the transport strategy and legislation division; Frazer Henderson, who is the bill team leader; Tom Macdonald, who is the head of the bus and taxi policy branch; and Caroline Lyon and Laurence Sullivan, who are solicitors with the Executive.

I will give Jonathan Pryce the opportunity to introduce the bill, but I indicate to the witnesses that, when we get to the questioning, we intend to take the three parts of the bill separately. We will start by asking questions that relate to transport partnerships, move on to questions that relate to the road works aspects of the bill and, finally, ask questions on the issues in the miscellaneous part of the bill, including concessionary travel. I invite Jonathan Pryce to make some introductory remarks.

Jonathan Pryce (Scottish Executive Enterprise, Transport and Lifelong Learning Department): I thank the committee for inviting us to give evidence today. We are pleased to have the opportunity to set out the provisions of the bill and give the background to it.

First, I will give a little of the history of how we have got to where we are today. The main policy provisions were set out in May 2003 in the partnership agreement, which outlined the principles that would guide the partnership in developing and implementing its transport policies in Scotland. The partnership agreement was followed in September 2003 by the consultation paper “Scotland’s Transport: Proposals for a New Approach to Transport in Scotland”, which set out a range of options on the establishment of a national transport agency and stronger regional delivery bodies. That consultation process was augmented by a national conference in November 2003, at which delegates from all areas of transport had an opportunity to influence the policy development directly. In 2003, we also conducted a consultation on utility road works and, earlier this year, we consulted local authorities and harbour authorities on simplifying the procedures relating to pedestrian crossings and harbour orders.

Bringing all that consultation together, we published “Scotland’s transport future: The transport white paper—June 2004”, which pretty much set out the framework for the bill. As the convener has mentioned, the bill makes substantive provision in three significant policy areas: the regional partnerships, utility company road works and powers for Scottish ministers to run the concessionary travel schemes that are in hand.

It is also worth noting that we are in the midst of a consultation on the detail of the regional transport partnership provisions. The consultation paper—“Scotland’s Transport Future: Proposals for Statutory Regional Transport Partnerships”, which we launched on 27 October—goes into detailed aspects of regional partnerships. The consultation period will run until the middle of January. Once we have had the feedback from the consultation, we intend to provide the committee with draft illustrative orders that will enable committee members to see what the secondary legislation will look like—the committee will be able to consider that in skeleton form at stage 2.

We would be happy to answer detailed questions on the provisions in the bill. I will speak mostly about regional partnerships; Frazer Henderson will deal with road works; and Tom Macdonald will deal with bus provisions and concessionary fares. We also have with us the two solicitors who have worked closely with us on the bill’s development, if members have any technical legal questions.

The Convener: Thank you for those introductory remarks. Fergus Ewing will open the questions on part 1 of the bill.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Jonathan Pryce mentioned that a consultation, the remit of which is to consult on “the development of the precise boundaries, constitution, functions and financing of the new Transport Partnerships”, was launched on 27 October. Would it not have been better for the Parliament to start considering the bill after that consultation was over, so that we had some idea of what the boundaries, constitution, functions and financing of the partnerships are to be? We are debating a bill that, in that respect, is little more than an enabling bill.

Jonathan Pryce: In response to that, I would say that the consultation paper sets out proposals on—and, in the main, puts forward the Scottish...
Executive’s view on—how to progress the regional transport partnerships. Nevertheless, it is important that we get feedback from that consultation and that we are able to bring the results of consideration of that feedback before the committee. We certainly hope that we will be in a position to do that at stage 2.

Fergus Ewing: Would we not be better off having that feedback before we spend time examining the bill, which will be our prime role as a parliamentary committee for the next several weeks? Why does the Executive not withdraw the bill and bring it back when we know what the boundaries, constitution, functions and financing of the partnerships will be?

Jonathan Pryce: The key thing is that all the matters that we are considering in the consultation paper will be the subject of the secondary legislation. The bill’s primary provisions are in front of the committee now and are open to the committee’s consideration.

Fergus Ewing: I appreciate that the decision was taken by a minister rather than by a civil servant, so it is perhaps difficult for Mr Pryce to answer my question precisely. The responsibility rests with ministers. However, I remember that the last bill that contained so many provisions for making subordinate legislation was the one that dealt with individual learning accounts, which came to a sticky end, as far as I recall.

I have a specific question about one of the few things that we know about the regional transport partnerships. Section 1(2) makes provision on their membership. It states that they should include “a councillor (but only one councillor)” from each council area. Is that not likely to lead to a situation in which a majority party in Scotland—let us have a wild guess and say the Labour Party—will just appoint a councillor from every council that it is likely to control? If that is the case, the fact that only one councillor from each council can be appointed will mean that the partnerships run the risk of being seen as no more than Labour quangos that herald a new age of Labour cronyism. Is that not a danger?

Jonathan Pryce: The bill makes provision for only one council member per local authority on the partnerships because the policy intention is that the regional partnership boards should be lean bodies that are capable of having focused and structured discussions and decision-making processes. That is what drives the proposal that there should be only one councillor per local authority on the partnerships.

Fergus Ewing: You must accept that there is at least a danger that, with one nominee per council, a dominant party will be able to ensure that the representatives on each of the regional partnerships are from that party, which will mean that the partnerships become seen as being dominated by party-political interest.

Jonathan Pryce: I would not like to speculate on what the final political balance would be, but we recognise that there could be an issue of political balance. The minister has acknowledged that and has said that it is something that he will want to consider further when he talks to the regional partnerships around the country. However, he has made it clear that he would like to hold to the principle that there should be only one voting councillor per local authority on the regional partnership boards.

The Convener: I have a question to ask on the back of Fergus Ewing’s, although it is perhaps not as overtly political as his was. Some of the proposed partnerships are relatively small in terms of the number of member authorities. For example, only two member authorities are proposed for the north-east regional transport partnership, which suggests that the number of people on the partnership would be limited. There would be only two councillors and—because two thirds of the places are allocated to councillors—there would be only one other person serving on the partnership. Is that interpretation correct?

14:15

Jonathan Pryce: In the scenario that you describe for the north-east, it is possible for there to be two external members as well as two councillors, because each council could have more than one vote. The provisions of the bill are designed to ensure that at least two thirds of the partnership’s voting weight comes from councils.

In the north-east, it is possible to envisage Aberdeenshire Council and Aberdeen City Council each having one councillor member with two votes and there being two external members with one vote each. It is a relatively complex arrangement to work through.

The Convener: A fairly limited pool of people would still be responsible for taking decisions in the partnership.

Jonathan Pryce: Yes. That is the way in which we have framed the legislation and the way in which we envisage the system working. It is possible—indeed, likely—that non-voting members would also attend board meetings. In that circumstance, the two councils might wish to send along other non-voting representatives as observer members.

Fergus Ewing: The members who are not councillors would be appointed by the Executive, subject to the Parliament’s approval. Is that correct?
Jonathan Pryce: In the first round of appointments, it is intended that the Executive will consult the local authorities that make up regional transport partnerships. Thereafter, appointments will be made by the partnerships, subject to confirmation by Scottish ministers.

Fergus Ewing: So the Executive has the power to appoint external members. That seems to increase the general risk of politicisation.

I return to the answer that you gave to my previous question. You stated that the minister is aware of the problem that I identified and that he is minded to consider it, so it must at least be possible that some change will be proposed. Is the minister contemplating changing the provisions relating to the constitution of regional transport partnerships?

Jonathan Pryce: At the moment, it is difficult for me to say whether there is any likelihood of a change. I explained that the minister was keen to retain the one council, one member arrangement for partnership boards—the element that is specified in the legislation. There is no intention to make a change, but the minister accepts that there is an issue of political balance. We need to consider whether that can be addressed in another way.

Fergus Ewing: I think that I am right in saying that Strathclyde Passenger Transport does not support the provisions relating to membership of regional transport partnerships. Is that your understanding?

Jonathan Pryce: We are discussing a number of issues with staff of Strathclyde Passenger Transport.

Fergus Ewing: I had the benefit of meeting representatives of SPT this morning. Would you not say that one of the body’s advantages is that it includes at least an element of representation from different parties?

Jonathan Pryce: That is the way in which the Strathclyde Passenger Transport Authority is made up at the moment. We are proposing something different.

The Convener: I want to bring in a couple of other members, but I will come back to Fergus Ewing later.

Bruce Crawford (Mid Scotland and Fife) (SNP): Mr Pryce, I hope that you will accept that some committee members are a wee bit concerned that we may be discussing some of the material a little prematurely given that we do not have all the facts about how the boundaries, constitutions and functions of the new transport partnerships will work in practice. You conceded that those issues are out for consultation at this stage.

From paragraphs 12 and 16 of the policy memorandum and from what you have said, it is clear that a considerable amount of secondary legislation will be required. A lot of the bill seems to be predicated on the need for orders, some of which seem to provide the minister with wide and strong powers over the process. As we all know, difficulties can arise if orders are made under the negative and not the affirmative procedure.

In particular, section 2 on the dissolution of RTPs says:

“An order under this section may modify any enactment.”

Again, section 10 allows the minister to use order-making powers to do anything that he likes to an RTP. The way in which the bill is drafted gives the Parliament problems in terms of scrutiny, transparency and understanding the process. As you said earlier, a lot of the material will not come together until stage 2, when you say that we will see it in skeleton form. Do you accept that the Parliament does not have the overlay of legislation that it requires to be able properly to scrutinise the bill?

Jonathan Pryce: The consultation paper is before the committee, so members can see in outline the Executive’s proposals, including its boundary proposals. Our hope is that the Parliament will be able to see rather more detail in the audits at stage 2.

You make a good point about the Parliament’s ability to scrutinise some of the strong powers that Scottish ministers will be able to exercise through secondary legislation. However, many of the orders made under the powers will be subject to the affirmative procedure. That means that the orders will come before the Parliament for approval. In particular, I am thinking of the constitution order under which the partnerships will be set up and the boundaries defined. There will be an opportunity for the committee and the Parliament to approve the make-up of the regional partnerships even after the bill has completed its passage through the Parliament.

Bruce Crawford: I hope that you will accept that the subordinate legislation affirmative procedure can never be as robust as the bill process. For example, the timescales that are involved in the order-making process do not allow for our taking evidence from witnesses.

You will have to forgive me for saying that it will hardly help us if skeleton orders are introduced at stage 2. That will not assist us in our significant evidence taking at stage 1 on constitutional issues, boundaries, functions and financing. By stage 2, the Parliament is getting down to the hard work of line-by-line change. Because we do not have the overlay of the legislation at this stage, we do not have the level of detail that we require,
which makes this feel like a premature stage in the process.

Jonathan Pryce: The only way I feel that I can respond to that is by giving the example of the boundaries. The consultation document includes a set of boundaries and I would entirely expect members to express views on them during the process.

Bruce Crawford: Are you saying that, if we wish, civil servants will come back before the committee to give evidence on boundaries, constitution, functions and financing? If we are to go through the process properly, where does that leave us in terms of the timetabling of the bill?

Jonathan Pryce: The minister will come before the committee towards the end of the stage 1 process. There will be an opportunity at that point to raise issues that members might have encountered in their evidence-taking sessions.

Bruce Crawford: Okay. There are other issues that I would like to raise, but I will do so later in the meeting.

David Mundell (South of Scotland) (Con): I have a specific question about the boundaries. What criteria have you used to divide Scotland into the regions for the purposes of part 1 of the bill?

Jonathan Pryce: Although the consultation paper sets out some of the considerations that we took into account, it is fair to say that we have largely tried to build on the four existing voluntary regional partnerships and to reflect their current division of Scotland. For example, we reflected the fact that, in central and Tay regions, Angus and Dundee are not members of any voluntary partnership by proposing a new partnership, which will include some of the existing south-east Scotland transport partnership authorities. Our fundamental approach to developing the boundaries has been to take the best of existing practice but to ensure that the whole of Scotland is covered by partnership areas.

David Mundell: Although Dumfries and Galloway has had contact with the west of Scotland transport partnership in the past, it does not really fit into any of the existing areas and it might not wish to become part of WESTRANS. However, under the strong powers of the bill, it will be required to become part of the regional transport partnership and will therefore have money requisitioned.

Jonathan Pryce: Dumfries and Galloway is a member of WESTRANS; it is not a member of Strathclyde Passenger Transport, but we should remember that some areas of other local authority members of WESTRANS are also not covered by SPT. The policy is that all Scottish local authorities should be a member of one or other partnership. Like the rest of the country, Dumfries and Galloway has transport links with other authorities and it is reasonable that it should participate in a partnership with other local authorities.

David Mundell: So you would rule out any proposal to make Dumfries and Galloway a partnership area on its own. However, Dumfries and Galloway is a former regional council area. Given that you are using those criteria and that strategic framework in this exercise, why is it not capable of remaining an area on its own?

Jonathan Pryce: The current policy is that all local authorities need to be a member of a partnership. Under the bill, it is not possible for there to be a single local authority partnership.

David Mundell: Is it not a little unusual to require people to be part of a partnership? After all, a partnership should be about working together for mutual benefit instead of requiring people to be part of it and requisitioning funds from them to pay their dues.

Jonathan Pryce: It is certainly the intention that the local authorities in the partnership will work together. Obviously, that raises questions about funding arrangements and the extent to which local authorities are prepared to work together in partnership and by consensus. However, the proposals are underpinned by the presumption that the councils will take a consensual approach. The position of Dumfries and Galloway vis-à-vis the partnerships is pretty much as I have set out: under the policy, it needs to be a member of a partnership with other local authorities. However, we are aware of its reluctance to enter into such a partnership. I have no doubt that the authority will make that entirely clear when it responds to the consultation and will also let us know about which partnership would be the best one for it to go into if it were not able, as you say, to be in a partnership by itself.

14:30

David Mundell: I want to follow up the general point about requisitioning funding. Why has the Executive chosen that route rather than granting funds directly?

Jonathan Pryce: We acknowledge that requisitioning is not always popular with local authorities, but we have not found any other straightforward way of arranging funding that would retain the local democratic principle. The Executive could fund the partnerships directly, but at that point the member local authorities would be out of the funding and accountability loop. Our view was that on balance it was better to provide accountability through the local democratic process whereby the councils, rather than the Executive, were the paymasters.
David Mundell: On the accountability front, how will the process work? I refer to the WESTRANS example. I am a resident of Dumfries and Galloway and a council tax payer. How is having one councillor from Dumfries and Galloway on the WESTRANS board providing accountability?

Jonathan Pryce: That councillor will have weight in determining precisely what the partnership board’s spending is and he or she will be accountable to his or her council and constituents. That is the link. A local democratic representative is on the board.

David Mundell: The councillor will not have weight if they have been outvoted by the other 13 councillors on the board.

Jonathan Pryce: That brings us back to the voting arrangements and the intention that councils should as far as possible work together and take a consensual approach.

The Convener: I have a couple of questions. First, if we assume that the bill is passed and the regional transport partnerships are established, would the partnerships, rather than local authorities, not be the appropriate bodies to hold powers in relation to the introduction or promotion of congestion charging, because they would be able to balance the interests of a whole region as opposed to those of an individual authority? Does the Executive have a view on that?

Jonathan Pryce: It will be possible for the partnerships, in consultation with the councils, to decide what functions they wish to transfer from the councils. The bill and the orders that will go with it will make the scenario that you describe possible. In certain parts of the country, congestion charging could be the responsibility of the regional partnership, but that will largely be a decision for the councils within the partnership to take. They would have to make a recommendation to Scottish ministers, who could then promote the order that would give effect to the recommendation. That is all part of the secondary legislation process of deciding what functions councils might want to transfer to regional level.

The Convener: Does the Executive have a view on whether that would be a desirable development?

Jonathan Pryce: Our view is that it is for the councils to make their own proposals about what functions should move.

The Convener: My second question relates specifically to what will become the south-east partnership in the SESTRAN area. I am aware that SESTRAN includes Forth Estuary Transport Authority as one of its members. How do you envisage the new south-east partnership relating to FETA?

Jonathan Pryce: It is perfectly possible for the arrangements to continue much as they are at the moment; FETA would not be a member of the partnership, but it could work closely with it. The detailed arrangements for FETA will depend on the outcome of the bridges review, which is ongoing. A separate process is under way to look at the management of and operational arrangements for the toll bridges in Scotland. Options for change to FETA and the Forth road bridge will be considered in that context.

Iain Smith (North East Fife) (LD): I welcome the general intentions behind the regional transport partnerships, but I am slightly concerned about one or two of the things that I have heard today about the policy position. I am not entirely convinced—and I wait to be convinced by you or, later, by the minister—that the right approach is to say that every council must be a member of a certain regional transport partnership, even if it is not logical for it to be a member of that partnership. For example, it is not immediately obvious why Dumfries and Galloway Council needs to be in the same regional transport partnership as the greater Glasgow area.

Another issue is the central and Tay boundary. It is not entirely clear to me what the regional transport partnership requirements are between Arbroath and Crianlarich, for example. I am not comfortable with that as a policy initiative.

A specific point about Fife, which I have raised a few times, is the fact that Fife Council is being put into a regional transport partnership with the south-east. That makes sense for most of Fife, but there are clear links between other parts of Fife and the central and Tay area, yet they would not be part of that regional transport partnership. Can you comment on those issues?

Jonathan Pryce: Much as I wish that it were possible, I do not think that any drawing of boundaries will be perfect. No drawing of boundaries will satisfy every local authority and everyone who has an interest in the new partnerships and where their boundaries lie. There will always have to be some compromise when we draw a dividing line between parts of the country.

We have made it clear that we would consider splitting a local authority area; therefore, it would be possible to address the issue that you raise in relation to north-east Fife and its linkages to Dundee across the Tay bridge. Although we know that that is not something that Fife Council is keen on, if it told us that it felt that that was the best thing for its area, we would consider that. It is worth mentioning that, as things stand, there is a linkage between Dundee and Fife in the context of the Tay bridge joint board.
**Iain Smith:** Fife people such as myself never want to see Fife split for any reason. The point that I am making is that there is no flexibility in the policy or the consultation document: a council has to be a member of one regional transport partnership or another although, in most areas, there is going to be a significant overlap at the edges. Fife is a good example of that. Where would you draw the line between the part that would go with Dundee and the part that would come south to Edinburgh? That would be a difficult thing to do. I am not sure that there is enough flexibility in what is proposed at present to take such issues on board. The answer might lie in observer membership of partnerships, but that might need to be specified.

**Jonathan Pryce:** You make a very good point about observer membership for neighbouring partnerships where there is such clear overlap. We are faced with a situation in which we have to draw boundaries and ensure that every part of Scotland is in only one partnership because the partnerships are to be capable of carrying out executive delivery functions. They could take on some of the transport functions of their constituent local authorities; therefore, we need to know where the dividing lines lie. We do not have the luxury of saying that Fife can be in, for example, the city region planning arrangement for Edinburgh as well as the city region planning arrangement for Dundee.

**Iain Smith:** The consultation paper provides three models for the development of regional transport partnerships that would allow councils to start at the lowest level and work up to the top or, I suppose, vice versa. Is there any opportunity within that for a partnership to have different functions in different parts of its area? For example, the transfer of functions to the west and south-west partnership might be less relevant for Dumfries and Galloway Council than for the councils that are in the SPT area. Will partnerships have the opportunity to come to arrangements whereby different functions are carried out in different parts of their area?

**Jonathan Pryce:** It is not the intention that there should be any difference among councils within a partnership area on the degree of function that moves to the regional level. I will need to check whether such an arrangement would be possible under the bill as it is currently framed. However, we have not ruled out the possibility that management arrangements could change where particular functions are delivered. For example, for the west and south-west partnership, it might well be that all public transport functions might be vested in the partnership, but an agency or local-office arrangement could plausibly allow services in Dumfries and Galloway to be delivered locally rather than from the heart of the partnership area. I cannot say precisely how such an arrangement would work, but the partnership could certainly explore those possibilities. That might meet some of the concerns that have been expressed this afternoon.

**The Convener:** I ask Bruce Crawford to keep his questions on part 1 as brief as possible so that we can move on to consider other parts of the bill.

**Bruce Crawford:** I recognise that dividing powers between councils and regional transport partnerships is a delicate balance to get right, given that local authorities have a legitimate democratic interest. However, some critics have said that the need for consensus and for partnership working will simply create toothless wonders without the real powers to do the job. An example of that is section 8, which deals with the duty of constituent councils and other public bodies in respect of transport strategies. The catch-all phrase “so far as possible” appears in every subsection of section 8. What consideration was given to providing the regional transport partnerships with more powers of direction so that the critics’ “toothless wonder” tag could be lost?

**Jonathan Pryce:** You have certainly put your finger on the approach that we have adopted. The requirement to produce a regional transport strategy that is binding on the constituent local authorities provides the mechanism by which the regional transport partnership can provide significant direction to those local authorities.

The use of the phrase “so far as possible” in the drafting simply reflects the fact that we need to get the balance right. It reflects the reality, which is that the duty will bite on the constituent local authorities only in so far as that is possible. If there is a view that the duty should be stronger than that, we could certainly explore the legal possibilities.

**Bruce Crawford:** I also want to ask about the intention to establish the regional transport partnerships as bodies corporate. If I remember correctly, Scottish Water was established as a body corporate under the Water Industry (Scotland) Act 2002. I read in the policy memorandum about the suggestions that you have made for the make-up of those bodies corporate, such as having joint boards or following existing arrangements. Did you examine the possibility of creating a public sector company limited by guarantee, which would be a more innovative model?

14:45

**Jonathan Pryce:** We looked at a range of options for the new regional bodies—that was the subject of the consultation in September 2003. As I recall, we did not get a significant level of support
for the company option, although it is fair to say that we did not get a huge response on the best approach to take. We sought to take a bespoke approach, which is particularly suitable for transport, bringing together members from each local authority while ensuring that there is some external expertise.

Bruce Crawford: That could still happen in a public sector company. The organisation could have that membership but be formed differently. I will give an example to illustrate why I asked the question. If at some stage in the future we were to decide to have another bridge across the Forth because of congestion problems—I am not saying that that would be the right option—that would be extremely expensive. It would, no doubt, gobble up all the Scottish Executive’s transport budget for some time. If, in the current environment and with the body corporate that you envisage in the bill, the regional transport partnership was the prime mover behind that, all that expenditure would score against public expenditure requirements. Am I right to say that if the body was a public sector company limited by guarantee, it could borrow from future years on the strength of its income from tolling or whatever, and that that would not score against public sector borrowing requirements? That would be a more innovative model and would release resources.

Jonathan Pryce: The financial question whether the sort of company that you describe would take expenditure off the balance sheet is complex. A complex analysis would be required to decide whether something would remain on the public sector balance sheet. I honestly cannot say whether the aim that you suggest would be achieved—it might. Under the proposed arrangements, it is open to a regional transport partnership to set up a company. It will have most of the attributes of a local authority and as it is possible for local authorities to set up companies limited by guarantee, it is perfectly possible that a regional transport partnership could do that. If there was a specific project of the nature that you describe, that option could be explored further.

Bruce Crawford: I understand the public sector model—for example, Perth and Kinross Recreational Facilities Ltd is a company limited by guarantee but that does not necessarily prevent it scoring against public expenditure. It would be useful if the Executive officials could take the suggestion away, put it through their complex mincer and come back to tell us whether it is feasible. The committee might want to examine the option further.

Jonathan Pryce: I do not think that something that was set up separately, outside the existing structures, would alter the balance sheet treatment, nor do I think that we could come back to you and give you a confident assessment of whether something would be on or off the balance sheet, simply because that is really a matter for Audit Scotland. It would consider the matter if we came forward with firm plans and, in my experience, Audit Scotland considers such matters only once a body has been created. However, I am happy to reflect on that matter.

Bruce Crawford: With due respect, we will have to vote on whether the bill is satisfactory. Some members may think that another model would be more satisfactory, but we need all the evidence that we can get to allow us to decide whether to support the bill. There must be some compulsion on civil servants to discuss the matter with Audit Scotland, if that is required, and to present to us the full range of available options. After all, you have presented other available options. We are simply asking for an option that is not on the table at present.

Jonathan Pryce: You raise the general point of the extent to which such a body would be able to take its borrowing off the balance sheet. I am happy to explore that issue with my finance colleagues. However, at present, I am not confident that we will give you the material that you want.

Iain Smith: If Mr Pryce is going to do that examination, I ask him also to consider the implications for the accountability of the members of such a public company limited by guarantee—rather than a body corporate—to their nominating bodies.

Fergus Ewing: Am I right that the bill will impose a sole duty on the transport partnerships, which is to draw up a strategy for transport in their regions?

Jonathan Pryce: That is the single main duty that will be placed on the partnerships from the outset.

Fergus Ewing: Is it the sole duty in the bill as drafted?

Jonathan Pryce: It is the sole duty that the partnerships will get at the outset, except in the west of Scotland, where the policy intention is clear that the board of the partnership will get powers that at present lie with Strathclyde Passenger Transport.

Fergus Ewing: My question was whether it will be the sole duty in the statute—I think that the answer is yes. Is it correct that, under the Transport (Scotland) Act 2001, the Scottish ministers already have powers to require any body to prepare a strategy for transport and that the Scottish ministers could therefore require Highlands and Islands strategic transport partnership, WESTRANS and other such bodies to do that?
**Jonathan Pryce:** That is not the approach that we have taken.

**Fergus Ewing:** My question is whether the legal capacity exists for ministers to use the power—which I think is contained in section 1 of the 2001 act—to require any body that they want, including existing bodies that do good work such as HITRANS, to carry out the sole duty that will initially be conferred on the new regional transport partnerships under the bill.

**Jonathan Pryce:** I think that, under the 2001 act, ministers can require bodies to produce a joint transport strategy.

**Fergus Ewing:** I am glad for that clarification, because that is what I thought. I am left metaphorically scratching my head—as the public may be doing—and asking what the new bodies are for, what they will do and whether they will be talking shops. The estimated cost of the new bodies is £2.5 million, but are they necessary? Would we not be better sticking with the existing bodies and providing them, on a voluntary basis, with additional power or resources, if that is what is required? Why do we need the regional transport partnerships, at a cost of around £2.5 million?

**Jonathan Pryce:** The framework that is set out in the bill will provide not only a requirement to produce a regional transport strategy, but a duty on the constituent councils to co-operate with that strategy. I do not believe that that is part of the 2001 act.

**Fergus Ewing:** I see. Can you give, say, three examples of councils that are not co-operating at present and which have therefore led the Executive to introduce the new statutory model?

**Jonathan Pryce:** It would not be right for me to go into detail. However, it is important that councils should have to co-operate with the provisions that are set out in the regional transport strategy. That is not the way in which the existing joint transport strategies work.

**Fergus Ewing:** Are you not able to give us examples?

**Jonathan Pryce:** I would not like to give specific examples, but I am aware of instances of friction between local authorities in fulfilling their transport functions.

**Fergus Ewing:** I am not aware of any legislation that can abolish friction.

**The Convener:** We move on to part 2 of the bill, on road works.

**David Mundell:** I have asked about how many prosecutions there have been under the New Roads and Street Works Act 1991, but my questions were answered by the Scottish Executive Justice Department, rather than the Enterprise, Transport and Lifelong Learning Department. What research have you done on the matter and why do you consider that the existing provisions have not worked adequately?

**Frazer Henderson (Scottish Executive Enterprise, Transport and Lifelong Learning Department):** To our knowledge, there have been no prosecutions under the 1991 act. Why that is the case is a matter for procurators fiscal.

**David Mundell:** I do not agree, because there is a wider issue. Elaborate provisions currently govern the digging up of roads throughout Scotland, but the anecdotal evidence is that the public do not regard the situation, since the passing of the 1991 act, as satisfactory and no one has been prosecuted for being in breach of the act’s provisions. How can we be confident that additional legislation will make the situation better?

**Frazer Henderson:** You will be aware that the bill would uprate the level of fines from level 3—the current level, which is £1,000—to levels 4 and 5. If a summary offence occurs, procurators fiscal might take a different view about prosecuting the offence vis-à-vis other offences that they must consider—I am not trying to second-guess how procurators fiscal would address the matter. We considered the offences, in particular administrative offences, and identified four offences under the 1991 act that we thought might more appropriately be dealt with by fixed-penalty notices.

**David Mundell:** Do you understand my difficulty? No one has been fined under the existing provisions, so it cannot be argued that people disregard them because they are too lenient. Simply to change the provisions will achieve nothing unless they are enforced. Surely the first step should be to enforce the current provisions, rather than to introduce new measures.

**Frazer Henderson:** I note your comments.

**The Convener:** Perhaps we can develop the point. Mr Mundell asked about prosecutions, but the Executive intends the bill to reduce inconvenience caused by congestion and to address matters such as the quality and safety of reinstatements. Many utility companies contend that the congestion that is caused by road works that they initiate is not huge in relation to the overall congestion on Scottish roads. Has there been a statistical analysis of the scale of the problem? What impact would the bill be likely to have?

15:00

**Frazer Henderson:** There are common figures for congestion. It is estimated that 65 per cent of
congestion is caused by the sheer volume of vehicles on the road. A further 25 per cent is caused by incidents, which could range from people double parking to serious accidents. That leaves 10 per cent, which is caused by road works of all types.

The utility companies directly cause about 6 or 7 per cent of congestion on the roads. That congestion can take many forms. Around 88 per cent of it is due to roads being narrowed so that work can be undertaken. A further 10 per cent is due to shuttling services where traffic lights have to be put up and traffic has to be constrained; such congestion and its social cost is therefore much greater. The remaining 2 per cent is due to diversions that are put in place when it is just not feasible to put in a shuttling service. Those are the figures, and I do not think that any of the utility companies would demur from them. Such road works probably cause around 6 to 7 per cent of all congestion.

The Convener: Working on the assumption that much of the work that is currently going on will still be undertaken after the laying of new regulations, what impact do you anticipate that the bill will have on reducing the amount of congestion attributable to the actions of utility companies?

Frazer Henderson: We are seeking to improve the co-ordination and co-operation between utility companies and road works authorities. It is very difficult to estimate the likely reduction in congestion because that will depend on the manner in which all parties co-operate in implementing the planning requirements.

We estimate—I think that this is mentioned in the financial memorandum—that even a relatively minor reduction in congestion will generate a business benefit of millions of pounds. The figure that we quoted is that congestion caused by road works by the utility companies and the road works authorities cost the United Kingdom economy around £2.4 billion. Even a 10 per cent reduction on that figure is substantial. That is the sort of figure that we are thinking about, but, as I say, we have no figure in mind for the likely reduction.

Fergus Ewing: Your evidence so far seems to be proffered on the assumption that all road works are occasioned by the utility companies, but that is obviously not true. What proportion of the total is caused by the utility companies?

Frazer Henderson: It is difficult to get a figure for that. One of the reasons for that is that the Scottish road works register, which contains details of road works, does not contain all information sets. We are seeking to redress that situation so that all information will be placed on the register. Once that happens, we will be in a better position to identify which road works are attributable to utility companies and which are attributable to road works authorities.

Anecdotal evidence—and that is all that it can be because we do not have the complete information set—is that the split could be 70:30. I am talking about 60 to 70 per cent of road works being caused by the utility companies and 30 to 40 per cent being caused by the road works authorities. However, as I said, that is purely anecdotal.

Fergus Ewing: I think that we are going to hear from the national joint utilities group later. While I am no expert, I understand that it will dispute those statistics. If you do not have the statistics, how were you able to quote those percentages for the causation of congestion?

Frazer Henderson: The congestion figures were taken from a 1992 report by the Transport Research Laboratory. They were, I believe, based on a sample and on an extrapolation taken thereafter.

Fergus Ewing: So, at best, the statistic is 12 years old—and probably older.

Frazer Henderson: Yes, unfortunately.

Fergus Ewing: If the statistic is at least 12 years old, do you think that it is of any use now?

Frazer Henderson: I think that it gives an indication. Clearly, many changes have taken place over the intervening period—especially among the utility companies. For example, many more telecommunications companies have come on stream. More research needs to be done.

Fergus Ewing: I wonder whether you can clarify something that will help us when we take evidence from the national joint utilities group. I know that this issue has been considered during the consultation, because utility companies have already expressed their concerns to you. Am I right in saying that the bill will subject utility companies to civil penalties if they infringe the law? If so, should those penalties not be exacted from anyone who is responsible for carrying out road works but who fails to do so and infringes the law? Should there not be equal treatment for utility companies, local authorities and the companies responsible for trunk road maintenance? Are they treated equally in the bill?

Frazer Henderson: As you know, the bill amplifies the provisions of the New Roads and Street Works Act 1991. There is indeed an uprating in the penalties that will apply to utility companies. The Scottish road works commissioner can also apply penalties, through regulations, if utility companies are not co-operating in the provision of information to the register.
A different regime applies to roads authorities. Under the Roads (Scotland) Act 1984, they have a duty to maintain the roads. The Local Government Committee was instrumental in the Local Government in Scotland Act 2003. That act ensures that the roads authorities have to act in accordance with best value. They are therefore subject to the Accounts Commission. As they carry out their duty to maintain the roads, the roads authorities have to use statutory indicators, but they are also subject—as we have made clear in the bill—to direction by the road works commissioner, who can ensure that they co-ordinate their works with the works of the statutory undertakers. The commissioner can state what steps the roads authorities should take to ensure that co-ordination.

The commissioner therefore has clear intervention powers with the roads authorities and clear fining powers with the utility companies. Those fining powers are supplemented by codes of practice. We are trying to have balance in the bill by ensuring that measures are in place to encourage good practice. However, the fines are being uprated.

Fergus Ewing: I thank you for that answer, but it does not really address the question put. Everyone should be treated equally. If there is to be a system of fines, anyone who fails to carry out road works properly should be fined. The minister does not accept that view, or the legislation would not apply civil penalties only to utility companies.

I will put to you the rationale that has been put to me by some utility companies. They—whether it is Thus, or Cable and Wireless or British Telecom—have a commercial interest in ensuring that works are completed as quickly as possible, because until works are completed they cannot start charging their customers and receiving revenue. Utility companies have a direct financial interest in carrying out the works on time, rather than allowing a delay to occur. The local authority, however, does not have any obvious interest in ensuring that every road work is carried out on time, because there is no sanction. No obvious benefit will accrue to a local authority through ensuring that road works are carried out on time and that there is no infringement of the existing rules.

Frazer Henderson: The road works authority has a duty to maintain the roads, which are a public asset. There are provisions under the various acts that we have been speaking about whereby the Accounts Commission can come down hard on the local authority. As I understand it, there are also provisions for ministers to intervene directly with local authorities to ensure that they are pursuing best value under the Local Government in Scotland Act 2003.

Fergus Ewing: Does the Accounts Commission have the power to exact civil penalties? If so, has that power ever been used? Have ministers ever intervened?

Frazer Henderson: I am sorry—I do not know the answer to that question.

Fergus Ewing: Perhaps we could find that out. There seems to be a two-tier system—it is road works apartheid. Utility companies will be fined. They will be hounded and pursued. Meanwhile, local authorities are subject to no sanctions at all. How can that make sense? Surely there should be one rule for all and, if the public want road works to be carried out properly and promptly, there should be one regime to which everyone is subject. Surely that is fair and easy to explain, and that is what we should have before us.

Jonathan Pryce: We are indeed looking at a bill that does not put the utility companies on the same basis as the road works authorities. That is inevitable, as the road works authorities are the owners of the asset. They are the owners of the road and, as Frazer Henderson said, they have a statutory duty to deliver best value and to ensure the smooth operation of the traffic on those roads. The incentives for the utility companies, strong though they may be, are rather different. Because of that aspect, the road works authorities and the utility companies have a different background to their reason for being on the road and carrying out road works. The bill is not just about the carrying out of the road works; it also places a duty on the road works authority to co-ordinate the works that take place on its roads.

Fergus Ewing: Are the road works authorities liable—and have they been liable—to enter details of road works on to the Scottish road works register?

Jonathan Pryce: Yes.

Fergus Ewing: Have they done so?

Frazer Henderson: Yes, some have done so. As I mentioned at the outset, we want to ensure that all information sets are placed in the register by all parties, so that we have a complete record.

Fergus Ewing: So some road works authorities have not done so. Could you be more precise, perhaps in a letter to the committee, about the facts on this matter?

Frazer Henderson: We can give you information about the notices that have been applied on the register for the past year.

Bruce Crawford: This is an intriguing area. Who will be fined and who will not be fined? If I have understood you correctly, the road works authority and the local authority cannot be fined because they are responsible for and own the
road, and the Scottish Executive is in the same boat, because it owns the trunk roads. Where does that leave BEAR Scotland or any of the other premium providers? They are not the owners but are simply discharging a duty on behalf of the Executive. Will it be possible for them to be fined? It seems that we need to explore this area a bit more.

While we are at it, could you tell us the number of occasions on which the Accounts Commission’s powers have been used against local authorities? If you cannot tell us that today, it would form useful follow-up information.

15:15

Jonathan Pryce: We cannot answer on the latter point today. As I understand it, the bill’s provisions will apply to the organisation that has responsibility for the road works. In other words, the Scottish ministers are accountable for any works on the trunk road network and, as you say, BEAR Scotland and Amey Highways are simply acting as our agents in carrying out the work.

Bruce Crawford: The Scottish Executive will not be playing on the same playing field as the utilities because it will in effect have an opt-out from being fined. You would perhaps not use the term “opt-out”, but you know where I am coming from with that terminology.

Jonathan Pryce: That is exactly what I was going to say; I would not think of it as an opt-out. The Scottish ministers have a responsibility to ensure the smooth operation of the trunk road network, want to ensure that at all times and therefore seek to minimise any disruption.

Tommy Sheridan (Glasgow) (SSP): I will pursue the idea of the proposed Scottish road works commissioner. My impression from surgeries that I have held over the years as a local councillor and as an MSP is that the big complaint from the public is about the amount of road works and the number of different companies that do them. Constituents ask why, rather than the road being dug up again and again, it cannot just be dug up once and have everything done then. My worry is that the commissioner might not have the resources and power to act as an overarching agent for all the work. Although there is pressure on private sector companies to get the job done as quickly as possible, there is not enough pressure on them to ensure that they put the road back into the condition in which they found it, and that is a major problem. Local authorities also have pressures on budgets for the equipment that they have to hire for road works, and that makes them try to get the job done quickly. I ask you to assure us that the commissioner will be properly resourced and will have the powers to stop the fiasco of several pieces of road being dug up at different times over the course of 12 or 24 months to the annoyance and inconvenience of ordinary people. I think that there are weaknesses in the plan, but I ask you for that assurance.

Frazer Henderson: The statutory register that we mention in the bill—the Scottish road works register—will be the principal tool for undertaking the co-ordination activities that your constituents constantly state are lacking. Under the auspices of the commissioner, it will be the principal way that we ensure that we get proper co-ordination and co-operation between road works authorities to minimise the impact of road works throughout Scotland. That is the ultimate aim and we are providing a planning tool to achieve it.

Tommy Sheridan: If there are future problems in local authority areas, the commissioner, rather than local authorities, will be responsible for solving them. Will the commissioner have the authority to be able to bridge the gap between the local authorities and the private utilities?

Frazer Henderson: We think of the commissioner as an overarching corporate body that will bring the utility companies and the road works authorities together using the register as the principal planning tool. By reference to that planning tool and the information that it contains, the commissioner will ensure that quality is maintained. I think that the bill refers to at least eight occasions on which the commissioner can resolve disputes between the road works authorities and the utility companies with the aim of smoothing through better co-ordination of road works, which is what your constituents have said that they want.

Iain Smith: I do not think that anyone would argue that the 1991 act is working satisfactorily. I can give a good example from my constituency. Work under a contract to replace water mains along the High Street in Newburgh was meant to take six months, but it took 18 months and caused great disruption for the community and businesses. Even when the work was completed, the reinstatements were not done to a satisfactory standard, which meant even more disruption to the local community while things were fixed. How will
the bill help to prevent such things from happening again?

Frazer Henderson: One of the major irritations with major water mains going in is that substantial works are required, but provisions in the bill mean that road excavations for substantial works cannot occur again within three years. That said, the emphasis is on all utility companies co-operating and co-ordinating activities in such a manner that roads are not constantly being opened.

I do not want to talk about the specifics of the case that you have mentioned, as I do not know the details, but if a utility company has stated that it will take X period of time to undertake works, that will be placed on the register and the road works authority will be aware of it. I can only assume that something untoward must have happened that caused the road works to go beyond the specified period of time.

Iain Smith: Nothing particularly untoward happened—there were simply bad contractors and there was bad management of the scheme. I had hoped that we would try to address such matters with the bill. Will the bill enable roads authorities to work to try to ensure that, when there is clear evidence of bad management of a scheme by contractors, roads authorities or the commissioner can take action to deal with that?

Frazer Henderson: The roads authority can currently take action if it thinks that there have been delays in any works that are taking place under the 1991 act. It can step in and undertake the work itself, and fine and/or invoice the relevant utility company for backfill, for example.

Through the bill, we hope that the commissioner will have access to the register in which all the information set will be placed and that the commissioner will be able to identify where there are quality issues from audit work and information that is provided to the commissioner by the road works authorities. The commissioner will then have powers under the bill to ensure that utility companies co-operate with road works authorities in providing information. If the information set is inaccurate, the commissioner will be able to step in and if there are quality issues, the commissioner will have wide-ranging powers to seek to address them with the utility company. We are seeking to improve the information sets that are available and to ensure that the commissioner has those available to him to undertake interrogation, audit and so on across a range of issues.

Iain Smith: I am not entirely convinced that you have answered my question. Information was available and people knew that work on the contract was taking three times longer than it should have taken and that the quality of work was not up to standard, but it still seemed impossible for the roads authority to take sufficient action to resolve the problem because its powers were essentially limited to reinstatement issues. However, there was bad management and poor supervision of a contract by the utility company, which meant that the work took longer than it should have done. Is there anything in the bill that will mean that if utility companies say that they will take six months to do a job but go beyond that six months, something can be done to deal with the matter?

Frazer Henderson: I would like to reflect on that and come back to the committee on it. I want to check the details.

Iain Smith: I would be grateful if you could do that, because one of the fundamental frustrations of the public is when utility works take significantly longer than required and cause more disruption. There is no point having a street works register saying that a job will take six months if it takes 18 months. That would be of no value to anyone.

Caroline Lyon (Scottish Executive Legal and Parliamentary Services): The power may already exist in the 1991 act, but perhaps the road works authorities are not using it. The extended powers in the bill will mean that they will have to co-ordinate their works properly, which may be an incentive for them to use the powers in the 1991 act to avoid any unnecessary delay.

Iain Smith: With deep respect, I am not sure how the roads authority can do that if the failure is on the part of the utility company to supervise its contracts adequately. Surely the roads authority cannot take over the running of the contract, which is the central problem.

Caroline Lyon: Under the 1991 act, the road works authority has quite a wide power to take whatever steps are necessary

“to mitigate or discontinue the obstruction.”

Bruce Crawford: We will be getting quite a superhighwayman. The commissioner will promote good practice and co-ordinate co-operation, which I understand, and will ensure compliance, which may lead to enforcement and fixed penalties. If those penalties are objected to, court action will no doubt follow, which will involve substantial amounts of time. The commissioner will monitor the performance of statutory undertakers, I presume from Benbecula to Berwick and from Wick to Wigtown. It will be a big job for the individual, but I cannot reconcile that big job with the costs, which it is suggested will be in the order of £200,000 initially, with running costs of £160,000 thereafter. Does that mean that in effect the job will be done by the person and a dog, or will they have a substantial number of staff to underpin them? Monitoring the performance of statutory undertakers will be a job in itself, even
though we will get feedback from the roads authorities. If cases end up in court action to back up fixed penalties, a substantial amount of work will be required to ensure that the action is successful. We have the detail of what the individual will do, but I am concerned that they will not have the wherewithal to make it happen. Maybe you will tell me differently.

**Frazer Henderson:** You are right to identify that we are talking about figures of £160,000 and £200,000 to start with, which are for a commissioner plus a small staff unit. We envisage the commissioner working closely with the roads authorities and utilities committee Scotland—which, as the name suggests, is made up of various parties—to drive forward improvements. That committee currently has a key role in terms of the register. From the dealings that we have had with that committee, we know that it wishes to improve the situation to drive up quality and ensure that the register has more information. The commissioner will not be going against the grain. We are all moving forward together. Support will be available to the commissioner from within the utility companies and the road works authorities.

The picture that you paint—perhaps unintentionally—is that an awful lot will be happening and there will be a lot of disputes. I hope, and the minister hopes, that that will not be the case. We are putting in place provisions that will assist the road works authorities and the utility companies to achieve what they each wish to do. The utility companies want to provide a quality product and the road works authorities want to ensure that their assets are maintained at all times.

I note the concerns of the committee about resourcing. Clearly, we may need to reflect on that as issues come out at stage 1.

**Bruce Crawford:** I appreciate the grain of the argument. However, utility companies will realise that the Scottish road works commissioner has a lot of teeth but cannot bite, because he will not have the wherewithal to do the work, given that he will have a small staff unit and no inspectors or staff to process disputes with road companies about fixed penalties. The utility companies will say, "He might be a big scary man, but he cannot do much to me, so we will carry on doing what we are doing."

**Frazer Henderson:** Regulations made under the bill could enable the commissioner to fine the utility companies.

**Bruce Crawford:** Let us tease that out. If a company objected to a fine imposed by the commissioner, who would do the case work and produce the evidence for the procurator fiscal? Would that be done by the commissioner and his small unit? Do you understand my point?

**Frazer Henderson:** I note it.

**David Mundell:** In light of Mr Henderson’s previous answers, I ask that the clerk write to the Lord Advocate to ask for his view on why there have been no prosecutions under the 1991 act. Perhaps the Lord Advocate can tell us how many reports have been made under the 1991 act and why they have not led to prosecutions.

The evidence that we have heard has gone round in a circle. Iain Smith described a scenario that could have led to a prosecution under the 1991 act, as Ms Lyon clearly indicated, although it did not lead to one. I have listened to all the evidence, but I am still not clear about how the measures in the bill will lead to prosecutions. What purpose will part 2 of the bill serve if there are no prosecutions under the enhanced measures that it introduces? What is Mr Henderson’s view on that?

**Frazer Henderson:** One of the commissioner’s key roles will be to ensure that the road works authorities fulfil their duties, which include ensuring that the utility companies perform as they should in relation to the road works authorities’ assets. Therefore, the commissioner will be likely to seek from the road works authorities information about the state of roads and about why the authorities might not be co-ordinating the works of utility companies or ensuring that those companies undertake their work in the manner that is expected of them.

**David Mundell:** That is an interesting reply. Basically, you are saying that you regard the local authorities as the problem, because they do not enforce the existing legislation. The purpose of the commissioner will be to gee them up. Is that right?

**Frazer Henderson:** One of the commissioner’s principal roles will be to ensure that the provisions of the 1991 act and the bill that relate to road works are addressed.

**David Mundell:** Could the minister not do that? If local authorities are simply not enforcing the existing legislation, must we invent a new role in order for someone to tell local authorities to use the powers that they already have?

**Frazer Henderson:** One of the principal reasons for creating the role of Scottish road works commissioner is that we want to put the Scottish road works register on a statutory footing and we need a statutory body to keep the register. In addition to that, we identified deficiencies in the 1991 act—perhaps “deficiencies” is not the right word. Under the bill, the commissioner will take forward the monitoring, compliance and good practice elements that emanate from the use of the register as an information set.
David Mundell: I would like Mr Pryce to clarify a small matter in relation to Fergus Ewing’s point about congestion. I understand that local authorities have a duty to maintain roads, but I am not aware of any provisions that place local authorities under a duty to minimise congestion, although that seemed to be the implication of what Mr Pryce said.

Jonathan Pryce: I am not suggesting that they have an explicit statutory duty to minimise congestion on the roads. However, given that they are the owner of the road and the traffic manager for that part of the local road network, in fulfilling their duties on best value they will want to ensure that the traffic flows smoothly on their roads.

David Mundell: Yes, but they do not have a specific duty to minimise congestion, do they?

Jonathan Pryce: Not that I can think of.

The Convener: Finally, do members have questions about part 3 of the bill, which deals primarily with national concessionary schemes, but includes a range of other measures?

Tommy Sheridan: In the interests of focus, I will leave out my question on the national concessionary schemes, because I am sure that other members will want to ask about them. I will ask about the support for the lifeline ferry services to our islands and, in particular, the repeal of the Highlands and Islands Shipping Services Act 1960. Has the Executive had discussions about exempting itself from the European Union state-aid rules, which it appears are being used as a justification for the repeal of the act? Has there been any discussion about challenging whether the rules should be imposed in relation to the essential ferry services to our islands? If that has been considered, what comparisons with services in other countries have been used?

Jonathan Pryce: There have been discussions with the European Commission about state aid in relation to the tendering of ferry services. From what the Commission has said, we are clear that there continues to be a requirement for the Executive to tender ferry services in Scotland. That comes out of the Altmark case, which was about whether a payment constituted state aid. The requirement for public tendering of ferry services stems from the maritime cabotage regulation, which has a different treaty base from the state-aid rules. The Altmark judgment itself does not affect the issue whether public tendering is required—the conclusion is that it is required.

Tommy Sheridan: I draw to your attention page 14 of the policy memorandum. The last sentence of paragraph 68 states, in connection with assistance to sea transport services in the Highlands and Islands:

“This sits uneasily with European Union State Aid rules which allow for access to markets, including State ferry subsidies.”

I put it to you that, although you have just said that you are absolutely clear that there can be no avoidance of the imposition of the tendering rules, that is not what is stated in the policy memorandum. The statement that something sits uneasily with European Union state-aid rules is open to interpretation and further discussion. Is it not the case that, although the Executive would have a legal case to mount to protect the services in relation to state subsidy, it has not been willing to take such a case to court?

Jonathan Pryce: My colleague Laurence Sullivan will be happy to answer your question on the legal aspects.

Laurence Sullivan (Scottish Executive Legal and Parliamentary Services): The purpose of the change of effect of the 1960 act—and its linkage into the EU rules that are mentioned in the policy memorandum—concerns the procedure that the Scottish Executive has to go through in order to use the 1960 act, rather than the substance of EU state-aid rules, which section 39 of the bill does not affect in any way. Section 39 simply removes the effect of the 1960 act and uses instead the power in section 70 of the Transport (Scotland) Act 2001, which will make the procedure for supporting lifeline services easier.

Tommy Sheridan: I say with the greatest respect that we are not talking about that. I am perfectly aware that the cumbersome problems with the 1960 act—in relation to the level of aid that triggers an application and to the complexity and bureaucracy that are involved in that—must be removed. However, as you will know if you check page 13 of your policy memorandum, your policy is to continue to have a power, rather than a duty, for the Scottish Ministers to support such services.

“I put it to you that, although you have just said that you are absolutely clear that there can be no avoidance of the imposition of the tendering rules, that is not what is stated in the policy memorandum. The statement that something sits uneasily with European Union state-aid rules is open to interpretation and further discussion. Is it not the case that, although the Executive would have a legal case to mount to protect the services in relation to state subsidy, it has not been willing to take such a case to court?”

I am asking whether the Scottish Executive has a legal case—who knows whether it would win? As you know, the basis of Altmark was that it was an arguable case. The French water situation involves another exemption that was sought from EU state-aid rules. Do we have a case for fighting for state-aid support as a duty for Highlands and Islands ferry services?

Laurence Sullivan: The 1960 act contains a power to fund lifeline services that is limited to the Highlands and Islands. Removing that provision and replacing it with the powers in section 70 of the 2001 act will extend the position, because the
The 1960 act has a variety of problems, which you noted. I am not in a position to comment in detail on the wider, complex issues of state aid and Altmark, because the substance of that argument does not affect what we do in the bill to change the procedures by which the Scottish Executive has the power to fund ferry services.

**Tommy Sheridan:** Are you saying that EU state-aid rules have nothing to do with the proposed changes in relation to Highlands and Islands shipping?

**Laurence Sullivan:** All EU state-aid rules apply to Scotland, as they do to the rest of the EU. I am saying that the removal of the effect of the 1960 act does not affect that.

**Tommy Sheridan:** I apologise if I am not making myself clear. I am looking for an answer from the Scottish Executive on whether it is prepared to consider seeking the same exemption as the German Government did in relation to Altmark and the French Government did in relation to water services from EU state-aid rules, to allow us as a country to continue to have the duty to support Highlands and Islands ferry services, rather than forcing those services into competitive tender. Has that been considered? Is there a case? If there is, why has it never been proposed?

**Jonathan Pryce:** Discussions have taken place. We have explored with the Commission whether it is necessary to tender ferry services, particularly the Clyde and Hebrides services. The Commission could envisage no circumstance in which the requirements of the maritime cabotage regulation would enable the Clyde and Hebrides ferry services not to go to tender. The arguments have been considered carefully. We have taken the case to, and discussed it with, the Commission. The Commission’s clear view is that tendering is required. However, I confess to not being an expert on ferry tendering.

**Tommy Sheridan:** I am asking you whether the Executive subsequently considered whether it had a legal case. You went to the Commission and asked it about the matter. In the cases that I mentioned, Governments went to the Commission and they were told, “No, you can’t exempt water in France,” and, “No, you can’t exempt bus services in certain parts of Germany.” However, there were subsequent court cases that allowed those Governments to fight their causes. Can you provide information to the committee about whether there was any consideration of mounting a legal challenge to the Commission’s opinion and, if not, why not?

15:45

**Jonathan Pryce:** We will come back to you on that.

**The Convener:** Okay. It would certainly be useful if you would come back to the committee on the general area that has been covered by that line of questioning. Thank you for that. We move on to other lines of questioning.

**Bruce Crawford:** The bill provides for a power to create a national travel concession scheme. Has further thought been given to the delivery mechanism for that? As we note from the Scottish Parliament information centre briefing on the bill, the options for delivery are through local authorities, the Scottish ministers or the new transport partnerships.

**Jonathan Pryce:** I will get Tom Macdonald to say a little more about that, but I believe that the minister appeared before the committee just two weeks ago and said then that there would be further developments shortly.

**Tom Macdonald (Scottish Executive Enterprise, Transport and Lifelong Learning Department):** The position is still as it was two weeks ago when the minister was before the committee. The powers in the bill are discretionary and they give ministers the ability to make an order for a national travel concession scheme if that is what they decide to do. The point is that the power is discretionary.

**Bruce Crawford:** Jonathan Pryce indicated earlier that we will be able to see, in skeleton form, some of the other orders that will be made under the bill. Will we see a national travel concession scheme order in skeleton form at stage 2, even though I think that it will be too late at that point? Will we know what the specific proposals are or will there be an announcement from the minister before then?

**Jonathan Pryce:** That depends on what stage we have reached in our proposals for concessionary travel. Perhaps Tom Macdonald would like to add something.

**Tom Macdonald:** I cannot respond to the question whether a draft order will be presented to the committee, but ministers plan to make an announcement fairly soon about the way forward on concessionary travel.

**Bruce Crawford:** I am not sure where that leaves the committee in terms of evidence taking. If we get to stage 2, we will not be able to have a detailed discussion about whether the mechanism that will be used to deliver such a scheme is the most satisfactory way of doing it. I am a bit concerned about that, in the same way as I was concerned about earlier issues.

My next question concerns a small matter that has come to my notice on a number of occasions. I notice that section 38—in the part of the bill entitled “Miscellaneous”—deals with the
"Abolition of requirement on local traffic authority to inform Ministers about certain pedestrian crossings".

However, is there any prospect that you would allow local authorities to introduce 30mph repeater signs in towns without having to ask the Executive for permission? Such a provision would help local authorities and communities to signal where there is a speeding problem. It seems daft that such a provision is not available to local authorities at present, because it would make life easier for everyone.

Jonathan Pryce: Did you say “30mph repeater signs”?

Bruce Crawford: I am talking about repeater signs within town boundaries.

Jonathan Pryce: So you mean the small signs—

Bruce Crawford: Small signs or markings on the road. I understand that, at the moment, local authorities have to ask permission from the Executive to introduce such signs. That requirement seems unnecessarily bureaucratic and everyone would be helped if it were removed.

Jonathan Pryce: I do not know the details. We can certainly take that issue away and consider it. I am not aware that local authorities have made approaches to us about it. If you have any more information—

Bruce Crawford: I will certainly forward to you the information that I have.

The Convener: I think that I know the answer to my next question from reading the policy memorandum, but will you confirm for the record that section 37 of the bill will give ministers the power to introduce travel concession schemes not only for buses, but for ferries and trains as they deem fit?

Tom Macdonald: Yes.

Iain Smith: I appreciate that the bill is enabling legislation for national travel concession schemes and does not provide the detail. However, the financial memorandum refers to the budget allocation of about £196 million over the last two years of the spending review to implement such a scheme. That is a substantial sum. We are all keen to ensure that, in introducing a scheme, that money is invested wisely. Is it possible to tell us now, or to indicate when further information will be available, about the models that the Executive is considering and about how such a scheme will be funded? Is the Executive considering a national scheme based on the fare multiplier that is used by local authorities or is it looking at another mechanism, such as a quality partnership-type scheme, which would require operators not only to ferry our concessionaires around but to improve the services that are available to people, in particular in rural areas where having a concessionary bus pass will be of no use if there is no bus to use it on?

Jonathan Pryce: All that we can do at the moment is to refer you to what is in the partnership agreement, where there is a commitment to free off-peak bus travel throughout Scotland for elderly and disabled people.

Tom Macdonald: The remuneration mechanisms through which operators are paid for carrying concessionary passengers currently work on a no-better-no-worse basis: operators are funded for what they would have received if they had not had the scheme in the first place. That underlying mechanism goes back to European legislation and is likely to continue when we introduce new national schemes. Beyond the narrow confines of the issue, as the Minister for Transport said when he was last before the committee, the scale of the investment in concessionary travel that comes through from spending review 2004 is such that there should be a general benefit to bus services.

Iain Smith: I am pleased to have that on the record, as it is important. Does the Executive intend to publish a consultation on concession schemes before the draft orders are published?

Tom Macdonald: Ministers have said in the past that the intention is to produce a consultation paper. All that I can say now is that an announcement will be made quite soon.

Fergus Ewing: When the Minister for Transport was before us, he said in response to a question from my colleague Bruce Crawford that he was actively considering extending the proposed national concessionary scheme to ferries. Since then, have you been in contact with the ferry operators, such as Caledonian MacBrayne, and with HITRANS? Have you obtained information about additional cost would be to extend the scheme to ferry users. Have you come up with a cost for extending the scheme to ferry users in the eligible categories—senior citizens and people with a disability?

Tom Macdonald: We have not been directly talking to HITRANS. I think that my colleagues on the ferry side may have been speaking with CalMac, but we do not yet have an answer to the questions that you pose about where we go further in relation to ferry travel. I say again that the minister will make an announcement quite soon.

Fergus Ewing: Yes, but he has already said what he thinks the cost of the scheme as proposed is, so we should be entitled to know—and the taxpayer needs to know—what the additional cost would be to extend the scheme to ferry users. Have you obtained information about those costs? Can you provide an estimate of the cost of such an extension?
Tom Macdonald: I cannot provide that today.

Fergus Ewing: Is that because you do not have that information?

Tom Macdonald: I certainly do not have it with me.

Fergus Ewing: But you have it.

Tom Macdonald: I do not have robust, fully worked out estimates of what such an extension would cost.

Fergus Ewing: May I ask one final question that strikes me as possibly being relevant? The minister will no doubt, concurrent with consideration of national travel concession schemes, be looking to implement the partnership commitment to explore ways in which air travel could be made less expensive for people in the Highlands and Islands. In particular, he will be thinking about the undertaking in the partnership agreement to consider the model that was proposed—

The Convener: I am not sure how relevant that is to the bill.

Fergus Ewing: I am coming to the bill. My question is simple. Arguably, if it is cheaper to go by ferry, fewer of the people who currently use the plane to travel to the mainland will continue to do so. Has consideration been given to whether making ferry travel subject to the concessionary scheme will have a knock-on impact on usage of air services and, in particular, on the finances of Highlands and Islands Airports Ltd and the companies that operate lifeline services to the islands?

Tom Macdonald: I understand the point that you make, but we have not done what you suggest.

Fergus Ewing: Do you intend to do it?

Jonathan Pryce: We will consider all aspects of the issue. You make a reasonable point.

Fergus Ewing: We would not want to help one type of transport and damage the interests of another, especially when lifeline services are involved. A commitment to lifeline air services appears in all the transport documents that I have seen.

Tom Macdonald: I understand the point that you make, but we have not done what you suggest.

Fergus Ewing: Was that a yes? You were nodding.

Jonathan Pryce: I was indicating that I understood your point. I was not aware that you were asking a question.

Bruce Crawford: I have a question about yellow taxibuses. Tom Macdonald is from the section that deals with taxis and so on. A few weeks ago, we heard evidence from the traffic commissioner for Scotland about some of the difficulties that Stagecoach yellow taxibuses were having. There is a conflict between them and local taxi drivers because of a lack of clarity about the distinction between public service vehicles and private hire cars. Given that the long title of the bill refers to “miscellaneous modifications of the law relating to transport”, would it be possible to use the bill to remove some of the grey area that I have described, so that both taxi drivers and Stagecoach yellow taxibuses are much clearer about the provisions? That might remove the threat of problems further down the line, if that innovative process is to be spread throughout Scotland.

Jonathan Pryce: I understand that the legislation to which you refer is reserved and is unlikely to be susceptible to modification through the bill.

Bruce Crawford: Good grief! We cannot even look after taxis.

Tom Macdonald: We can look after taxis. The legislation on taxis and private hire vehicles is devolved, but the legislation on the licensing of bus services is reserved. We can deal with the issue from the point of view of taxis and private hire vehicles, but not from the point of view of yellow taxibuses. You said that there is confusion about what is a taxi and what is a bus. The yellow taxibus from Dunfermline to Edinburgh that Stagecoach provides is a registered local bus service. There is clarity about where it fits into the current structure.

Bruce Crawford: I accept that it is a local registered bus service, but it can be called to people’s homes to pick them up, as a taxi would be called. The fact that that is not how registered bus services normally work has resulted in a lack of clarity in the system. I understand that some issues may be reserved to Westminster—although I may not like it—and that that may make it difficult to achieve clarity.

Tom Macdonald: I recognise the point that you make. There are questions about the distinction between buses and taxes. However, the yellow taxibus has been accepted by the traffic commissioner as a local bus service, so we know how it is classified.

Tommy Sheridan: You say that the bill’s overarching policy objective is “to promote economic growth, social inclusion and health and protection of our environment through a safe, integrated, effective and efficient transport system.” Has a road equivalent tariff scheme been considered for the Highlands and Islands? Given
the prohibitive cost of travel to and from our islands, such a scheme might help to meet the objectives of the bill, particularly economic growth and social inclusion.

Jonathan Pryce: I understand that the Executive has considered the point that you raise, but I am not aware that any particular consideration was given to it in the context of the bill.

Tommy Sheridan: Would it be possible for amendments and additions on the issue of road equivalent tariffs to be introduced to the bill’s policy objectives? Will you share with the committee the consideration that has already taken place in the Executive? What was the extent of that consideration? Were figures given and was a scheme examined?

The Convener: It is for me as convener to adjudicate on what amendments are acceptable and within the remit of the bill at stage 2. I would not want to do that hypothetically on the basis of amendments that I have not seen. At stage 3, it is for the Presiding Officer to decide whether an amendment is appropriate. I do not think that the Executive officials can respond on the matter.

Tommy Sheridan: Can they respond to the second part of my question, on the consideration that has already taken place?

Jonathan Pryce: Yes. Thank you, convener, for your comments on the scope of amendments—that is my understanding, too. As far as road equivalent tariff schemes for ferry services are concerned, it is best for us to drop you a note explaining the background. Again, that is not a matter on which I or anyone else here is particularly expert.

Tommy Sheridan: Will you do that in enough time for me to raise the matter during consideration of the bill or are you talking about dropping us a note in a few months’ time?

Jonathan Pryce: We will seek to produce something for you swiftly. I do not know how much we will have to say.

The Convener: That brings us to the end of questions—finally—for this group of witnesses. I thank Jonathan Pryce and his team of officials from the Scottish Executive. I suggest that we have a three or four-minute break before we bring in the next panel of witnesses.

16:09

On resuming—

The Convener: I apologise to our next panel of witnesses for the fact that we overran a little with the Executive officials. To some extent that was because the Executive is the promoter of the bill and so will be quizzed in detail on every aspect.

I welcome representatives of the Society of Chief Officers of Transportation in Scotland. Bill Barker is the operations manager for strategic waste policy and assets at Dumfries and Galloway Council and Grahame Lawson is the head of planning and transportation at North Lanarkshire Council. I understand that you have some introductory remarks to make.

Grahame Lawson (Society of Chief Officers of Transportation in Scotland): I realise that you have had a long day; we have given you a written submission, so we will rely on that. We welcome the opportunity to give evidence to the committee at this early stage of the bill. I have spoken to Bill Barker and neither he nor I will say any more than that, as we prefer to answer your questions, which I think would be appropriate.

The Convener: That is helpful. Thank you for the written submission that you provided in advance. Again, we will deal with the three aspects of the bill. Do members wish to ask questions on regional transport partnerships and part 1 of the bill?

Iain Smith: One of the proposals in the bill is that regional transport strategies will have to be devised within a year of the partnerships being set up. Do you think that that is achievable? If not, what timescale would be realistic?

Grahame Lawson: One of the proposals in the bill is that regional transport strategies will have to be devised within a year of the partnerships being set up. Do you think that that is achievable? If not, what timescale would be realistic?

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Fergus Ewing: We heard recently from Audit Scotland that there is a backlog of £1.5 billion of road works for which local authorities are responsible. How will spending £3.7 million on the bill help that situation? Would it be better to spend the extra money on carrying out road works rather than on talking about carrying out works of any description? Will you explain in concrete terms exactly how the partnerships will help?
Bill Barker (Society of Chief Officers of Transportation in Scotland): That issue probably falls neatly between us—Grahame Lawson will talk about expenditure on regional transport partnerships. You refer to the maintenance backlog, on which Audit Scotland recently published a report. I can say only that any additional money spent on that backlog would be a wonderful thing.

The Convener: I ask members not to get too deeply into the £1.5 billion backlog because the committee has agreed to take further evidence from SCOTS and Audit Scotland on that. We will be able to give the matter detailed scrutiny in due course.

Grahame Lawson: That is what I was going to say. If you do not mind, the question is better answered at another time. We certainly welcome any money for road maintenance because there is a backlog, but we will answer the question later. On the partnerships, all I can say is that voluntary partnerships already exist, but they have limitations. It would help if they had more teeth because there is a need for a regional dimension in transport planning.

Fergus Ewing: What teeth will be provided by the bill?

Grahame Lawson: You asked that question earlier. There are big differences between the partnerships. Four of the five proposed partnerships will have limited powers, in that their only statutory duty will be to produce a regional strategy. The exception will be the new body that will take over in the west of Scotland, which will also have to take over the powers of SPT. That will create a major imbalance in the powers and nature of the partnerships, which you will have to address.

Fergus Ewing: Am I right that, as far as SPT is concerned, teeth will be extracted rather than provided? Its responsibilities in respect of rail are being removed, as explained in paragraph 22 of the policy memorandum.

Grahame Lawson: I understand that the committee will invite SPT to speak to it later. The powers that will be “extracted” from SPT, as Fergus Ewing put it, are limited and relate to the strategic element of rail passenger planning rather than to overall planning. The bill does not mention the relationship between the new regional partnerships and the proposed national transport agency—between the two, no powers will be lost to Scottish democracy, so SCOTS is relaxed from that point of view.

Fergus Ewing: The questions that I am trying to cover are: what is the point of the partnerships and how will they make a difference for the better? So far, your answer has been that there will be more teeth—although I cannot detect any molars, let alone any incisors—and that the strategies will be statutory rather than voluntary. What difference will that make unless there is extra cash to implement the strategy? I think you will agree that the bill does not give any indication of whether there will be extra cash, or whether the partnerships will be responsible for delivery and fulfilment of the strategy as well as its production.

Grahame Lawson: We mentioned that in our comments on section 3 of the bill. We acknowledge that there will be huge variations, as I said, in the scale and nature of operations. We would certainly be concerned if there was no assurance from ministers that strategies will be funded. That applies to sustaining the current SPT operation, which is a major operation in its own right and is the exception. It is the only situation in which local authorities’ duties and responsibilities for public transport are vested in another body.

Fergus Ewing: That is extremely helpful. You said that unless there are assurances from ministers that the strategies will be funded, they will not work. Should the strategies be able to cover all modes of transport? Should the regional bodies be able to cover trunk roads, minor roads, rail, ferries and air transport or should they cover only some of those modes? If so, which modes should they cover?

Grahame Lawson: We made representations on that. The bill mentions powers being ceded by local authorities to the partnerships and we have raised the issue of powers being ceded downwards by ministers to the partnerships, particularly in relation to trunk roads and motorways. We accept that there may well be a difference between the trunk road network and the motorway network in terms of the scale and nature of the beast, but it is difficult to see the difference between trunk roads such as the A77 south of Ayr or the A9 north of Inverness and other local authority roads. We see no reason why maintenance and development of such roads could not be passed to regional transport bodies.

We have already touched on rail and bus operations, which are—again—patchy. That situation goes back to the Transport (Scotland) Act 2001, which included powers to introduce quality bus partnerships and quality bus contracts. We want quality bus contracts to be made easier to implement, with fewer hurdles. It would be useful for the regional partnerships to promote them because bus services tend to operate along corridors and often pass from one local authority area to another. It makes sense for local authorities to co-operate in the development of services.
On air travel, there are some services that are internal to Scotland. The intention, as I understand it, is for the national transport agency to take over responsibility for the Highlands and Islands Airports Ltd operation and, I presume, to have an interest in internal air services. I do not think that there is a case for partnerships to take over interest in external air services, except in relation to the land side of airports and access to them, such as rail and bus links.

_Fergus Ewing:_ That is extremely helpful. As far as trunk roads are concerned, should the regional partnerships have responsibility for prioritising in their strategies the improvement works that would be required for trunk roads in their areas to work properly?

_Grahame Lawson:_ I do not see how a regional partnership could come up with a transport strategy that did not address that issue.

_David Mundell:_ Are you and your organisation aware of the widespread lack of co-operation among local authorities, which might be preventing regional schemes from being delivered? In our previous questioning, we sought examples of that, but none was provided.

_Grahame Lawson:_ I am not aware of any friction among local authorities. There will be issues that divide authorities, of course. For example—although perhaps I should not mention this—the issue of road-user charging in Edinburgh and the east of Scotland has, shall we say, got authorities talking. Otherwise, in terms of promoting projects, the evidence is that local authorities recognise the advantages of co-operating with each other and do so. For example, my local authority, North Lanarkshire Council, which is a member of the WESTRANS partnership, and West Lothian Council, which is a member of the SESTRAN partnership, are co-operating closely on the reopening of the Airdrie to Bathgate railway line and on promoting the Caledonian express services on the Shotts line. Not only do we co-operate within our partnerships, but we are prepared to co-operate with other partnerships.

_David Mundell:_ That is a helpful response, because part of the rationale for the bill was the need to force local authorities to work together. If there is no evidence that they are not working together, one must question that rationale. Could you comment on the funding arrangements and the concept of requisitioning funds from local authorities rather than having the Scottish Executive fund the new partnerships directly?

_Grahame Lawson:_ Wearing my SCOTS hat, I would say that that concept of requisitioning funds will be alien to many authorities. It is not something that they are accustomed to and I am not certain that many authorities would be comfortable with it. However, the 12 authorities that currently lie within the SPTA area are used to requisitioning, to a certain extent, because funding for SPT comes in the front door of each authority and straight out the back door to SPT.

We would prefer agreed strategies to be directly funded; that would be in line with the practice of the Scottish Executive over the past two years. In my written submission, I allude to our having a successful record on spending the money that has been given to the partnerships in the past two years. Indeed, WESTRANS achieved 101 per cent spend; we were so successful that we achieved a greater spend than had been anticipated. It is easier for authorities to come together in agreement when they are talking about spending somebody else’s money.

_David Mundell:_ It is always easy to spend somebody else’s money.

_The Convener:_ In your written evidence, you express concern about the proposal for each council to be represented by a councillor with a weighted vote. Could you expand on those concerns? What would be your suggested solution?

_Grahame Lawson:_ We have concerns about the democratic accountability of the weighted-vote system. If I might be permitted to say so, that system smacks of union meetings with card-carrying members and so on. All the institutions that we have in local authorities at the moment are based on a one-person-one-vote system. We see that as being the only way to do things. For example, SPT has 34 members and the share is proportional to the size of the member authorities. Glasgow City Council has eight members, North Lanarkshire Council and South Lanarkshire Council have four members each, and so on down to smaller authorities that have only one member.

The current proposal for the west of Scotland is to have 13 members with weighted votes. For example, the Glasgow member might have four votes, the North Lanarkshire member might have three votes and so on. We would have 13 members but a total of 20 or 21 votes, depending on how things worked out in practice. In addition, one third of the voting membership would be non-elected people, who would be drawn from elsewhere, which would amount to 10 or 11 people. Sitting round the table would be 24 people, but the number of votes would not be 24 but some other number. That is far from democratic accountability.

Having discussed the issue with colleagues in different partnership areas, SCOTS sees no substitute for a straightforward vote according to the number of members. Instead of a weighted
vote, why not have the number of votes equal to the number of representatives? Why should Glasgow City Council not have four members, and so on?

Under the current proposals, in Aberdeen there might be four people sitting round the table. Two would be from local authorities—one from Aberdeenshire Council and one from Aberdeen City Council. The two elected members would have four votes but the other two members would have only two votes. That defies all normal systems of accountability and we, as officers, would foresee difficulties for our elected members in that situation.

Bruce Crawford: I am not sure whether Grahame Lawson heard the earlier evidence from officials. I am interested in the various powers that will be available to the regional transport partnerships, as compared with the powers of councils. I appreciate that there is a difficult balance to be struck. You will have heard me talk about the phrase “so far as possible” in the bill, which represents a wee bit of an opt-out, although I can understand the reasons for that.

Section 8 of the bill is on the “Duty of constituent councils and other public bodies”.

The Executive will soon be responsible for most of the rail network, once powers have been transferred from the Department for Transport, and it is responsible for trunk roads. Most of the work of the regional transport partnerships will therefore impact on what the Executive does, or might be expected to do. However, the bill does not seem to place a duty on the Scottish Executive to follow through on issues regarding regional transport partnerships and what they might come up with by way of a strategy. Do you think that that is a necessary requirement?

Grahame Lawson: Yes. When the present local authorities were established in 1996, one of the things that we had to do was come up with a local transport strategy. At the time, we expressed concern that there was no national strategy within which to set local strategies. We got the impression that the then Scottish Office felt that, if each of the 32 local authorities produced a local transport strategy, those strategies could be put together and—hey presto!—we would have a national strategy.

Similar logic seems to apply to the new regional transport strategies. Unless we have a detailed and comprehensive national context into which to set those strategies, we will be in difficulty. The impression is that the Executive thinks that if there are five partnerships and five regional transport strategies, the strategies can be put together and again—hey presto!—we will have a national strategy. It will not work that way. There is an element of a top-down approach and an element of a bottom-up approach. Unless the local authorities and the partnerships work in partnership with the Executive and the national transport agency, we are doomed.

Bruce Crawford: I think that you are saying, in effect, that although it is all good and well for good work to be going on, for regional transport strategies to be developed and for there to be agreements among the regional transport partnerships and the local authorities, the Executive is not going to play ball, meaning that everything will come to a stop. You are asking for the bill to contain a duty on ministers to have a national transport strategy so that time is not wasted and we know where we are going.

Grahame Lawson: Absolutely.

Bruce Crawford: That was very useful. Thank you.

The Convener: There are no further questions on that part of the bill, so we move to members’ questions on part 2 of the bill, on road works and so on.

16:30

David Mundell: Do you have any view about why there have been no prosecutions under the New Roads and Street Works Act 1991?

Bill Barker: My colleagues from the Executive gave you part of the reason. There is a perceived reluctance among procurators fiscal to make such prosecutions. It is also fair to say that, within Scotland, we have always taken the view that we would work in partnership with utilities companies. Unlike the situation south of the border, we have had some remarkable successes in collaborative and co-operative working. A number of my colleagues in other authorities would really like to have taken cases to prosecution, but have failed because the procurator fiscal felt that to proceed was not in the public interest.

David Mundell: So the reports have gone to the procurators fiscal.

Bill Barker: I understand that that is the case in some authorities. I know that none has gone from my authority, but I cannot give you information on other authorities.

David Mundell: It is probably not a question that Mr Barker can answer, but on that basis, one of the questions that we have to ask is why such issues would be pursued under the new act if fiscals are not pursuing them under current legislation.

Bill Barker: We share your concerns.
For a moment I thought that you thought that the statistics that underpin development of the bill were not an accurate reflection of the amount of road works that have been undertaken by the utilities companies, and that local authorities had much more responsibility than the statistics indicated. Do you have any comments on that?

Bill Barker: A number of smaller Scottish local authorities find it difficult to find the resources to put into the Scottish road works register all the data that are currently required. Some works, whether utilities or road works authority, are excluded from having to be put into the register. There are gaps in the existing system, though I have to say that the SRWR is one of our successes. It might not be perfect, but it is a lot better than anything that has gone before.

Michael McMahon: Will the bill enhance the relationship between you and the utilities companies?

Bill Barker: For a moment I thought that you were going to ask whether it would enhance the Scottish road works register. I was just about to leap into an answer.

Michael McMahon: You can answer that one as well—I do not mind.

Bill Barker: One of the good aspects of the bill is that it will require everybody to enter information on the register. That is not the case at the moment because it is possible to pass notices by paper—in other words, by fax or post. The bill will make it a requirement to use the register; that will be a good thing. I do not anticipate the relationship between utilities companies and road works authorities changing to that extent in Scotland because of the bill.

Michael McMahon: So fears on the part of the utilities companies would be groundless.

Bill Barker: Those companies would have to answer that question.

Iain Smith: I am not sure whether you were here when I referred to the case in my constituency of a utility company—the water board as it happens—whose contractors were so inefficient, and Scottish Water’s supervision so poor, that a contract that should have taken six months took 18 months. Will any of the proposals in the bill help to address such situations when they occur? That was not an isolated incident—it is not only the water board that is responsible for such occurrences. If the bill contains no such proposals, can you suggest any improvements?

Bill Barker: I do not think that any legislation will overcome difficulties with contractors, whether they are on the utilities side or on our side. South of the border, section 74 of the New Roads and Street Works Act 1991 made provisions for lane rental, but even that has its problems.

Iain Smith: I noticed the reference to lane rental in your submission. Do you think that that would be of benefit as regards lengthy works by utilities companies? Would it give an additional incentive to the utilities companies to supervise their contractors?

Bill Barker: As I am speaking on behalf of SCOTS, I must give a fairly ambivalent answer. Although the more urban areas—the cities, in particular—feel that such provisions could have significant benefits, rural authorities such as mine feel that the administrative burden of implementing such measures would outweigh any benefit. Opinion is divided.

Fergus Ewing: Your submission challenges whether the Scottish road works commissioner will be effective or will be able to do anything that cannot already be done by, for example, RAUCS. It questions whether the commissioner will have any additional powers and asks what the point of having a commissioner will be. It suggests that the proposal will impose additional burdens on smaller authorities, as you just mentioned, which the Executive’s financial memorandum does not cost or provide for. I do not have time to repeat the other criticisms that are made. Will having a Scottish road works commissioner produce any clear and demonstrable benefit or would we be better off using the money to carry out road works rather than to administer and talk about them?

Bill Barker: As far as SCOTS is concerned, the single benefit of a Scottish road works commissioner that we can identify is that access to Scottish ministers will be provided. Also, with the requirement to publish annual reports, the commissioner will become a figurehead for the whole road works situation.

I do not believe that having a commissioner will make a significant difference. Most of the commissioner’s functions are those of RAUCS, of which I am the roads co-chair. Again, we are divided on the matter. If there is to be a commissioner, we would like the commissioner to have more powers. We are concerned that, given that the commissioner will have a very small and lean staff, most of the work will be done by utilities companies and roads authorities on the commissioner’s behalf, which will create a burden for which some councils are not resourced.

Fergus Ewing: I notice that the bill will impose a duty on the commissioner to monitor road works
throughout Scotland. In his questioning of the civil servants, Bruce Crawford established that, with a budget of £200,000 for the whole office, the commissioner is unlikely to have more than a handful of staff. Is it your view that, because most monitoring will be done through submission of information by local authorities and others, you will be doing the commissioner’s work for him or her, because he or she will simply not have the resources to monitor all road works throughout Scotland?

Bill Barker: The short answer is yes.

Bruce Crawford: I thank Fergus Ewing, as I was going to go down that road. I am now able to go down another road instead. If the short answer is, “Yes, one man and his dug isnae gonnae make any difference,” could RAUCS be given the statutory power to do the job instead?

Bill Barker: That suggestion has merit. Both SCOTS and RAUCS have discussed the suggestion of making RAUCS a statutory body with certain powers. At present, it carries out its functions in a spirit of co-operation, and those functions are much the same as those that the commissioner will have. We already monitor road works quality locally, in larger areas and nationally.

Bruce Crawford: In that case, will you submit more considered views on that model? There is no point in creating a bureaucracy to do what is already being done. All we need to do is give the powers to your organisation—provided that you agree on a proper constitution—and, hey presto, we do not need one man and his dug.

Bill Barker: We can certainly produce something on that.

The Convener: Those are all our questions on part 2 of the bill and I do not think that we have any questions on part 3—I guessed that most of our questions to the witnesses would be on parts 1 and 2. I thank them for their evidence.

We move swiftly on to our third and final panel for the afternoon. I welcome the representatives of HITRANS, who are Councillor Gordon Mitchell, from Shetland Islands Council, Councillor Duncan MacIntyre, from Argyll and Bute Council, and Howard Bridle, who is the co-ordinator of HITRANS. I thank them for their patience during the earlier sessions and for their written submission on the bill. I understand that Councillor Mitchell has some introductory remarks.

Councillor Gordon Mitchell (Highlands and Islands Strategic Transport Partnership): Thank you for the opportunity to give evidence to the committee.

As members probably know, HITRANS covers a huge area that stretches from Shetland down through the Highlands and Islands nearly to the Glasgow area. The councils in the area have a wide variety of needs and aspirations. HITRANS has been in existence for about eight years and I have been a member of HITRANS, as a representative of Shetland Islands Council, for the past five years. During that time, quite a few innovative projects have been pushed through, and some are still in the early stages. We have been complimented on the way in which we operate, but we are now being forced into change.

At present, HITRANS has one member from each of the councils in the Highlands and Islands area, each of whom has one vote. We have no proper voting system, in that we work on a consensual basis. We have never gone to a vote on anything; we always end up with a compromise or consensus. That has worked extremely well.

16:45

When it comes to finance, each council voluntarily contributes an amount that is worked out according to a sliding scale relative to the populations of the different areas. That covers about 50 per cent of the costs of running HITRANS; the other 50 per cent is met by a grant from the Scottish Executive.

HITRANS does not yet have a coherent view on the bill, because we have still to discuss it in greater detail at our next meeting, which will be held at the beginning of December. I will give you the views of the smaller councils, because they have the most concerns about the bill. The bigger councils have some concerns, but they are perhaps less vociferous in expressing them. There is a definite spread of views within HITRANS, but we hope to come to a consensus before the end of the year. I will give you the views opposing the bill, which is of great concern to the smaller councils.

The biggest concern is that the bill insists that we pay for the cost of the administration of HITRANS by requisition. In other words, the small councils would have no say over how much they were to pay. At the moment, as I have explained, the councils each pay a proportionate amount towards half the costs of running HITRANS. Under the new system, we expect the level of administration to increase dramatically, which, in turn, would dramatically increase the amount that each council would have to pay. Even allowing for smaller contributions on the part of smaller councils, there would still be a large hike. It would more than quadruple the amount that we have to pay at the moment. We currently have no budget for such a big increase in costs, and we do not feel that we should be asked to pay it. Our view is that the intention of the bill is to improve the functionality of central Government in Scotland, and that it is not exactly fair to ask individual councils to pay for that. We feel that we should
continue to pay what we have been paying until now, and that any difference should be made up centrally.

We are being told that we are going to be forced into adopting a new voting system whereby, instead of each member of HITRANS having one vote, some members will have more votes than others. Nobody is happy with that. The whole concept of running a system that worked on consensus worked extremely well. We have heard that WESTRANS and SESTRAN have voting systems that have worked well, and that they are therefore being allowed to keep them. We are asking why we cannot keep our system, because it has worked very well for us. If we are going to be forced into adopting another system, we ask to be allowed to come up with our own new version of how to do things, rather than having that imposed on us.

There are a number of problems when it comes to finance, from the small councils’ point of view. Let us suppose that a huge new roads scheme was to be started in the north of Scotland and that money would, at some stage, have to be borrowed in order to make that work. There is talk of using prudential borrowing in order to allow the scheme to proceed. That might be acceptable or unacceptable to the councils that use the roads in question. However, someone who lives away up in Shetland is not particularly interested in roads down on the west coast of Scotland that they never use. We would not be happy to have to pay for a new scheme there. On top of that, we have a stringent policy in Shetland of borrowing only within our resources. If we found ourselves tied into a system of prudential borrowing in which the council was not involved, that would create a great problem for us.

In the suggested voting system, small councils would have one vote and no veto. I speak not only for Shetland Islands Council, but for several smaller councils when I say that we are concerned that we would have no real say in the financial running of the proposed organisation. That leads us to question whether we should be involved in an organisation that would represent such a disparate range of interests.

The situation in Shetland is almost unique because we have only one passenger ferry a day, which leaves for Aberdeen. We have about five flights a day. Orkney is slightly better off, but it is still a long way from the centre of things. Orkney and Shetland largely share transport interests, but we have completely different transport interests from those of other parts of the Highlands and Islands. That has led us to pursue the concept of having a separate TRANS—let us call it NORTRANS—so that we would have our own little TRANS organisation, with our own interests and our own very low running costs. Personally, I do not think that that would be a good idea in the long run because the HITRANS concept is about having a large corporate body that can fight for its members. However, having our own organisation makes a lot of sense financially to the small councils, so we are looking at the question of boundaries and whether we should be forced to sign up to an organisation when we have no idea of the costs involved. From the bill and the provisions on secondary legislation, it is unclear how much the smaller councils would have to pay once the proposed organisation is running. Therefore, we are unhappy about being forced into signing up without knowing about longer-term financing.

Much of the severity of the situation could easily be reduced, as far as we are concerned, if the voting arrangements were to remain as they are. In the current consensus situation, smaller councils can at least block measures, if not necessarily veto them, until we can reach a compromise. That is a good idea, as far as we are concerned, and it has always worked in the past. That takes me back to the voting problem.

As I said, the issue that nobody is happy about is the requisitioning of funds. I will leave matters there and will try to answer any questions.

The Convener: Thank you. The first group of questions is on part 1, which is on the regional transport partnerships. Iain Smith will lead off.

Iain Smith: I listened with interest to your statement, Councillor Mitchell, but I was a little concerned that you seemed to imply that the consultation document’s option 3 model, which would give most powers to the regional transport partnerships and take more powers from local authorities, would be imposed on HITRANS. I am not sure that that is what is intended by the bill or by the options. Do you accept that, if HITRANS went for option 1, it would make little difference to the current situation and the existing HITRANS, because all option 1 does is impose a duty on all regional transport partnerships to create a regional transport strategy? That would not be a huge burden on local authorities. It would not result, for example, in Shetland Islands Council having to pay for something in Argyll, because that would be part of the strategy and it would be up to Argyll and Bute Council to fund its share of that work.

Councillor Mitchell: You are correct. At the moment, we are looking for a continuation of the present situation, in which we would deal only with the strategic transport plans, but somewhere in the stuff that I have read, it is suggested that there would be a move towards further legislation under which model 3 might be implemented. That is worrying. In addition, we do not know at this stage what the impact of the secondary legislation will
be. We are saying that we should not be asked to sign up for something until the secondary legislation has been published and we can look at it.

Iain Smith: I understand that point, but my understanding is that the consultation document “Scotland’s Transport Future: Proposals for Statutory Regional Transport Partnerships”, the bill and the minister’s previous statements have all made it clear that the Executive does not anticipate regional transport partnerships—apart from the west and south-west of Scotland partnership, which is slightly different because of Strathclyde Passenger Transport—moving beyond model 1 unless there is a consensus in the partnerships to do so. Do you accept that the policy intention behind the minister’s statement is that it would be up to the partnerships to decide whether they wished to go further than the basic minimum requirements?

Councillor Mitchell: That is not our primary concern at the moment, but it is a secondary concern. One of our primary concerns is the additional costs that will accrue from having a much larger administration. Theoretically, once the new Highlands and Islands regional transport partnership is formed and running, there is nothing to stop it expanding its administration. That would mean additional costs, all of which will, under the present proposals, fall on the councils after the first year of the new partnership’s operation. We will find that we are paying huge amounts of money for no improvement on what we had before.

Iain Smith: Surely if a regional transport partnership is basically creating and monitoring a regional transport strategy, it will not create a huge bureaucracy. That is what HITRANS is doing at present.

Councillor Mitchell: The figures that I have been given show that, at the moment, Shetland Islands Council is paying something like £14,000 a year for its share of the bureaucracy. However, I am afraid that when the new regional transport partnership is formed—if the council is part of it—that amount will go up to more than £100,000 a year to pay for the extra services that the new partnership will put in train.

Iain Smith: It would be helpful if you could provide the committee with those figures, because I am not sure where they come from. To be honest, because HITRANS is already fulfilling most of the functions that are included in the minimum requirements for regional transport partnerships, I cannot see where the huge increase in cost comes from. That is the bit that is confusing me.

Howard Brindley (Highlands and Islands Strategic Transport Partnership): We have given a statement and a range of figures to the Finance Committee. The figures are not quite as high as those that Councillor Mitchell gave, but the current operating cost of HITRANS is about £250,000 and we estimate that, if it carries on as a model 1 partnership, the cost might become something between £400,000 and £500,000. If the Scottish Executive’s share of that cost is removed, the current share of about £100,000 that is borne by the local authorities would be multiplied by five. How the authorities divvy that up between them will vary if it is done by population share, but if the cost has to be borne from current local government finance without any additionality, the money will have to come from another pot.

Iain Smith: That is helpful. We have not yet received a report from the Finance Committee, so we were not aware that those figures had been made available. We will obviously study them—at least, I will.

17:00

Bruce Crawford: I heard what Councillor Gordon Mitchell said about secondary legislation. There are a number of provisions in the bill that give ministers the power to do things by order. I am especially concerned about sections 2 and 10, which allow ministers to make orders about anything. Would the witnesses from HITRANS like to reflect on those provisions? What problems do you think that they might cause?

Councillor Mitchell: If extra powers are granted, we do not know what will be done with them. That is the big problem. We are concerned about the financing of extra duties that may be imposed, as we do not know how the extra costs will be met. We suspect that some of those costs—whether they are extra administrative costs or potential borrowing costs, about which we still do not know—will come back to local authorities.

Bruce Crawford: I understand that HITRANS is organised on a consensual basis. One large project that needs to be completed in the Highlands is the upgrading of the A9. If the new regional transport partnership drew up a transport strategy that included that project, all the partners would have some responsibility for delivering it. Are you suggesting that smaller and island councils should be able to say that they do not want to contribute?

Councillor Mitchell: We expect that the partnership would find a way of spreading the cost among those councils that would benefit from the new project. We in Shetland would not expect to pay for something that was happening on the mainland, on roads that we would never use.
Bruce Crawford: In that case, why should you expect the mainland to pay for additional ferry services?

Councillor Mitchell: Which ferries?

Bruce Crawford: Any extra ferries that the partnership decided to run as part of its strategy.

Councillor Mitchell: The problem is that we are out on a limb. All our internal ferries are run by Shetland Islands Council. The ferries between Shetland and the mainland are run by NorthLink Orkney and Shetland Ferries, with a direct subsidy from central Government. At the moment, there is no HITRANS input into the ferry system.

Bruce Crawford: The new regional transport partnership will draw up a transport strategy for the Highlands and Islands. It may decide either to upgrade the A9 or to improve the ferry services between Shetland or Orkney and the mainland, because they are not what they should be. There would a compulsion on members of the partnership to contribute to whichever project is chosen. I am trying to establish how you will get things done. How do we get big projects to happen unless everyone is prepared to contribute? I am sure that you have a good answer, but I need to hear it.

Councillor Duncan MacIntyre (Highlands and Islands Strategic Transport Partnership): Councillor Mitchell has spoken from a Shetland point of view. Shetland is unique. The borrowing provisions that were mentioned earlier would be perfect for us, if they were in place. Bruce Crawford spoke about the A9. All the councils in the area and members of HITRANS support the A82 project. A few months ago, all the members of HITRANS gave their support to the spinal route in the Western Isles, which has gone ahead in the past few weeks. We have big projects in mind. HITRANS is committed to expansion in the whole of the west Highlands and Islands. Shetland does not see that it needs to contribute to projects in the HITRANS area, because it does not really use them.

Your point about air routes and ferries was well made, but there remains a unique situation in Shetland, because there is no requirement to borrow money to make things work. The concessionary fares scheme works in Shetland, but there is no benefit from that on the mainland. We must try to bring the two sides together. I am not here to represent the opposite side to Shetland—

Bruce Crawford: I understand that.

Councillor MacIntyre: I am just trying to explain the other side of HITRANS. We have a difficulty because there is a unique situation in Shetland, which is very independent and has a forward-thinking local authority, but wants to retain control.

Bruce Crawford: Is that unique? I do not know whether you arrived early enough to hear David Mundell talk about the problems in Dumfries and Galloway in relation to that area’s involvement in a west coast TRANS that would include the greater Glasgow area. Big projects might go ahead in greater Glasgow that would bring no benefits to Dumfries and Galloway. Aspects of the situation might be unique to Shetland, but all the peripheral parts of Scotland have problems.

Councillor Mitchell: Everybody has problems. I am not in favour of breaking away from HITRANS or changing the current system; I am trying to describe the problems that the smaller authorities perceive that the bill would create. It would be easier if the bill were amended slightly to allow us to operate almost as we did before. The changes to the bill would involve, first, removing the threat of requisitioning and including provision for some other system of finance that would not place a great burden on a small authority but would bring in central Government grants without disturbing the council’s usual financial system. Secondly, nobody wants the new system of voting that would be imposed on us—that is not just our view, but that of almost everybody in HITRANS. As things stand, we can argue our way into a decent compromise on any subject, but if we are forced into a vote every time we are likely to find ourselves disenfranchised.

The Convener: It strikes me as dangerous to argue that Shetland does not want to contribute to the A9 because its residents do not use it much, but instead wants central Government to contribute to the road. Does that not imply that people who live in the central belt, who might not often use the A9 north of Inverness should pay for the road, whereas people who live in peripheral parts of Scotland should not have to pay? That seems a strange argument to make.

Councillor Mitchell: We are not saying that we should not pay for the A9. Under the current system, the A9 is paid for by central Government. We were concerned that a situation could arise in which central Government could not find enough money to pay for the A9 and required HITRANS to borrow money to pay the remaining costs, which would put us in a difficult position. We cannot be involved in prudential borrowing, because we do our own borrowing within Shetland Islands Council.

Bruce Crawford: That leads to the inevitable question that I put to SCOTS. If HITRANS or its successor body were to agree a particular strategy, constituent councils and other public bodies would have a duty “so far as possible” in relation to the strategy, but there would be no such duty on the Scottish Executive. Do you think that the bill should place a duty on the Executive to be
involved in the same way as the constituent councils and other public bodies might be?

Howard Brindley: That is fundamental to our position. The HITRANS strategy has tended to consider what the Executive and the national transport agencies are doing in the Highlands and to try to influence their policies, rather than to concentrate on individual local authorities. Our strategy does not say what Shetland Islands Council should do in relation to its internal ferry services, for example, but it comments on how the links between Shetland, Orkney, the Western Isles and the mainland should work. We see our strategy as a fairly high-level document, which is almost a dialogue with transport Scotland—as it will be—and the national providers, such as Highlands and Islands Airports Ltd, CalMac and so on, rather than something that imposes on the local authorities, but if we cannot influence what they are doing through our strategy, it is not worth very much.

Bruce Crawford: In that case would you support the Executive, through transport Scotland, being required to set out in statute a national transport strategy?

Councillor Mitchell: Yes.

Councillor MacIntyre: Yes.

Howard Brindley: Yes. I would also support its being required to have regard to what comes from the regional strategies.

Bruce Crawford: I understand that.

Fergus Ewing: I have a number of points. I have read the submission regarding the costs of HITRANS and have heard your concerns about requisitioning. The existing costs are set out helpfully in the written submission and detailed as £250,000 a year. We have heard from Mr Brindley that they are set to increase approximately fivefold if one model is adopted. This committee does not consider the costing aspects specifically—that is what the Finance Committee does. However, on a point of procedure, have you sent a separate detailed submission to the Finance Committee so that it has the benefit of the detail of the computation of your cost estimates?

Howard Brindley: Yes, we have. The predicted increase was not fivefold. The submission that we sent the Finance Committee says that our current costs are £250,000 a year. A lot of provision is made in kind by our partners. For example, we do not pay office costs and we receive a lot of help in kind from the partners’ staff. Once a new organisation is up and running, it will have to pay for an office, its admin and its telephones and it will not be able to call on members of the councils’ staff to help it out so easily. We have said that the figure could double; it could rise from £250,000 to £500,000. I made an estimate of about £400,000, which would be for a model 1 authority dealing with a strategy.

The second thing we said was that if local government has to meet the whole cost instead of just 45 per cent of it, which is what happens at present, there will be a significant knock-on effect on local authority budgets. The cost will rise from something in the order of £100,000 to the total of £400,000 or £500,000, spread throughout the local authorities. That is a significant hike in the costs from what they are at present.

The Convener: Will you clarify that? From what you have just said it seems that the increase in cost will not be as much as you indicated initially. You are suggesting that many staff members are already employed by the public sector bodies. Given that many of them are employed by the councils, I presume that the councils are already paying for them.

Howard Brindley: Yes, there is an element of that. The councils are providing help in kind. They will benefit, because they will be able to use their staff to do other things.

The Convener: Although you have provided information to the Finance Committee, it would be useful if you could break down all the figures for us, so we can understand them properly.

Fergus Ewing: I want to be clear about this. Councillor Mitchell said that he was speaking to some extent for his own council, Shetland Islands Council, rather than for HITRANS. Am I right in saying that as things stand, given the serious question of funding and local authorities facing a substantial, up to fivefold, increase in their contribution to the new body, HITRANS and its constituent members would oppose the regional transport partnerships?

Councillor Mitchell: I was speaking for Shetland Islands Council and to a certain extent for Orkney Islands Council and I happen to know that Western Isles Council takes a similar line. As I said at the beginning, there is a spectrum of views within HITRANS, which I feel could eventually be reconciled if small changes were made to the wording of the bill. HITRANS does not have a clear view on the bill at the moment. To a certain extent, things will depend on the committee’s findings, but in round figures, we do not oppose it. I am here to point out to members the problems that the legislation would bring to us. Indeed, my council is taking a much stronger stance than are the other councils; we have already informed the minister that we are considering the possibility of having a separate TRANS with Orkney. We are considering that possibility mainly with financial and voting problems in mind.
As I said, I am not giving the views of HITRANS, but views from within HITRANS. I have worked in HITRANS for five years and am very much in favour of it. It is an excellent organisation, and it would be a bonus if we could continue to run it in more or less the same way that we have done in the past. In the detail of the bill as it stands, I can see that it is possible that we would be able to run it in that way, but there would have to be small changes to the bill.

Fergus Ewing: Will Mr Brindley answer the question?

Howard Brindley: I do not know whether HITRANS would say that it could not afford to do what has been proposed if it was imposed on local government. The bill’s financial memorandum says that a start-up cost will be provided by the Executive. I have forgotten the figure, but around £1.5 million will be made available for year 1 start-up. After that, it implies that people are on their own. Baldly, I have said to the Finance Committee that if the cost to local government rises from its current level of around £100,000 to something in the order of £400,000 to £500,000 and no provision is made in grant-aided expenditure to allow for that—in other words, costs must be met from existing commitments—it will be quite hard for some authorities to meet costs. At this stage, I do not know whether they would reach the point of saying that they could not afford to meet the requisition.

Fergus Ewing: I appreciate that candour is not always possible, especially if it involves criticising those from whom you are seeking funding in various other ways. However, it seems inconceivable to me that HITRANS could support the bill as drafted, or that any of its constituent members could, unless assurances are given.

Paragraph 9 of your submission is a helpful summary of the current work programme of HITRANS, which, as you have pointed out, was set up in 1996. Elements of a transport strategy in the HITRANS area are set out, including consideration of improving the A82—which is long overdue—public service obligations, and consideration of air and ferry travel and transport in the round. Has HITRANS not already worked on producing a transport strategy for the area? Has it not done so for a long time?

Councillor Mitchell: We have been commended for that work, which is why we are rather puzzled that we are being forced into a corner by some parts of the bill, which does not really stack up, as far as we are concerned.

Fergus Ewing: I want to deal with another matter that has not been mentioned. I do not think that we will have the opportunity to take oral evidence from Highlands and Islands Airports Ltd, which has a unique place with respect to airports in Scotland, as it is wholly owned by the Scottish Executive and is reliant on public funds. I think that a witness from SCOTS—although I might be wrong—said that it was expected that responsibility for HIAL would pass to a national body. Presumably, HITRANS would oppose that tooth and nail if it were true. I must admit, however, that the suggestion came as something of a surprise to me. It did not appear to have been mooted under the HIAL proposal. I wonder if any of the witnesses can comment on that. HIAL has built up a lot of expertise over the years in staff, personnel and so on. I think that the prospect of control passing down to Edinburgh would be of concern.

Councillor Mitchell: We would be concerned if control went down to Edinburgh. However, control over HIAL really comes from Edinburgh already, to an extent. At the stage when HITRANS was considering the various options that might be open to it, one of them was for HITRANS to take over HIAL, CalMac, NorthLink Orkney and Shetland Ferries and all the rest, running them as part of a bigger organisation. We pointed out that, if we found ourselves involved in such a venture, and if there was a major catastrophe in one of those organisations—which, as you will probably recall, took place with NorthLink—we would not have sufficient funds in HITRANS to bail that organisation out. Central Government funds are required to deal with such situations. We rapidly backed off the concept of taking over any of the quangos that we could, theoretically, have under our wing.

Howard Brindley: My understanding is that there is currently a small team in the Executive’s transport division that is responsible for HIAL’s operation, although day-to-day management is based in Inverness. The industry is nationalised and the Executive team considers the broad strategy, ensuring that the funding is in place. That team will move to transport Scotland, or whatever the agency will be called.

As far as I am aware, there will be no other difference in how HIAL is managed. Representatives of HITRANS have said that they want HIAL to pay attention to the HITRANS strategy. That takes us back to a point that was made earlier: bodies such as HIAL should be required, in statute, to have regard to the strategy, just like other bodies. I am not aware that there would be any other change.

Fergus Ewing: On another matter that is important for transport funding in the Highlands and Islands, I wonder if HITRANS could give us any information on whether it would like to be in a position to argue for continued funding from European regional funding sources for major
transport projects of all types. Such funding has been invaluable to many major projects. Without it, many projects, including those involving the A9, the A830, harbours, piers and air travel, would never have happened. In particular, could you indicate what you expect to happen after 2005, when the axe falls?

The Convener: I am not sure that we need a lengthy answer on that. I am not sure that that falls entirely under the remit of the bill.

Howard Brindley: There is £38 million in the current European regional development fund programme for transport, which has made a significant contribution. HITRANS has worked with the managers of that programme to set the strategic projects and to determine which projects get that money. We would like that to continue. However, it is not up to us to say. Without that money, there would be a significant loss to the infrastructure programmes that we have in the Highlands.

Fergus Ewing: I think that the bill confers a power on the regional transport partnerships that could be used, for example, to enable the partnership for the Highlands and Islands to negotiate directly with the European Commission directorate-general for energy and transport, at least in relation to the trans-European network, which I think includes the A82, as was mentioned earlier. Would going directly to the European Commission—cutting out the middlemen—assist you?

Councillor Mitchell: That question has not been asked. Therefore I cannot speak for HITRANS, but my own view is that that would be a step forward.

Councillor MacIntyre: I will come back to Mr Ewing about HITRANS’s strategy.

HITRANS is a voluntary organisation and as such we have gone as far as we can; we must now have formal standing. Bruce Crawford talked about having some teeth and we feel that we have to go that next step. HITRANS works well, but we have taken it to the limits. To go forward we have to get backing from the Executive in the form of some powers.

I will move away from Shetland to talk about Argyll and Bute Council, and perhaps the same applies in Moray and North Ayrshire. Argyll and Bute is in both WESTRANS and HITRANS. The situation is that Helensburgh and Lomond are in the WESTRANS camp. It is of concern to us that there will be a conflict if we are still split and WESTRANS goes down the road of the third option and HITRANS takes the first option. We want assurances about how that would work. It might be better in some ways if we were in one transport partnership rather than two, but there are concerns about which way to go.

We will talk later about concessionary fares: that is only one of the concerns. There are difficulties within all the local authority areas. Shetland has its problems and we have ours. We must strike a balance for all in Argyll and Bute. When we get more information the council will decide which route it is best to go down. The council has not yet formally put in a response.

The Convener: We will move on to parts 2 and 3 of the bill.

Michael McMahon: Does HITRANS take a view on the establishment of a road works commissioner to look after what already exists?

Councillor Mitchell: We have not discussed that yet, so I cannot give you an answer on behalf of HITRANS.

Michael McMahon: Could you submit an answer once HITRANS has made that decision?

Howard Brindley: Yes. We meet on 10 December and I will ensure that we respond to the committee on that point.

Michael McMahon: What is your general experience of the existing regime? Is it working? Will the proposals in the bill make the relationship between local authorities and utility companies better or worse, or will they make no difference?

Howard Brindley: Discussions with my colleagues suggest that we tend to see that as more of an urban issue than a rural one. I think that SCOTS also said that to a certain extent. There is no evidence of major problems in the Highlands and Islands; I cannot give you examples of where the current system is not working. At the meeting on 10 December I will try to get a response from HITRANS to establish whether we have the same problems with the procurators fiscal not taking forward cases when action could perhaps be taken. However, I am not aware of a significant problem. No one I have spoken to says that the provision of a commissioner will make any difference to what happens.

Councillor MacIntyre: I will mention Scottish Water. That seems to have been a problem in most authorities; it has certainly been a problem in Argyll and Bute. The matter may well come down to a budget change. Scottish Water was going to do certain work and did only part of it. The job seemed to start and stop and appeared to go on for ever. In parts of Argyll we have had problems all the way through with road works and utilities.

Roads are an asset, whether they belong to the local authority or, in the case of trunk roads, the Scottish Executive. We suggest that, because the roads belong either to the council or the Scottish Executive they should do the reinstatement work,
rather than leave it to anyone else. That would lead to a reduction in complaints about reinstatement work. If the Scottish Executive or the local authority did the work to a set standard they could complain only to themselves, rather than continually having to go back to say that the work is substandard and needs to be reinstated yet again. The council is considering that approach. We are looking to make comments about that matter with regard to utilities.

17:30

Fergus Ewing: I have one last question. As I understand it, the purpose of part 2 is to accelerate the time that it takes for utilities in particular to complete road works and to ensure that they are of improved quality. We would usually expect the duration of road works to be weeks or at most months. Councillor MacIntyre might be in the best position to answer this question. Am I right in saying that road works on the A82 between Tarbet and Inverarnan, in the form of temporary traffic lights, have been in place for a period of time that is measured not in weeks, months or even years but in decades? Does Councillor MacIntyre agree that tackling that problem on the A82, where there is an extended single-track section in two parts, should feature largely in the transport strategy of HITRANS in future?

Councillor MacIntyre: The A82 is part of our strategy. For the record, the traffic lights that you mention have been there for 32 years—although they are only temporary. A study is on-going to try to get to some sort of conclusion. We are looking at the stretch from Inverarnan up to Fort William. It seems, sadly, that it will take another year or 18 months to get the results of that survey, although Highland Council and Argyll and Bute Council have both conducted their own surveys and have information about the matter. Howard Brindley is conducting some detailed work.

Fergus Ewing: The First Minister referred to the A82 at First Minister's question time on 4 November, in the context of it being classified by the Automobile Association as a black route—in other words, one of the most dangerous routes—in response to a question from Jackie Baillie about a tragic accident in her constituency of Dumbarton. Why should it take so long to produce the report, which the First Minister referred to as a priority? I do not understand why it should take so long, particularly if information is already available from the local authorities.

Councillor MacIntyre: Howard Brindley can perhaps answer that question.

Howard Brindley: We have been working with Executive officials and consultants on the matter. I believe that early next year all the main surveys will be completed. It will then take a further six months to produce a report that identifies what needs to be done. Once the report has been produced it is necessary to go through a process of statutory traffic orders and perhaps public inquiries, so it is not necessarily the case that work can be started on the ground once that point has been reached. Delays will occur. If the report is produced by the end of next summer, we will still not have reached the point at which it is possible to go to contract and have the work done. More statutory work will have to be done.

The Convener: There are no further questions, so that brings us to the end of the evidence session. I thank Councillor Mitchell, Councillor MacIntyre and Howard Brindley for their evidence.

That brings us to the end of the committee meeting. I thank members of the committee, the press and the public for their attendance.

Meeting closed at 17:33.
The Society of Chief Officers of Transportation (SCOTS) welcomes this opportunity to give evidence to this Committee with regard to the Transport (Scotland) Bill. This written submission concentrates on Sections 1-13 and the associated Section 43 and Schedule One relating to the establishment of Regional Transport Partnerships. Evidence is also offered with respect to Sections 37 and 38 regarding national travel concession schemes and requirements relating to the establishment of pedestrian crossings.

We welcome the recognition by the Scottish Executive of the need for a regional dimension to the planning and delivery of the roads and transportation service. We also welcome the recognition of the success of the four existing voluntary regional transport partnerships. All four have demonstrated that Councils and other partners can come together to deliver on a common agenda.

We note that the Scottish Executive has mounted a separate and parallel consultation on proposals for statutory regional partnerships. Finally, in these introductory comments, we note from paragraph 28 of the Policy Memorandum that accompanies the Bill, the intention to make available illustrative draft orders for the establishment of Transport Partnerships during Stage 2 of Parliamentary consideration of the Bill.

The following comments are referenced to the Sections in the Transport (Scotland) Bill as introduced.

Section 1

We note the intention that all parts of Scotland should be within a transport partnership. We note and agree that the detailed constitution of each partnership should be left open. However, the subsequent sub section 2 seems unduly prescriptive in this respect and at this stage in the proceedings.

We express concern about the proposed voting arrangements in terms of transparency, accountability and democratic representation where there is a single member per Council with a weighted vote.

We also believe that the varying size of each of the proposed partnerships in terms of number of constituent Councils will mean big variations in the number of elected and non-elected members. This will have practical implications for the functioning of partnerships.

Section 2

It seems only reasonable that there should be powers to dissolve a Partnership.

Section 3

It seems there will be huge variations in the nature and scale of funding associated with each partnership. In the case of the West of Scotland Partnership, this will include the direct funding of the Glasgow Underground operation and large numbers of SPT staff. At the opposite end of the spectrum, the north east Scotland partnership is envisaged as having only 2 constituent Councils and a relatively small number of staff. SCOTS would wish to be assured that the Scottish Executive will continue to fund commitments currently delivered by the existing partnerships (including SPT).

A key element in the funding of any partnership might be whether or not there was some form of road-user charging. This is referred to specifically in Section 43. However to be an effective mechanism in transport strategies, there is also a need include the need to allow for charging for the use of trunk roads if this was considered to be appropriate and for any revenues to be included (see also Section 43).
Section 4

The associated Schedule One will need detailed discussion beyond the scope of this note. An SPT transferring to the West of Scotland Partnership would bring its own existing administrative powers and duties. These would need to be integrated and accommodated.

Section 5

We agree that the first priority of the new partnerships should be to establish a regional transport strategy.

However we believe there is a dimension to which further attention needs to be given. Regional strategies ought to be set within the context of a comprehensive national transport strategy. It is disconcerting to see reference to a requirement for the partnerships to indicate how they would individually measure and monitor progress in the implementation of transport strategies. This implies a lack of consistency and direction at national level.

An overall national strategy is essential when it comes to consideration of investment in trunk road/motorway and rail infrastructure. It is also vital when it comes to consideration of any strategy involving road-user charging.

Sections 6, 7 and 8

The new statutory partnerships will be able to draw on strategies that have already been devised or which are in course of being finalised by the current voluntary partnerships. However, the one-year deadline for producing what will be a statutory document, will be challenging for the larger partnerships with multiple membership.

SCOTS accepts the need for regular review and agreed strategies should be binding on constituent members but we believe there will be practical implications in terms of democratic accountability – particularly where control in a Council is firmly balanced.

Section 9

This provision is important. It would seem to offer the opportunity to have a larger number of partnership areas than the currently envisaged five. It allows for the fact that the proposed partnership areas do not necessarily match journey to work areas. It also allows for projects such as the re-opening of the Airdrie-Bathgate rail line which lies partly within two partnership areas.

Sections 10, 11, 12 and 13

The provisions regarding the transfer of transport functions from one body to another require careful consideration. SCOTS believes that Councils currently would be unwilling to cede powers upwards to partnerships unless there was also a positive indication that the Executive was willing to transfer powers to the partnerships.

The “transfer” of the powers and responsibilities of SPT to the West of Scotland Partnership is also one which will require much detailed consideration.

Section 37

SCOTS believes that a national travel concession scheme should be just that – a scheme that applies nationally and which confers the same national rights of travel for all those eligible to travel. The Welsh Assembly has demonstrated that this is possible.

Section 38

SCOTS welcomes the proposal to abolish the requirements regarding informing Ministers about certain pedestrian crossings.
Section 43

SCOTS notes the proposal that local authorities in the SPT area should have powers to operate quality partnerships, quality contracts and joint ticketing schemes. This introduces a more level playing field across all authority areas. It recognises the direct responsibilities of all local authorities for bus and road infrastructure. It is also consistent with the provision in Section 12 to allow for the concurrent exercising of powers.

Re the use of proceeds from road-user charging, reference has already been made above with regard to the financing of the activities of the new partnerships.

Part 2: Road Works

The Scottish Road Works Commissioner (Ss 14 – 16)

The proposed Scottish Road Works Commissioner appears to have the same terms of reference as the existing Roads Authorities and Utilities Committee (Scotland) (RAUC(S)).

The Commissioner does not appear to have significantly different powers than Roads Authorities currently have and would thus appear have the same difficulties in getting New Roads and Street Works Act 1991 (NRSWA91) offences prosecuted.

Whilst the White Paper (Scotland’s transport future) proposed strengthening training, the Bill (as introduced) does not appear to give the Scottish Road Works Commissioner any powers or duties relating to it. If a Commissioner must be appointed then monitoring of training standards and qualifications should be one of his/her functions.

The duty of road works authority and undertakers to provide Commissioner with information will be a significant additional workload for Councils as road works authorities. Smaller authorities, in particular, may find it difficult to find the resources to perform this and other duties required by the Bill.

The Scottish Road Works Register (S17)

The SRWR is one of the real successes of RAUC(S). As mentioned above, the Scottish Road Works Commissioner appears to take over the functions of RAUC(S) and the appointment of the Commissioner calls into question the vehicle used to deliver the SRWR – Susiephone Ltd.

The requirement to enter information into SRWR is a positive but this does not require a Commissioner.

The proposed section (112B) to be inserted into NRSWA91 includes some minor provisions of the Roads (Scotland) Act 1984, but omits two major sections (S56 – Control of Works and Excavations and S61 – Granting of Permission to place and maintain etc apparatus under a road). The new section also makes much of skips, but does not include scaffolding. It is felt that this section will require significant additional work for road works authorities.

Miscellaneous (Ss18 – 27)

Section 18: Directions as to timing of road works. Sub-sections (1) – (3) clarify the wording in NRSWA91 and are useful.

Section 19: Directions as to placing of apparatus in roads. This section is complex and demands a Code of Practice – the writing of which has resource implications for RAUC(S). It is conceivable that the use of this section by two adjacent road works authorities (eg Scottish Executive and Council) could prevent apparatus being laid at all by prohibiting its placement in adjacent roads. It is likely that this Section will be used infrequently.
Local Government and Transport Committee, 3rd Report, 2005 (Session 2)
ANNEXE C

Section 20: Restriction on works following substantial road works. The extension to 3 years is good news for road works authorities, but there are a significant number of exemptions for undertakers in the existing S117 of NRSWA91.

Section 21: Duty of road works authority to co-ordinate road works etc. Whilst strengthening co-ordination is to be welcomed, a number of councils have concerns about the resource implications of this duty.

Section 22: Duty of undertakers to co-operate with authorities and other undertakers. It is likely that this section will be difficult to implement effectively until new (GIS) developments are introduced to the SRWR. There is a need to clarify/reinforce that co-ordination remains a road works authority function.

Section 23: Enforcement of section 119 of the 1991 Act. No comments, but see paragraph 2 above.

Section 24: Qualifications of supervisors and operatives. This section should include requirements to do with training as well as for qualification. Currently qualifications once gained can be renewed (after 5 years) without any requirement for refresher training.

If a Scottish Road Works Commissioner is to be created then the Commissioner should be given powers in this section to monitor compliance with standards and also to issue sanctions (up to and including the removal of qualification).

This section could be extended to ensure that all those working on public roads are appropriately qualified (whether working for Councils, undertakers or private contractors).

The requirement for notification etc may be complicated, particularly for signing/guarding where many people might be involved for very short periods. Whilst the section as written might assist in tracking which supervisors and operatives were engaged on a particular set of road works, it does not require that supervisors/operatives are able to show evidence (on-site) of their qualifications (ie to Police, Road Works Authorities or the Scottish Road Works Commissioner).

Section 25: Duty of authorities, undertakers etc. to ensure competence of employees etc. This section may require guidance or a Code of Practice to ensure consistency.

Section 26: Duty of undertaker to notify completion of road works: form and procedure. This section clarifies the original intent of the NRSWA91.

Section 27: Notices requiring remedial works relating to reinstatements. No comments.

Resurfacing (Ss 28 – 30)

The principles contained within this element of the Bill are good, but there is some concern about their operation in practice.

Enforcement of the 1991 Act (Ss 31 –33)

Councils find it difficult to take legal action under the 1991 Act and thus increasing penalties provides no deterrent or punishment.

The introduction of Fixed Penalties is welcomed, but it is disappointing that Schedule 4: Schedule 6A to the New Roads and Street Works Act 1991 only contains Fixed Penalties relating to notice offences. There are a number of offences listed in Schedule 3: Increase in maximum fines for certain summary offences under the 1991 Act for which Councils would like to see Fixed Penalties introduced to facilitate effective management of the road network.
Schedule 5: Schedule 6B to the New Roads and Street Works Act 1991. Councils have a concern that the right to request a hearing (Paragraph 7) might be used in a vexatious manner to stall the prosecution of offences. It would be preferable for the right to request a hearing to become a right to request a review of the evidence in a similar fashion to off-street parking. It is not clear why Paragraph 7(4)(b) requires the notification of the Procurator Fiscal.

Resolution of disputes under 1991 Act (S34)

In general this is to be welcomed, though arbitration is a currently function of RAUC(S).

Enforcement of certain offences under the Roads (Scotland) Act 1984 (Ss 35 – 36)

These sections provide useful albeit limited powers to Councils as Roads Authorities.

SUBMISSION FROM HITRANS

The following written submission is provided as background to the oral evidence which will be given to the Committee on 16 November by the Chair of HITRANS Councillor Charles King, and the HITRANS Co-ordinator Howard Brindley.

Current operation of HITRANS

The Highlands and Islands Integrated Transport Forum was set up by the Highlands and Islands Convention in 1996 with the objective of acting as a focus for the discussion of common transport problems and opportunities in the region. In 2001 it changed its title to HITRANS and adopted its current constitution.

It is a voluntary partnership and its members are:-

Argyll and Bute Council (except for Helensburgh and Lomond)
Comhairle nan Eilean Siar
Highland Council
Highlands and Islands Enterprise
Highlands and Islands Public Transport Forum
North Ayrshire Council (for Arran and the Cumbraes)
Moray Council
Orkney Islands Council
Scottish Council Development and Industry
Shetland Islands Council

Its objects are to undertake research and gather information about the transport needs of the region; to prepare and keep up to date a regional transport strategy endorsed by all the partners; to implement regional transport projects through the delivery resources of its partners; to act as the strategic consultation body on behalf of the partners; and to establish a dialogue with government, users and operators.

Its Board comprises one councillor and one senior officer from each local authority partner, and one representative from each of the other partners. Each member of the Board has one vote. The Board meets every 2 months.

The Board has contracted a co-ordinator to manage its affairs and makes extensive use of professional consultants to undertake research and prepare its strategy. Officials of the partners also provide substantial help.

Its budget is provided 45% from local authorities according to a population share formula, 45% from the Scottish Executive and 10% from HIE. The current budget is:
HITRANS Budget 2004/5

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<tr>
<td>Consultants studies</td>
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<tr>
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<td><strong>Total</strong></td>
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Our Regional Transport Strategy was approved by all the partners in 2003. It looks forward over 20 years and has five strands of long term strategic action. Our primary objective is to tackle the costs of transport, reducing fares by PSO and journey times by investing in lifeline routes. Our infrastructure strategy identifies the improvements which require long term investment. The strategy also outlines the initiatives to improve public transport services; to improve integration between modes; and to provide better information.

Our current work programme includes:

- Developing our proposals for reducing fares and improving service on the Highlands and islands air network through the extension of PSOs. This has the support of the Executive in principle.
- Establishing a programme of strategic public transport infrastructure projects with funding from the Executive.
- Working with the Executive on the economic case for improving the A82.
- Working with the Executive and NESTRANS on a multi-modal study of the Aberdeen to Inverness transport corridor.
- Preparing a long term review of development opportunities on our main sea crossings.
- Drawing up and prioritising a list of strategic transport projects for investment in the medium term using ERDF and Section 70 grant.

HITRANS’ views on Statutory Regional Transport Partnerships

In June 2003 HITRANS forwarded preliminary observations on Statutory Regional Partnerships to the Executive’s officials who were drafting the consultation paper on proposals for a new approach to transport in Scotland. In September 2003 the consultation paper was published, and HITRANS organised a major seminar in Nairn for regional transport stakeholders. The output from that seminar along with HITRANS response to the consultation paper was forwarded to the Executive.

We confirmed support for moving from the voluntary partnership stage to the more formal statutory level. HITRANS is beginning to deliver the role envisaged when it was set up by the Highlands and Islands Convention, in advocating regional transport needs, developing regional transport strategy, and identifying strategic projects and securing funding commitment. The organisational structure needs to be strengthened with dedicated staff and formal powers so that this strategic approach can be firmed up and fed into the delivery plans of Transport Scotland and our regional service providers. We also stressed that:

The principles of subsidiarity and local accountability are fundamental. In the Highlands and Islands where there is little cross boundary daily movement Local Authorities will be best placed to deliver most transport services.

The main role of the regional partnership must be to set the strategy for those key services which link the local authority areas such as trunk roads, air services, mainland to island group ferries, and major interchange facilities, and to determine the development priorities for investment in these services.
The regional partnership must include the Highlands and Islands as a whole, not a smaller unit of geography. Common characteristics of islands communities, peripherality, long travel distances, the importance of air and sea transport, thin public transport, are what binds us and differentiates us from other parts of Scotland.

The regional partnership must include local councillors and representatives of the economic development agencies.

The regional partnership should not be a delivery organisation itself because the existing Local Authorities and service providers have the skills and ability to deliver the scale of project envisaged for the region. Consequently it should have thin staff resources.

Statutory regional transport partnerships will be new bodies carrying out new functions and HITRANS is concerned that their funding should not be a further burden on the present local authority budget. We did not envisage powers of requisition on Local Authorities in our consultation response because this is a new function. Therefore we have recommended that net expenses should not be met from the constituent councils but by a grant directly from central funds.

The White paper on Scotland’s Transport Future was published in June 2004 with the consultation paper on proposals for Statutory Regional Transport Partnerships following in October, at the same time as the Transport (Scotland) Bill. A response to this consultation will be agreed by HITRANS in December. However preliminary discussions by the Board of HITRANS have revealed concerns about requisition and weighted voting.

National travel concession scheme

HITRANS has welcomed the introduction of a national scheme because of the anomalies which arise where journeys cross local authority boundaries, particularly between Argyll and Highland and Moray and Highland. There is also an anomaly on ferry journeys in the Calmac network where concessionary travel is currently available only in Argyll and Bute. The national scheme should extend concessionary fares to all eligible passengers using Scottish ferry services.

Howard Brindley
HITRANS
Co-ordinator

16 November (25th Meeting, Session 2)(2004)) – Supplementary Written Evidence

SUBMISSION FROM THE SCOTTISH EXECUTIVE

Dear Euan,

I refer to your letter dated 23 November requesting additional information in support of the oral evidence provided by officials of the Scottish Executive to the Local Government and Transport Committee on 16 November. I have detailed below our response to each of the items raised (in bold) within your letter.

Whether a regional transport partnership, if established as a public sector company limited by guarantee, would be able to take its borrowing off the balance sheet and what the implications would be for the accountability of members of such a body, to their nominating bodies.

These companies would be subject to all laws applicable to companies, including financial reporting and auditing requirements, and liability to corporation tax. If the company were to be (part) funded by borrowing, the borrowings, from whatever source would have to appear on the company’s balance sheet. The directors of the company would have to be confident that the company’s income would be sufficient to service all borrowings. The company would have to cease trading if it could not meet its debts as they fell due. While the directors would not be personally liable to meet the company’s liabilities, they would risk disqualification as directors, were
they to trade insolvently. The status of the company’s borrowings would vary according to the ownership, as below.

Options

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<tr>
<th>a) Scottish Ministers</th>
<th>b) Local authorities</th>
<th>c) Individual members</th>
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<td>The company would be classed as a public corporation, and as such the options for borrowing would be limited.</td>
<td>The company might be able to borrow, but only if the local authorities were to provide guarantees. (Any lending support from local authorities would be subject to the prevailing rules for local authority borrowing.)</td>
<td>It is difficult to envisage any lender advancing money to such a company. (The company could not realistically offer any of its assets as security for borrowings, as the lender could not, for example, seize a stretch of the public highway.)</td>
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In summary, under options (a) and (b) above, we expect that any borrowing by the company would appear on balance sheet, while under option (c) the company would be unlikely to be in a position to raise capital.

While the members and directors of any regional transport company would be subject to the Companies Acts, they would also have responsibilities towards their nominating bodies. Conflict of interest issues could well arise.

Whether the Accounts Commission has the power to exact civil penalties on local authorities for failure to carry out road works within a set time frame or to a set standard and if the Accounts commission does possess this power, whether it has ever been used, and if so, on how many occasions. In addition there was a query about whether Ministers have ever intervened in such a situation.

The Accounts Commission does not have power to extract civil penalties in this manner. The powers of the Accounts Commission are set out in the Local Government (Scotland) Act 1973, as amended by the Local Government (Scotland) Act 2003. The Accounts Commission can consider any report on the performance of a local authority (e.g. Best Value Audits, Statutory Performance Indicator). If they think it is necessary then the Accounts Commission can hold a hearing into any matter that is raised in that report. Thereafter the Accounts Commission may make appropriate recommendations to the Scottish Ministers.

Following the audit of the accounts of a local authority, the Controller of Audit if not satisfied can make a Special Report to the Accounts Commission. On receiving a Special Report the Accounts Commission can hold a hearing and subsequently may make recommendations to the Scottish Ministers to direct the local authority to take any remedial action as necessary.

There is no instance known where the Scottish Ministers have intervened in respect of a road works related issue.

The notices that have been entered on the Scottish road works register during the past year.

During 2003/4 129,690 notices were entered on the register; 114,620 (88.38%) related to utility companies and 15,070 to local authorities.

Whether the Bill provides for action to be taken against utility companies who fail to carry out road works within agreed time scales.

There is no explicit provision in the Bill that will require utility companies to carry out road works within a particular timescale, although the general duty of the road works authority to co-ordinate the execution of works (section 21 of the Bill) allied to the duty on the undertaker to co-operate with the road authority (sections 22 and 23) could be used by the authority to put pressure on an undertaker to complete works more quickly.
In addition, utility companies must act reasonably in carrying out works. They have a duty placed on them under section 125 of the New Roads and Street Works Act 1991 to avoid unnecessary delay or obstruction when carrying out road works. A utility company who fails to do so commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale. The Bill proposes increasing the fine to level 5.

**Whether the Executive has given consideration to making a legal challenge to the European Union’s state-aid rules in relation to the provision of ferry services to Scotland’s islands.**

There is no mechanism for the Executive to challenge the European Union’s state-aid rules except by triggering a complaint from the Commission, for example by continuing to subsidise Caledonian MacBrayne and to not tender the services. However, if the ECJ were subsequently to find that such an action was in breach of EU rules the consequences could be severe. In particular, following on from such a ruling, the Commission could order the immediate cessation of subsidy to Caledonian MacBrayne and that Caledonian MacBrayne re-pay to the Executive all subsidy that had been declared to be illegal State aid.

At the transport debate on 8 December the Scottish Parliament expressed concern over the requirement to tender the Clyde and Hebrides ferry services. The Minister for Transport was in Brussels on 9 December and raised these issues with EU Transport Commissioner, Monsieur Barrot. Further discussions will take place between the Executive and the Commission. Thereafter, the Minister will report back to the Scottish Parliament on this matter as soon as possible.

**Whether the Executive has given thought to giving powers to local authorities to introduce 30mph repeater signs in towns without having to ask the Executive for permission.**

The use of 30 mph repeater signs in an area where there is street lighting is not permitted under the Traffic Signs Regulations and General Directions 2002, the legislation which sets out the requirements for road signing in Great Britain. The aim of these regulations, which is reserved to the UK Parliament, is to ensure a consistent approach to road signing throughout the country so that motorists are familiar with and can respond to the instructions which are being given to them.

My records also show that we would supply details on road equivalent tariff scheme for ferry services. If the Committee is interested further in this, I would refer them to the answers given in the Chamber by the Transport Minister on Thursday, 6 May 2004. These are recorded in columns 8194 and 8195 of the Official Report, and are appended to this letter.

Please do not hesitate to make contact if I can be of further assistance.

Kind regards

Frazer Henderson
Transport (Scotland) Bill Team

**Annex**

**The Minister for Transport (Nicol Stephen):** A road-equivalent tariff scheme would generate significant additional subsidy costs, which could be funded only by displacing high-priority transport projects. We have no current plans to introduce ferry fares based on road-equivalent tariffs.

We certainly want to strengthen and improve ferry services to all parts of Scotland—the northern isles services and the Clyde and Hebrides services. It is far from certain that road-equivalent tariffs would benefit communities such as those in the Western Isles, because the longer ferry routes could well be more expensive as a result of the tariff—one must be very cautious before suggesting that all communities would benefit from RET schemes.

We have done a lot in recent years to invest more in our ferry services. We are significantly increasing the level of investment, both in Caledonian MacBrayne and in the northern isles services. For example, we have frozen the commercial freight fares on the CalMac services and we intend to introduce freight as part of the new, retendered northern isles contract. Those
improvements will bring significant benefits to Scotland's remoter island communities. I believe that we are on the right track and that we are investing the right sums of money.
The Convener: The main item on today's agenda is consideration of further evidence on the Transport (Scotland) Bill. Three panels of witnesses will appear before us. The first consists of witnesses from the Confederation of Passenger Transport UK. I welcome to the committee Marjory Rodger, who is director of Government relations for the CPT in Scotland; Jim Lee, who is the managing director of Travel Dundee and the current chair of the CPT Scottish council; Robert Andrew, who is the deputy managing director of Stagecoach; and George Mair, who is the managing director of First Aberdeen. I invite Marjory Rodger to make some introductory remarks to the committee.

Marjory Rodger (Confederation of Passenger Transport UK): The CPT is pleased to be given this opportunity to put forward the views of its members on the content of the Transport (Scotland) Bill. We strongly support the introduction of a project management structure that is focused on delivery by partnership working. As a key stakeholder, we look forward to working with both the new strategic national agency and the statutory regional transport partnerships.

In the paper that we have submitted, the CPT has concentrated on three areas. First, we highlight the positive and negative sides of the current regional arrangements. Secondly, we explain why better organisation and improved standards of road works are so necessary to our industry—it is totally unacceptable that 50 per cent of road works are substandard and have to be redone to acceptable levels. Thirdly, the CPT makes a plea for a truly national concessionary fares scheme for the elderly and disabled. Although a fair resolution to the current concessionary travel arrangements is vital to the bus and coach industry, we have not repeated our case at length. We believe that we covered the issue in giving evidence in the committee's inquiry into the effectiveness of the Transport (Scotland) Act 2001. We hope that majority opinion now favours one national concessionary scheme and that the debate currently centres on how that scheme should be administered.

The clear message from CPT members is that they enjoy more productive working arrangements in other areas of Scotland than they appear to enjoy in the Strathclyde Passenger Transport area. This is not a blanket attack on the Strathclyde Passenger Transport Executive. We have respect for some individuals who are employed by SPT. In the paper that it has submitted for today's meeting, SPT again calls for...
reregulation. It justifies its call by reference to the Colin Buchanan and Partners report, without explaining that the report is a straightforward case study comparison with cities and regions that have received significantly greater public funding over decades.

In its evidence of 28 September, SPT attacked some operators for cherry picking. SPT appears to have painted bus operators as solely self-interested and lacking a social conscience. The CPT cannot let that charge go unchallenged. As the SPT paper has never appeared on the Parliament website, the CPT does not know what and how many other allegations were made. If we were given sight of the paper, we would investigate all the claims that have been made.

We believe that the evidence given regarding service 31, the Lanark to Hamilton route that is run by the McKindless Bus Company Ltd, was inaccurate and omitted several key facts that alter the conclusions that have been drawn. The £83,000 subsidy was paid to HAD Coaches, which with no prior warning went into liquidation on 5 March 2004.

The Convener: Today’s committee meeting should not be a battle between the CPT and SPT. We want to focus more on the CPT’s views on the Transport (Scotland) Bill.

Marjory Rodger: I accept that totally. The last thing that we want to do is to waste valuable time going into many scenarios. However, we would like to send in a written submission that details some of those matters.

14:15

The Convener: Okay. Do you have any further comments on the bill?

Marjory Rodger: I want to work positively and to concentrate on the bigger issues, but we had to set the record straight.

Dr Sylvia Jackson (Stirling) (Lab): I welcome the witnesses—some faces are becoming familiar. What clear benefits would passengers derive from the provisions of the Transport (Scotland) Bill? Do you think that the bill could be improved for passengers?

Marjory Rodger: I will throw that question open to my colleagues, but it seems to me that joined-up thinking would bring clear benefits for passengers. If we work in bigger units, it is much easier to introduce joint ticketing, through-ticketing and other measures that make the system simpler for passengers—the south-east Scotland transport partnership one ticket is an example of that. Most journeys go through more than one local authority area, so we need the bigger groupings—home to work or whatever. It should become a lot easier to make improvements for our passengers.

George Mair (Confederation of Passenger Transport UK): There will be opportunities to consider major projects that could deliver real benefits in journey times into cities from outlying areas. We might be able to secure infrastructure improvements more quickly if we can consider the bigger picture rather than concentrated areas.

Dr Jackson: You will be asked about road works, but I assume that if the infrastructure were to be in place, as you suggest, aspects such as punctuality and reliability would improve.

George Mair: In certain areas, when decisions are taken at local authority level, our members often find that the easy issues are dealt with, but the key initiatives that would reduce journey times and provide real benefits to the travelling public are perhaps more controversial. We hope that, if the bigger picture were to be considered, decisions could be implemented more quickly and deliver real benefits to people who use public transport.

Iain Smith (North East Fife) (LD): In your written submission, you say that you support "the creation of statutory regional transport partnerships."

What advantages would such partnerships have over the existing voluntary arrangements?

Marjory Rodger: We understand that regional transport partnerships are currently at different stages. We have seen some of the evidence from the Highlands and Islands strategic transport partnership and we know the views of SESTRAN; if those bodies think that they need to start at model 1 and work up, that is fine. However, we want the bigger groupings, so that we do not have to make decisions with 32 authorities. We understand that local authorities have different budgetary and policy priorities, but public transport fund bids have not progressed as fast as we would have liked them to progress. We hope that the creation of partnerships that have powers will mean that larger projects are implemented faster.

Iain Smith: Can you give examples of projects that have had problems because they covered different council areas and there was no partnership?

George Mair: The north-east Scotland transport partnership has been successful in developing a modern transport strategy and has delivered a number of measures up front. For example, NESTRANS has made great progress on the western peripheral route in Aberdeen. In the local scenario, certain projects that were encompassed within the first two rounds of public transport fund money have been delivered, but others have been a bit more controversial. For example, a park-and-ride scheme has been delayed. We hope that, if such matters are considered on a larger scale,
Initially, it is up to local authorities to decide which partnership is best for them to be in. That is definitely not for us. We have sympathy with Dumfries and Galloway and we agree with the sentiment that the WESTRANS area or Strathclyde is already a very large grouping. To include Dumfries and Galloway and the Ayrshires is probably not logical. It is up to Dumfries and Galloway to make its case. We would say that the proposed arrangements do not fit.

David Mundell (South of Scotland) (Con): That is an interesting point. In last week’s evidence, we heard that local authorities were to be forced into partnerships. There will not be a choice—authorities will have to be in a partnership. If Dumfries and Galloway is effectively forced to form part of a larger unit, will that have any benefit for bus services there?

Marjory Rodger: Initially, it is up to local authorities to decide which partnership is best for them to be in. That is definitely not for us. We have sympathy with Dumfries and Galloway and we agree with the sentiment that the WESTRANS area or Strathclyde is already a very large grouping. To include Dumfries and Galloway and the Ayrshires is probably not logical. It is up to Dumfries and Galloway to make its case. We would say that the proposed arrangements do not fit.

George Mair: Partnership and force seem to me to be opposites. From our point of view, whenever partnership arrangements are put in place, we want to be part of them. We have written to the minister, requesting that the CPT participate in whatever partnership emerges, in whatever form. That is a decision for the political world—for you guys or the Scottish Executive—to take. We will happily work as best we can under whatever arrangement is put in place.

David Mundell: Your evidence is that there is no logical fit for Dumfries and Galloway within the proposed west and south-west partnership, from a bus point of view.

Robert Andrew (Confederation of Passenger Transport UK): We understand the concerns that have been raised with Dumfries and Galloway Council. In many instances, the industry works very well with the council. We want successful partnerships to come forward and we do not feel that it should be for the industry to decide who should be in which partnership. There might be some logic in the western partnership being smaller than has been suggested, but we will work with whatever the final outcome is.

David Mundell: I will follow up on the point that you made about local authorities working together. Last week, the Society of Chief Officers of Transportation in Scotland told us that local authorities worked well together. On that basis, the rationale for having statutory partnerships is less strong. You have cited examples of people working well together under the current arrangements. We have not heard significant evidence—or in fact any evidence—of local authorities not working well together under the current arrangement or working in a way that inhibits the development of strategies, partnerships and so on. It would be helpful if there was clear evidence that the current arrangements are not working or could not be made to work.

Marjory Rodger: In our view, one of the current constraints on local authorities is their three-year budgetary cycle. Not all transport innovations or big projects can be brought in over three years. That throws things into jeopardy and can cause big delays. It can make local authorities nervous about pledging the sum of money required and putting their plans into action. A statutory partnership that could commit over a longer term, so that the bigger projects could be implemented, would provide a much more secure basis on which to move forward.

Marjory Rodger: Is that not also an argument for partnerships to have their own budgets, which they will not have?

Marjory Rodger: How much power the partnership would be able to invoke is directly linked to which option the partnership chooses.

Paul Martin (Glasgow Springburn) (Lab): The bill contains proposals for the modernisation of the various transport regions, but what proposals have the transport companies made to modernise their approach to regional operations? You have set out what you want to see take place in the various authorities, but what are the proposals of the two main bus operators in Scotland for modernising regional transport? If we want to dictate to local government a new approach, why do the bus operators not modernise their approach to deliver regional transport?
Robert Andrew: At the moment, bus companies tend not to be structured along local authority boundaries or even regional transport boundaries. I give the example of my organisation. There are three main operating companies geographically spread across Scotland: one largely operates in the proposed west and south-west partnership area; one largely operates in the proposed south-east partnership area; and the third is split between the proposed north-east and Highlands and Islands partnership areas.

Currently, we have good working relationships with NESTRANS and HITRANS, in those areas where the voluntary partnerships are beginning to work, but that is less the case with SESTRAN, because that organisation goes about things slightly differently. I feel that we are already structured in such a way that there will be no difficulty moving forward with the proposed new regional partnerships. If changes were necessary, we would be able to evolve quickly, as we have in the past, to work with the appropriate bodies.

Paul Martin: We are asking the authorities to change and modernise, but are you saying that the bus companies will evolve as that happens?

Robert Andrew: If it is necessary. We have flexibility and we have specialists in a variety of roles, so we can react quickly to whatever the climate is at the time.

Paul Martin: Do you give a commitment to do so once we have set in place the new regional transport partnerships?

Robert Andrew: The CPT cannot speak for the industry as a whole, but my organisation would automatically act in the way that I have described.

Marjory Rodger: I think that you will find that the industry will watch what happens and tailor itself to match that as closely as possible. We are investing heavily in vehicles. We have produced the “On the move” booklet, which shows all that we are trying to do. We are keen to use through-ticketing and smartcard technology. We back all those measures; we are certainly for innovation.

George Mair: There are other areas in which we can demonstrate that we have been prepared to look at the wider issues. We contribute substantially to Traveline Scotland. FirstBus has looked at Scotland-wide ticketing options and we have a variety of different arrangements in place in different parts of Scotland, whether those are quality partnerships or umbrella agreements. The industry is willing to bend and shape as needs develop.

Michael McMahon (Hamilton North and Bellshill) (Lab): It is clear from your submission that you see road works as a major problem, because obviously the timetabling of buses and coaches is problematic if road works are in the way. Why would the establishment of a road works commissioner help to improve that?

Marjory Rodger: We have called for effective management of road works. I recall from last week’s evidence that powers are available now that are not used. Is that what you are referring to?

Michael McMahon: Yes.

Marjory Rodger: We are simply asking for the situation to be sorted. If having a commissioner will be a more effective way of sorting the problem, we will support that. We want resolution. We have not made a distinction in our submission between utilities road works and road works on trunk and local roads, because those are political definitions. We are just highlighting our perspective of how the passengers see the situation, which is detrimental to the image of public transport and to us as operators. We are saying that big problems exist and that effective action must be taken.

Michael McMahon: So how can your organisation, through engaging in this consultation, make the road works commissioner an effective position?

Robert Andrew: Regardless of what the framework is, we are major customers of the road authority, for want of a better description. Our customers are greatly inconvenienced whenever something goes wrong with a set of road works and we already try to give feedback through local authorities when there are problems. I think that a road works commissioner would be a focus and an outlet that we could besiege with letters and e-mails to ensure that people know about problems on the ground and that those problems are being looked at. Yesterday, for example, I had the misfortune to be in Aberdeen, from which it took me 50 minutes longer than usual to get home simply because of two sets of road works on a trunk road.

14:30

Michael McMahon: So the issue is all about communication.

Robert Andrew: Communication is half the battle. However, we are not saying that there is a particular solution. We are saying that things need to be a lot better than they currently are.

Michael McMahon: So you see the road works commissioner as being not so much judge and jury on issues, but more a vehicle for communication.

Marjory Rodger: We think that road works must be far better co-ordinated. There must be communication all round, much better timetabling and a much better standard of road works from
those who dig up the roads. If current measures are so inadequate, we will support something that has more teeth and powers, which would probably improve the situation.

Paul Martin: In your evidence, you clearly say that you want one national travel concession scheme rather than five schemes being run by the individual regional transport partnerships. Why do you want one national scheme rather than five schemes?

Marjory Rodger: We have had great difficulties working with the current set-up of 16 schemes, which we believe is unsustainable. There are 16 sets of negotiations, 16 sets of definitions and benefits and varying levels of reimbursement. Reducing 16 schemes to five schemes might seem a big improvement, but the same underlying problems would remain. How will there be consistency in respect of definitions, benefits and entitlements? Our concerns are particularly with carers and cross-boundary issues rather than with the national minimum standard. There must be one clear set of definitions and benefits and one set of reimbursement negotiations. We must have a standard for Scotland, so that we can manage the risk and so that everybody knows where we are going and how to deal with things. We support one national scheme.

Paul Martin: Is there an argument for regional variations? We are talking about only five regional transport partnerships delivering a strategy. That also raises the issue of including ferry operators in the scheme. Should we consider that in relation to regional variations?

Marjory Rodger: That is a political decision. If any local authority or partnership wanted an enhancement above the national scheme and ferries were the home-to-work transport, we could understand the case. We do not have a problem with local enhancements. We will work with the decision.

Paul Martin: Councillor Gordon might be able to open the Renfrew ferry for us. There could be free ferry services.

George Mair: From a user’s point of view, it is important that whatever scheme is in place is simple and easy to use. The benefit of having free travel consistently throughout Scotland is attractive.

Paul Martin: Would the running of a national scheme mean less expenditure? Can it be argued that, with a much simpler scheme for the operators, we could get more out of our investment?

George Mair: It is inevitable that there would be huge savings in managing one scheme as opposed to managing the existing arrangements.

Marjory Rodger: There would be savings in management time on all sides. An incredible amount of time is currently being spent on the issue and I cannot see that there would be big savings with a reduction to five schemes.

Robert Andrew: It is worth highlighting the fact that some of the proposed regional partnerships would create problems with current concession scheme boundaries. I am thinking of, for instance, where Moray Council fits into HITRANS. Moray Council has a joint concession scheme with Aberdeenshire Council, which will be in NESTRANS. That could open a whole new can of worms.

David Mundell: I am sorry, but I was not quick enough to ask a question about road works. I would like to go back to that area of questioning. I seek clarification about the proposals in the bill on road works and the role of local authorities. I do not want to lead you, but I am sure that your experience is that it makes no difference to the congestion and disruption that are caused to your passengers whether a local authority or a utility is carrying out the road works.

Marjory Rodger: Yes. We have categorised all road works as a problem, regardless of whether they are carried out by utilities, and we want them to be managed better.

The Convener: Those are all the questions we have for the panel. I thank the four representatives of the Confederation of Passenger Transport.

I welcome from Glasgow City Council our second panel: Councillor Charles Gordon, who is the leader of the council; Marshall Poulton, who is the head of policy and planning for the council; and Michael Donnelly, who is the business strategy manager for the council. I invite Councillor Gordon to make introductory remarks.

Councillor Charles Gordon (Glasgow City Council): I am pleased to have the opportunity to give evidence on this far-reaching bill, which is potentially important for the city region of Glasgow as a travel-to-work area.

I maintain a strong interest in, and have knowledge and experience of, transport-related matters. I spent nearly 20 years of my working life
on the railways, so the convener and I have something in common. Between 1990 and 1994, I was vice-convener of Strathclyde Regional Council’s roads and transport committee and from 1994 to 1996 I chaired it. Local government was changing back then and, during the shadow year of 1995, I was the new Glasgow authority’s roads convener. From 1995 until 1999, I was the chair of the Strathclyde Passenger Transport Authority.

We have some concerns about the detail of the bill, principally relating to the fact that much of the detail will come later under ministerial orders. However, I emphasise that we are not here simply to defend the status quo. The approach that we have taken in partnership with other councils in the west of Scotland has been practical in relation to the issues. The city region—the travel-to-work area—is a spatial reality: people cross administrative boundaries every day for a variety of reasons. That was recognised a long time ago by Barbara Castle, in the Transport Act 1968. She made special arrangements for the seven great city conurbations in the United Kingdom outside London, and she established passenger transport authorities and executives.

That model was developed and innovated on further by Strathclyde Regional Council, which was more than just a city-region authority as it had responsibility for considerable island areas and landward rural areas. The regional council simply used the passenger transport executive as a council transport department. That proved that Barbara Castle’s original model could be adapted to changing circumstances.

Our primary concern is not to jeopardise the progress that has been made and not to disrupt the economic functioning and regeneration of the city region of Glasgow and the surrounding areas. We do not want to be landed with an untested and rather theoretical model and we do not want to diminish Glasgow’s role as the hub of the country’s largest transport network.

We have taken a practical approach. In our submission to the original consultation in December 2003—which was made jointly with the 11 other local authorities in the west of Scotland and with SPT—we presented in simple diagrammatic terms practical proposals to adapt the existing models and to strengthen them. Glasgow City Council has not yet had a formal discussion on the latest stage of legislative consultation, but our evidence today is based on that 2003 submission.

Principally, the model that we wanted to develop was essentially a joint board that would encompass 12 councils and SPT. However, the civil servants’ report on the consultation responses seems to have treated the submission as one submission from one council because it was submitted with a covering letter from South Lanarkshire Council. That was a fundamental error. If at all possible, we need to bring back into consideration the innovative model that we proposed in that submission.

There are some issues with the latest stage of the proposals. We have a difficulty with the concept of there being individual members of the new regional transport partnerships; after all, those individuals will vote on the allocation of public money. We believe that the inclusion of non-elected people will represent a dilution of public accountability.

To limit the number of the council’s votes to four will not properly reflect the population range in the west of Scotland regional transport area, nor will it reflect the level of budget that Glasgow City Council can expect to contribute or the weight of the city council’s transport responsibilities. We need a high level of safeguard on the extent and scale of majority voting in the new RTP in order to redress any potential democratic deficit and to ensure best value from spending of what is, after all, the public pound.

We have doubts about whether the inclusion of Dumfries and Galloway in the proposed west and south-west partnership can be justified. Dumfries and Galloway has not previously been included in the west of Scotland and is not part of the travel-to-work area of the Glasgow city region.

Under the latest model that has been proposed, it will be difficult to ensure that councils transfer to the regional transport partnership the powers that they currently hold at unitary level. We had already persuaded councils to do that under the model that we proposed last December. I can give further details on our proposal if required.

The Executive appears to be flexible on the three models in “Scotland’s Transport Future: Proposals for Statutory Regional Transport Partnerships”, but rigid on the voting arrangements, despite the range of population sizes in, for example, the west. There seems to be a presumption in favour of arguments against the joint-board model, but it is a tried and tested model in local government. Joint boards function very well for the police and for the fire service. As community planning legislation rolls out, the country councils are showing that they are able to adapt to joint working and partnership working in relation to a new range of public sector powers that were hitherto held at unitary authority level or within individual organisations.

Only one respondent out of 176 made a significant argument in favour of requisitioning. However, that method is being proposed although it is alien to the joint-board model that exists in Scottish local government.
My last point illustrates the inequity that would exist in the proposed system of voting and representation. Glasgow City Council provides about 27 per cent of public transport finance resources for SPT, so it does not seem unreasonable to us that that should be reflected—I will use an uncommon word for me—more proportionately in the proposed arrangements.

14:45

The Convener: Thank you for those introductory remarks. I thought that “proportionately” was the word that you were coming to towards the end of your comments; I suppose that that might make the headlines. I welcome your contribution and acknowledge your long-standing interest and expertise in transportation issues.

Paul Martin: I have two questions. First, you did not cover benefits that the bill will bring to the electorate, so will you tell us about those? Secondly, are there omissions from the bill that should be addressed? As elected members, various representations have been made to us on some issues. We have been involved in a bus inquiry and various other matters that relate to discussions about the bill.

Councillor Gordon: I emphasised the joint submission that 12 councils made in December 2003, but I am happy to make it clear that we broadly welcome the road work proposals. If the committee would find it helpful, Glasgow City Council could submit written comments specifically on that aspect of the bill.

I accept that there is to be a national transport agency and that we must raise our game in respect of transport delivery. I acknowledge that the Executive has put significantly increased sums into transport recently and so is probably entitled to feel that delivery could be sharpened up. I accept that the status quo has not been delivering and that greater innovation is required.

The west of Scotland councils have not made a joint submission on concessionary travel, but I have some knowledge and experience of the matter as I was for some time the chair of the Strathclyde concessionary travel scheme joint committee. Glasgow City Council currently puts about £12.2 million into the Strathclyde concessionary transport scheme annually. My view—at this stage it is a personal view—is that once the Scottish Executive introduced free bus travel it fettered the discretion of local authorities in relation to local concessionary travel schemes. In the past we could from time to time raise the price of concessionary travel, but once there is a free element—albeit through a national scheme injected into the local schemes—it becomes inevitable that we will head in the direction of a national concessionary travel scheme.

The other thing that is missing—it was also missing from the Transport (Scotland) Act 2001—is that, notwithstanding the Confederation of Passenger Transport’s view, we need to consider regulation of the bus industry. Our railway industry is, rightly, heavily regulated, but the bus industry is virtually unregulated. We all desire greater co-ordination and integration of buses, which will require increased regulation. People say that they support quality contracts. They amount to the same thing, which is regulation. We are talking about trying to get bus companies to use some of their huge profits to cross-subsidise routes that may be less profitable but which are socially necessary because communities may be left in isolation if they disappear. That does not apply only in rural areas: similar issues arise in urban and semi-urban areas, particularly after dark or at weekends.

Iain Smith: You highlight concerns about boundaries, particularly about the proposal to include Dumfries and Galloway in the west of Scotland regional transport partnership area. What area would be appropriate for the west of Scotland partnership and why would it not be appropriate to include Dumfries and Galloway?

Councillor Gordon: A balance must be struck. When people desire to travel, they will cross any boundary that we develop or that exists. Travel is by definition a dynamic phenomenon, but transport patterns show that most journeys take place within fairly defined areas. In our case—a city region—that is a travel-to-work area. There is little evidence to show that significant travel-to-work crossover takes place between Dumfries and Galloway and the Glasgow region. I could make a stronger case for including Carlisle.

Iain Smith: Do you have other comments about the proposed boundaries for the west of Scotland partnership? Are there areas that should be included or excluded?

Councillor Gordon: The west of Scotland partnership will cover a big area and we need to keep the arrangements to a manageable size. Plenty of proof exists that the west of Scotland model works—it has worked for a generation—but it would be hard to justify an expansion of the area. Certain areas that are geographically close to Glasgow, such as west Stirlingshire, have never been considered to be part of Glasgow’s transport arrangements, but no one proposes that they should be included. If we argue that because people from a certain region make journeys to Glasgow, that area should be included in Glasgow’s arrangements, we might end up with the whole country included in those arrangements.
That sounds like the civil No. We already have accountability, that is a far superior model.

In terms of democratic arrangements. In terms of democratic both regional roads and other new partnership the model that we propose, they would administer the passenger transport authority is that we would define regional roads and transfer them to the joint board that we proposed to establish. The submission was signed by the leaders of the 12 councils, including me; we have political agreement on that approach. However, the innovative model that the 12 councils proposed was a voluntary approach. Given the potential loss of political accountability in the present proposals, I cannot guarantee that we would all play ball in that scenario.

Such a move as Michael McMahon suggests would have tremendous benefits, however. One of the advantages of the roads authority also being the passenger transport authority is that we would not need to worry about a lack of integration between public transport operations and management of the road system.

Michael McMahon: I am not saying that I am concerned about your comment on political involvement. Would the situation necessarily change, however, because of a change to the voting system? If it was appropriate two or three years ago for the 12 local authorities to see the value in ceding responsibility, what would be the difference, in practical terms, of a change in the voting system of the RTPs?

Councillor Gordon: There would not be a change in practical terms. Yes—we could make the system work, but we would like to know what lies behind the apparent attack on the democratic model that we already have. All that we propose is that the 34 councillors who are drawn pro rata from the 12 local authorities in the west of Scotland to make up the Strathclyde Passenger Transport Authority should wear two hats: under the model that we propose, they would administer both regional roads and other new partnership arrangements. In terms of democratic accountability, that is a far superior model.

We do not know why the Executive proposes to cap council influence at a maximum of four votes. We do not know why individuals who are not elected or accountable are to be given places and voting rights on new bodies that will spend public money that has been requisitioned from local authorities. We think that that is an alien model. Our proposal is far more practical and has the added benefit of being far more politically acceptable. There are enough tensions between central and local government without the Executive looking for ways to invent new ones, which is what seems to have happened in the case of the rather arcane voting proposals.

David Mundell: One of the things that the Scottish Executive led in evidence last week as a rationale for the partnerships was the fact that local authorities cannot work together, so we require a statutory framework to make them work together. However, no evidence has so far been produced to show that failure of local authorities to work together has been an impediment to a specific project. Your evidence on the joint-board model appears directly to contradict that idea. What do you say about the rationale that we need the legislation because local authorities cannot work together?

Councillor Gordon: That sounds like the civil service at its worst. There is antipathy towards local government behind that idea, but all the evidence points in the opposite direction. Local government has proved that it can work in partnership within statutory or voluntary frameworks both in relation to services, such as police and fire services, and generally in community planning. Local government has also proved—certainly in the west of Scotland—that it can work in partnership in delivering public transport. SPT has been going for 30 years; we have other joint arrangements, even at operational level. Bus lanes in Glasgow, which we call quality bus corridors, do not stop at local authority boundaries. We have developed a joint approach to bus lanes; for example, with West Dunbartonshire Council, in the case of Dumbarton Road.

I do not see any evidence for the idea that David Mundell mentioned. What lies behind it is the civil service view that the delivery vehicle should be anything but local government.

David Mundell: To clarify your evidence, do you envisage that regional transport partnerships, such as the one that is proposed for the west of Scotland, will be able to deliver anything more than the joint boards that you propose?

Councillor Gordon: No. We already have voluntary agreements—which have been signed up to by 12 council leaders—to do a great deal more. As I said at the start, our approach to the consultation was not ideological, but practical. We have been in the game and doing these things for a long time. Things can be improved; there can be innovation and delivery can be sharpened up, but
that cannot be done by implementing an untested theoretical model. We should build on the strengths that we have.

15:00

The Convener: I will explore that further. The model that the councils proposed talked about 34 members, but one of the Executive’s aims in reducing the number of representatives was to make the organisation more focused. Some people would suggest that a committee that has 34 members would find it more difficult to come to agreement than would one with fewer members. If the issue of weighting was addressed within the lower number of members, would that satisfy Glasgow City Council?

You also expressed concerns about the appointment of unelected people. Those people would initially be appointed by the minister, but ultimately they would be selected by the regional transport partnerships. Is your concern in that respect merely to do with voting? I expect that the Executive would say that one of its aims with the RTPs would be to encourage more partnership working between councils and other economic bodies in the areas concerned. How do you envisage that the joint board that you propose would work with potential partners in the west of Scotland?

Councillor Gordon: In the west of Scotland, we sit down with the chambers of commerce every year and talk to them about plans for roads and transport, which after all form an important supply side for economic development. Roads and transport are important to business people and the public sector has the whip hand in relation to roads and transport. We could consult and Parliament could make it mandatory for us to consult or co-opt, but I have a difficulty with unelected persons voting to spend taxpayers’ money, be it national taxpayers’ money or local taxpayers’ money.

We could look at reducing the boards’ membership from 34 while keeping representation proportional, but the astonishing fact is that, in all the time I chaired the Strathclyde Passenger Transport Authority between 1995 and 1999, we only had one vote, which was over which livery we would use to repaint the trains.

The Convener: On the point about external bodies, would you be prepared to consider a model that included co-opted members, as long as those members did not have voting powers?

Councillor Gordon: Yes, because any strategic body engages with stakeholders if it has any sense. However, that engagement and partnership working must be done qualitatively; it cannot be done by a tick-box or enforcement approach. We would find that the business community would regard it as tokenism if we were to take one of their number and make that person a committee member with full voting rights, because they would understand that a lot of the politicking would take place behind the scenes. If we want better-quality engagement with stakeholders such as the business community, there are other ways of achieving that. I am certainly in favour of engagement; economic development is at the heart of Glasgow’s regeneration and the two most important things the public sector can bring to the regeneration party are transport and skills. I do not regard engagement as an afterthought.

Dr Jackson: I will ask you about your response to the consultation paper about the utility companies’ involvement in road works. You are obviously not too happy about how long they take, the quality of reinstatements and the site supervision. Would the introduction of a road works commissioner and a national road works register, which are proposed in the bill, improve the situation?

Councillor Gordon: They have the potential to improve the situation. We have to try to innovate and to improve the situation, which is unacceptable. People get very angry about road works—as a former roads convener, I know that. People would say that we did them at the wrong time. Believe you me, there is never a good time to do road works. Somebody is always going to be inconvenienced by them. However, we know that the utilities have a statutory right to dig up the road. They try to programme their works and we try to switch them round to coincide with other works or to avoid impacting on major events, but the reality is that they just have to say that in their operational judgment it is an emergency. Are we going to second-guess someone who says, “There’s a gas main down there and this might develop into an emergency”?

As was highlighted, there are issues with the quality of reinstatement, for which better arrangements could be made. I guess that the commissioner could examine the performance of local authorities and utilities after the fact. By making it clear that the commissioner would apply sanctions, we could perhaps raise standards. It is worth a try, but I do not have complete faith that it will work.

Dr Jackson: That has been an issue in my constituency and, I am sure, in others. What do you do in Glasgow when a community gets in touch with you about reinstatement not being up to standard, with sinking in the road and so on? What procedures do you follow? What inspections do you perform?

Marshall Poulton (Glasgow City Council): As Councillor Gordon said, we welcome part 2 of the
We do not have that information with you, perhaps you could submit it to us later. Has Glasgow City Council ever made a complaint against a statutory undertaker under the New Roads and Street Works Act 1991? Is there no penalty?

In Glasgow, we are introducing additional coring and we are designating strategic roads, which all comes under the considerate contractor scheme. We are also introducing a system of lay assessors to improve the inspection regime, whereby members of the public help us to monitor the road works that are being carried out. The considerate contractor scheme is novel. It has been used by one authority in England—I believe that Birmingham City Council has adopted it—and we are hoping to drive it forward by putting in place an agreement between us and contractors to improve the state of roads and road works.

Dr Jackson: I have a question on your powers of enforcement. I accept that there is an issue with the number of staff you have to inspect roads. As you say, a utility might subcontract the work, which means that you cannot guarantee the quality. If you inspect a road and find that the reinstatement is not up to standard, is there no penalty?

Marshall Poulton: We do not have such powers just now, which is one of the problems. That is why we welcome the financial penalties in the bill. Maximum fines can be increased and fixed penalties can be introduced for certain offences. Even civil penalties could be introduced by regulation to enable roads authorities to impose charges.

David Mundell: I want to follow up on Sylvia Jackson’s question. If you do not have the information with you, perhaps you could submit it to us later. Has Glasgow City Council ever made a complaint against a statutory undertaker under the New Roads and Street Works Act 1991?

Councillor Gordon: We do not have that information to hand, but we will try to get it for the committee.

David Mundell: In evidence last week, we heard that there have been no prosecutions under the 1991 act. It is important that we get to the bottom of why that is the case.

We have been told that the purpose of part 2 of the bill is partly to deal with congestion. What is your view on the fact that local authorities are not included in that part of the bill? Would the council be happy for the same provisions to be applied to it when it carries out road works as are applied to utilities?

Councillor Gordon: Yes. We do not want a double standard. Glasgow City Council often undertakes road works on its own behalf. We should be subject to the same standards as utilities.

The Convener: Iain Smith has a question.

Iain Smith: Councillor Gordon covered the issue of concessionary travel earlier.

The Convener: That brings us to the end of questions. I thank Councillor Gordon, Michael Donnelly and Marshall Poulton for their evidence.

I welcome our third panel for the afternoon, which is made up of representatives of the Strathclyde Passenger Transport Authority and the Strathclyde Passenger Transport Executive. We have with us Councillor Alistair Watson, who is the chair of the SPTA; Malcolm Reed, the director general of the SPTE; Douglas Ferguson, the director of operations; and Valerie Davidson, the head of finance.

I know that there is concern in SPT about comments in one of the papers that were submitted and that today the CPT has made further comments regarding SPT. However, in your introductory remarks and in your answers to questions, I would like you to concentrate mainly on the Transport (Scotland) Bill and SPT’s views on the bill. Hopefully, if we touch on any of the other issues, we will do so only to a small degree.

Councillor Alistair Watson (Strathclyde Passenger Transport Authority): I welcome the opportunity to present evidence on the bill. Like Councillor Gordon and the convener, I have spent a substantial chunk of my life in the railway industry—getting on for 30 years. The organisation that I represent is more than 30 years old, so we are growing old together. Like an old fiddle, we are probably getting better.

There is no doubt that, of all the public transport authorities in Scotland, SPT is most directly affected by the bill. We welcome the opportunity to give evidence to the Local Government and Transport Committee and to explain some of our concerns about the bill.

My colleagues and I are happy to answer any questions that the committee may have concerning our written evidence, which members have received. However, it might be helpful if I summarise some of the key issues behind our written submission.
I emphasise, at the outset, that SPT shares the concerns that have been expressed widely about the proposals for membership of the new regional transport partnerships. We also have severe misgivings about the Scottish Executive’s boundary proposals. However, as both those issues are the subject of a separate consultation, our written evidence does not touch on them because the Scottish Executive’s final proposals are not yet available. That, in itself, illustrates one of SPT’s major concerns with the bill—that important parts of the Scottish Executive’s proposals are not included in the bill but are reserved for subordinate legislation. We are required to give evidence to you in ignorance of the precise way in which the proposed changes will eventually be framed.

Unfortunately, that applies in particular to the sections of the bill that deal with the future arrangements for SPT and the west of Scotland. The Minister for Transport gave some specific and extremely welcome undertakings in relation to SPT when he introduced the white paper in the Parliament on 16 June. He has since repeated many of those assurances in meetings with me and the SPTA. However, at this late stage we are still awaiting details of how the minister’s unambiguous parliamentary undertakings will be delivered. Frankly, I am not reassured that the positive spirit that was communicated to the Parliament is being reflected in the subsequent approach to the drafting of the bill.

One of my major concerns is about SPT’s continuing involvement in the delivery and monitoring of rail services in the west of Scotland. Our written evidence quotes the minister’s words, and what Nicol Stephen told the Scottish Parliament is entirely consistent with what the Secretary of State for Transport said to the Westminster Parliament on 15 July, which was that

“local transport decisions are best taken by people who know what is needed locally.”—[Official Report, House of Commons, 15 July 2004; Vol 423, c 1548.]

Recognition of that fact is especially important if we are to go on planning and delivering integrated transport in the west of Scotland, where more than a quarter of all fare-paying journeys are made by rail—more than anywhere else in Britain, apart from greater London.

That state of affairs did not come about by accident; it is the result of a conscious political choice at the regional level and of more than 30 years’ investment in the Strathclyde rail network by local taxpayers and passengers. An outcome whereby such active regional involvement did not continue would be bad for transport integration, bad for the railway—because of the loss of additional funding—and bad for passengers. However, because it is taking so long for the Scottish Executive to tell us how the minister’s undertaking will be delivered, I am beginning to fear that the outcome may be different from what he promised.

Those practical doubts about implementation reinforce SPT’s worries about the bill and its implications. As we have pointed out in our written evidence, all the white paper’s objectives for regional transport planning and implementation can be delivered through existing legislation without any of the upheaval and diversion of human and financial resources from front-line delivery that will be caused by the transition process. Just as important, the bill fails to address the real issues that could improve Scotland’s transport and create better integration on the ground. It does not provide for more adequate revenue funding, nor does it tackle the underlying deficiencies in the way that the bus industry is organised.

I was disappointed with the written evidence from the Confederation of Passenger Transport. As its evidence states, the CPT is a trade association. Its members in Scotland receive around £200 million of their annual income from central and local government, in addition to the support that bodies such as SPT give through the subsidised provision of bus stations and other facilities that directly assist their businesses. I do not want to waste the committee’s time by rebutting in detail all the CPT’s entirely unsubstantiated comments about the SPT. However, I remind the committee that more than two thirds of SPT’s employees are directly operational, like those of the CPT’s members. They are involved in staffing bus stations, travel centres and subway stations, and they maintain the subways, drive trains, process dial-a-bus bookings for elderly and disabled clients, deal with concessionary travel inquiries and manage and maintain more than 10,000 bus stops. The tone of the CPT’s evidence does not seem to reflect the spirit of partnership that the CPT claims to promote.

**The Convener:** Thank you for your introductory remarks. I will open up the questions by asking about your concerns about the drift of the bill. First, are you concerned about delivery on specific assurances that the minister has given you? If so, will you expand a little on those concerns? Secondly, does SPT consider it essential that before the bill is passed the Executive publish draft regulations in the various areas in which the bill makes provision for secondary legislation, so that the Parliament may understand the general direction in which the Executive intends to move before deciding whether to pass the bill?
Councillor Watson: I have sought reassurance after reassurance from the minister that what he has promised will be firmed up through undertakings and compliance on the part of the civil service, but he has not always agreed that that is what he is working towards. We have always asked that SPT’s autonomous powers to develop, manage and monitor the rail network should continue to be provided to SPT or its successor body. In fairness to the minister, he has acted in a way that is entirely consistent with his intention to deliver on that promise. However, given the way in which the bill is drafted, I am concerned that the issue might not be followed up with enthusiasm by the civil servants who support the minister. It is prudent and pragmatic to remind the committee that we are concerned that the bill as drafted does not appear to follow through on the minister’s promise.

The Convener: Apart from rail powers, are there other areas in which you think that the bill does not deliver on assurances?

Councillor Watson: Yes. When the consultation document was first discussed, there was an intention to devolve the bus powers that SPT enjoys to individual local authorities. The director general and I argued that that approach would be a complete reversal of integration because, as we and other witnesses said, an overarching organisation is needed if we are to promote cross-boundary services and integration. We made robust representation to ministers and civil servants but, although we were given verbal assurances that we were making a good case, our arguments are not reflected in the bill.

Iain Smith: On rail powers, do you accept that the way in which the bill has been drafted reflects the powers that are currently available to the minister? Those powers are limited by the fact that the relevant legislative proposals have not yet been introduced at Westminster, although a commitment to do so was given in the Queen’s speech. The wording might not be as tight as you would have liked it to be, but that might simply reflect the reality of the current legislative situation.

Councillor Watson: The spirit of ministerial statements, at Westminster and in the Scottish Parliament, reflected a desire to devolve rail powers to regional transport delivery vehicles. SPT clearly represents a successful model of delivery, as Councillor Gordon said. The legislation that set up SPT was probably one of the best pieces of transport legislation in the past 30 years and SPT’s successful track record is proven, so I cannot understand why there is a hurry to suck up powers from Westminster that are currently enjoyed by SPT, without deriving any real benefits from doing so. We are the delivery vehicle in the west of Scotland and we have proven that we can deliver on projects. What is the hurry?

Malcolm Reed (Strathclyde Passenger Transport Executive): We understand that the legislative limitations of devolution have constrained the Scottish Executive’s approach to the matter. Helpful comments have been made in the Westminster Parliament about the spirit in which it is intended that our rail powers should be dealt with. Unfortunately, the issue has remained with us since the white paper was published.

My colleagues and I have had a number of meetings with civil servants to try to understand how they intend to give effect to the minister’s clear commitments. We are still waiting for detail, but there seems to me to be a stepping back from the minister’s clear undertakings. We are not being promised the effective control that would allow the proposed west of Scotland partnership to integrate all modes of transport within its transport planning. The current discussion involves agency powers from the Scottish Executive. To my mind, that does not match the assurances that were given to our chairperson, Councillor Watson, and to the Parliament in June. We seem to be talking about a limited permission to exercise Scottish Executive powers rather than the effective integration of rail with other forms of transport, which has been the backbone of how we have delivered integrated transport in the west of Scotland for the past 30 years.

Iain Smith: Moving on from that, you have expressed concerns about the bill and the consultation going in tandem. Would it have been better to introduce the bill after the completion of the consultation on the boundaries and financing of the proposed regional transport partnerships?

Councillor Watson: We have argued strongly that the UK Government’s rail review should run simultaneously with the bill because they are both concerned with rail powers. We were confused by the almighty rush to get something through the Scottish Parliament without finding out whether rail powers would end up with the minister through the demise of the Strategic Rail Authority.

Iain Smith: I note your comment, but I am not sure that we are rushing the bill through the Scottish Parliament and not giving due consideration to it. It is more likely that the Westminster bill will be rushed, if there is to be a general election in May.

Councillor Watson: You said that, not me.

Iain Smith: That is just a comment. As a committee, we are taking all due care to ensure that the bill is properly scrutinised. I am sure that the Parliament will do so also.
You said that you have not gone into detail on the boundaries and so on of the proposed RTPs. It would be helpful to the committee if you could comment particularly on the boundaries issue, which is causing concern, and the financing powers.

**Malcolm Reed:** The previous panel of witnesses made the point that it is important that boundaries are drawn with reference to natural transport catchment areas. We have a common view with Dumfries and Galloway that that region is not a particularly good fit with the proposed west of Scotland transport partnership. We feel strongly that Ayrshire is part of the extended Glasgow travel-to-work area. We are concerned about the tightness of the proposed Highlands boundary with reference to the west of Scotland. For example, we think that it is nonsense to include Arran and Cumbrae in the proposed Highlands transport partnership, when they look entirely to the mainland for all their local government services and main transport links.

We also feel that there is a case for considering the boundary to the north and north-west of Glasgow. Parts of Stirlingshire were previously in the greater Glasgow passenger transport area before local government reorganisation in 1975. We think that there is a strong case for looking at the area round Balfron, Drymen and Killearn, whose natural transport links are with the west of Scotland and which contribute significantly to the road traffic coming from that quarter.

It is important that any approach to boundaries should reflect the reality of what is happening in the transport network. Research that the Scottish Executive commissioned a couple of years ago shows that the boundaries of the city regions do not overlap particularly. There is a natural watershed at about Falkirk, but Glasgow and Edinburgh have different catchment areas. They are both expanding, but they are doing so in different directions. We think that a coherent case can be made for the existing Strathclyde boundary, with some of what is at present part of Argyll and Bute added to the area, and including the North Ayrshire islands.

**The Convener:** Do you contend that Dumfries and Galloway does not fit with any of the proposed partnerships and so should stand alone?

**Malcolm Reed:** That is a valid point. The Scottish Executive’s figures for travel movements in Scotland show little cross-border movement north and north-east from Dumfries and Galloway. The region is largely self-contained and has different characteristics from most of the rest of the west of Scotland.

Reference has been made to partnership working. We have no problem with working in partnership with Dumfries and Galloway Council—we already do so. For example, we have jointly sponsored a study of the potential for opening additional railway stations on the route between Carlisle and Glasgow. That was a good example of how two adjacent authorities can get together to produce proposals that benefit both their areas. We see no inhibition to continuing to work in that way. However, we are not sure about the reason for a forced marriage between Dumfries and Galloway and the rest of the west of Scotland.

15:30

**The Convener:** You have strong views about continuing to play a strong role in rail. Many of the Executive’s primary transport projects are rail projects. Several of them—such as the reopening of the Bathgate to Airdrie line and enhancements to the Shotts line—take place not within proposed partnership areas, but across partnership boundaries. How would such projects progress best? Would they best be developed by regional partnerships working together, or by the national transport agency?

**Councillor Watson:** I suggest that the answer is a mixture of both. Just because a rail project kicks off outside our present boundary, that does not mean that we cannot become involved in it. The Airdrie to Bathgate line is a classic example of our being part and parcel of assisting in a project. We are not the project’s promoter, but we are enthusiastic about the benefits that the conurbation will experience from that line.

Our crossrail project, which will be on the minister’s desk in about nine months’ time, will have direct benefits for the Airdrie to Bathgate line, because we propose to increase line capacity in the High Street junction area. That is a classic example of how we can work on cross-boundary issues. The Shotts line is another classic example of how we can promote services in partnership with West Lothian Council and beyond our present boundary.

That returns to the argument that travel-to-work areas are important to planning a regional transport partnership. As with the argument about Dumfries and Galloway, if a project happens to take place just outside a boundary, there is no stumbling block to working with partners, including other partnerships.

**Paul Martin:** I will ask Councillor Watson about the strong statement in the SPT’s submission that the Executive is not acting on advice to deliver transport policy. I do not know whether you have touched on it, but will you say what that advice was and why you are concerned?

**Malcolm Reed:** It may help if I field that question. We were referring to work that the
Scottish Executive commissioned from Colin Buchanan and Partners, which is one of the best-known names in the transport planning profession, on the transferability of best practice in transport delivery. That was a worldwide study to which the CPT’s evidence referred.

The study produced pretty strong statements about the way to deliver effective transport policy. The first statement, on which we have common ground with the CPT, is that transport in Scotland is relatively underfunded. As a result of the Executive’s new policies, much emphasis has been placed on big infrastructure projects, including public transport projects. We welcome the additional money for those projects, but we keep reminding civil servants and the minister that the problem remains of finding sufficient revenue funding for public transport, simply because revenue delivers subsidised bus services, integrated ticketing schemes and the support for infrastructure that makes passengers’ lives better.

Another strong conclusion in the study by Colin Buchanan and Partners is that we all need a period of policy stability. In a sense, what has been happening in Scotland since devolution—for good or bad reasons—has been the reverse of that. In our written evidence, we point out the fact that the Scottish Executive consulted on exactly the issues that are covered by the present bill only five years ago and came up with the opposite conclusion to the conclusion that it seems to have reached this time. We would like a bit of stability and an opportunity to get on with the job of delivering services to the public, instead of responding to consultation papers and engaging in this sort of discussion. Enjoyable though this is, it stops us from getting on with our day job. That is a powerful, underlying message.

One of the other important lessons from that study is one on which the CPT has expressed a view. In our evidence, we do not advocate re-regulation; we simply point out that the universal finding of that piece of research is that best practice in public transport delivery throughout the western world is to be found in areas where there is some form of regulation of the bus industry. That statement is embodied in the Scottish Executive’s own published research report, which was reissued as recently as last week. We would like a bit of clarity about why the Scottish Executive is not addressing the advice that it has been given by its consultants.

Dr Jackson: I got a partial answer to this question earlier. Why does the SPT oppose the provisions that would allow the local authorities that make up the SPT to enter into bus quality partnerships?

Councillor Watson: We are a regional body and, as has been mentioned, many bus services are cross-boundary services. As recently as the announcement that the minister gave on the bus development grant, we were asked by the constituent local authorities to produce a number of bids based on strategic projects in relation to the bus industry. Those powers are, frankly, best used by a regional authority such as ours—a conclusion that is, ultimately, supported by the Buchanan report, which has been mentioned several times.

Malcolm Reed: In our evidence, we say that that is a capability that the 12 councils in our area—with the exception of Argyll and Bute Council—do not have. The bill will impose an extra cost on local government that is not covered in the financial memorandum. We reckon that it would cost about £440,000 a year for the councils in our area to discharge the powers that are proposed in the bill.

Michael McMahon: Councillor Watson, neither your written submission nor your oral evidence has mentioned the proposed road works commissioner. Can you explain why you have not mentioned that and whether you see it as being of any value?

Councillor Watson: I ask Malcolm Reed to answer that.

Malcolm Reed: Basically, because we are a public transport authority, we would not want to comment on what are primarily the functions of the roads authorities in our area. We obviously have an interest in how road works affect the delivery of public transport, especially bus services. Also, as a potential promoter of schemes, we may find ourselves acting as statutory undertakers with an interest on the other side of the fence. We share the general view that anything that improves the co-ordination of road works and minimises delay, especially on key public transport routes, is to be welcomed. However, frankly, we are not close enough to the detail to be able to offer any comments on the proposals that are in the bill.

Michael McMahon: That makes perfect sense.

David Mundell: I suspect that you would agree that, where road works impact on your activities, it does not make any difference whether the road works are being carried out by councils or utilities. Do you agree that there is no logic to the way in which the bill places certain obligations on utilities but not on councils for the carrying out of what might be similar works on the roads?

Councillor Watson: There is a difference of accountability. Dealing with accountable bodies such as local authorities is a hell of a lot easier than dealing with utility companies. In my previous incarnation as convener of land services for Glasgow City Council, I could have provided volumes of evidence on how difficult it can be to
deal with unaccountable organisations such as utility companies. Local road networks will be improved by some schemes that we are promoting, such as one of our projects in Glasgow that involves a number of partners, including Glasgow City Council and a private sector operator. Any move towards improved integration, understanding and accountability is undoubtedly welcome.

David Mundell: According to the Executive, part of the rationale for the inclusion of regional transport partnerships in the bill is that projects have been impeded by the inability of local authorities to work together. However, we have heard no examples of that today. Has the inability of local authorities to work together impeded any major SPT projects?

Councillor Watson: Not at all. I directly challenged the civil servants to prove that claim when it was made at a conference in Glasgow, but I still await that proof. Frankly, I agree with Councillor Gordon that the claim is probably mischief making on the part of the civil servants. It shows them at their worst.

David Mundell: Your submission says that the proposals “add nothing that could not be achieved under existing legislation”. Does that sum up your view?

Malcolm Reed: Yes. As we point out in our submission, the Transport (Scotland) Act 2001 provides Scottish ministers with the power to require public bodies to deliver statutory transport plans, which will be the common activity of the proposed regional transport partnerships. In many ways, the power that already exists is better than that which is proposed. Under the 2001 act, ministers could require health boards and the enterprise agencies to become involved in the transport planning process. That is exactly the approach that we will need if we are to address some of the emerging local transport issues, which concern enterprise and the delivery of health services.

Paul Martin: What is Councillor Watson’s view of the democratic accountability of the proposed partnerships?

Councillor Watson: As an accountable, elected member, I find it difficult to be comfortable with a mechanism that will, in theory, allow unelected, unaccountable people to requisition and spend public funds. As an organisation, we are committed to working closely with the private sector and we maintain an on-going dialogue with a host of private sector partners, including the chambers of commerce, the Federation of Small Businesses and the private sector operators with whom we work closely in the procurement of public transport. However, I would have great difficulty if part and parcel of spending taxpayers’ money was to involve a private sector appointee with no element of accountability.

Paul Martin: Is there an argument for user group representatives, such as a bus-user or rail-user representative, to have a seat on the proposed regional transport partnerships?

Councillor Watson: Over the past 18 months since taking over as chair of the authority, I have tried to establish close working relationships with a number of user groups and pressure groups. There are probably hundreds of thousands of such groups who want your ear because they want to influence policy decision. I do not have a problem with rolling out a dialogue with just about everybody and anybody, but the formulation of policy should remain with those who are fully accountable to the public: that is, those who are elected members.

15:45

Paul Martin: If there is to be additionality, it might be that we go down the route of user group representatives having a seat, rather than being concerned about other elements.

Councillor Watson: Yes.

The Convener: I will ask a question about congestion charging. I am aware that no authorities in the west of Scotland are pursuing congestion charging proposals. Nevertheless, is there a case that such powers should lie with the regional body rather than with an individual local authority, so that the interests of the wider travel-to-work area are taken fully into account, rather than only the interests of one local authority?

Councillor Watson: I do not want to make Charlie Gordon do a handstand behind me, but I think that such a strategic power should remain with the regional authority. However, there would need to be an almost unbelievably close working relationship with the constituent local authorities.

I was involved in rejecting the idea of congestion charging for the Glasgow conurbation in relation to the provisions in the Transport (Scotland) Act 2001, which was passed in the previous session of Parliament. The reason for that is simple: the Scottish Parliament did not play ball. The Parliament produced enabling legislation that allowed local authorities to promote congestion charging without the Executive, which is responsible for the trunk road network, initiating a similar congestion charging scheme on the trunk road network, which is an integral part of the road network in the Glasgow, Lanarkshire and Renfrewshire conurbation.
If a congestion charging scheme is to be rolled out at some point in the future—I have no doubt that there will be a constant argument about whether that should be done—a regional strategic organisation, such as that which we are discussing, should have the power to roll it out. We must ensure that we do not repeat the mistakes that have been made elsewhere. We must, to pick up on the point that David Mundell made, not fall out with anybody and ensure that we work together.

Iain Smith: Your submission makes no reference to the bill’s proposals on concessionary travel. Can you comment on those proposals and on whether moving to a single national scheme would have a positive or negative effect?

Malcolm Reed: I will start—forgive me for this—by declaring an interest because I qualify for concessionary travel tomorrow.

The Convener: Congratulations.

Malcolm Reed: The reason why we do not comment on the proposal in detail is because it is currently a permissive power. Councillor Gordon argued powerfully that the way in which the legislation is tending means that there is probably a logic for having a national scheme. If such a scheme is implemented, we would have concerns about the local delivery arrangements. For example, the most basic point is about how local inquiries would be answered and how people would be able to establish their eligibility. I am sure that they would not want to come to one central office somewhere in Scotland to register. Many of the details of a national concessionary scheme have to be thought through.

I made the point in evidence to the Parliament during a previous meeting that any concession scheme can be only as good as the public transport system on which it is available. One of my concerns is that by giving so much priority to concessionary travel we are neglecting the core network. If money is pumped into concessionary travel at the expense of support for main line bus services for all users we are storing up a problem for ourselves. I would like to see any rolling out of a national concessionary scheme supported by more robust measures for financing the network for passengers who still have to pay a fare.

The Convener: That brings us to the end of questions for the panel. I thank Councillor Watson, Malcolm Reed, Valerie Davidson and Douglas Ferguson for their evidence.
As the trade association for bus, coach and light rail, CPT welcomes the opportunity to give evidence on the Transport (Scotland) Bill.

CPT supports the creation of a national transport agency. The Scottish Executive is committing unprecedented levels of funding to deliver the major transport projects identified in the Partnership Agreement. Large scale projects cannot be implemented by 32 local authorities.

CPT also welcomes the commitment for a national transport plan for the longer term. This is essential if maximum co-ordinated improvement is to be achieved. The constraint of the 3 year local budgetary cycle has proved a real restriction to progress. Large scale projects take longer than 3 years to bring to fruition.

CPT also welcomes the creation of statutory regional transport partnerships. A significant proportion of journeys cross regional boundaries, and local authority policy and funding priorities often differ.

Statutory regional transport plans are also a positive and welcome requirement. The fact that they will have to dovetail into the national plan means that for the first time Scotland will have unified and comprehensive transport project planning.

CPT looks forward to working together with both the national transport agency and the statutory regional transport partnerships to maximise improvements for the travelling public.

CPT views this new structure and comprehensive planning as positive developments, essential for major improvements. Funding will no longer have to be spent by end of financial year on piecemeal projects but can be earmarked for those improvements which have been identified as most necessary and effective.

CPT contends that it is up to the local authorities themselves to identify which transport partnership best serves their needs, but we are concerned regarding apparent imbalances.

NESTRANS and HITRANS work effectively with committed professional teams of less than 10. From its outset, NESTRANS involved Scottish Enterprise and business interests, and although founded after SESTRANS, WESTRANS and HITRANS, has made significant progress in its short life.

NESTRANS has developed its Modern Transport Strategy, which includes park and ride proposals. Recent HITRANS initiatives include improved services and publicity at Inverness Airport, low floor bus conversions and upgraded bus stop infrastructure.

Conversely, SPT employs over 700 people and in regard to bus related matters, progress is frustratingly slow. CPT understands that the intention is that SPT is to be an integral part of the new West of Scotland transport partnership. Currently, WESTRANS, like NESTRANS, operates with a very small, efficient staff. CPT sincerely hopes that WESTRANS will not be swamped by the passenger transport executive, and that the constituent local authorities of Strathclyde will be the controlling voices in the West of Scotland partnership. CPT would be exceedingly disappointed if the new West of Scotland statutory regional transport partnership were to become simply SPT (minus rail powers / highway powers) with another name.

While we have said that individual local authorities should decide which regional transport partnership best serves their needs, CPT is concerned that the grouping which far outweighs the rest in population served is to be enlarged even further. SPT covered 42%
of Scotland’s population and now it is proposed to add Dumfries and Galloway and the Ayrshires to the West of Scotland regional transport partnership. If over 50% of Scotland’s population belong to one regional partnership, will this not give that partnership unfair advantages in policy decisions taken and financial bids made?

- CPT also questions why 700 people are automatically guaranteed continuing employment. Surely is should depend on individuals’ experience, skills and track records?

- Unnecessarily large bureaucratic bodies incur exceedingly large overheads. Wherever possible, CPT wants to see funding ring fenced for actual transport improvements – giving benefits to the travelling public.

- Bus and coach related improvements move far faster in the non-Strathclyde areas of Scotland where real consultation takes place and partnership working is standard.

- When one body wants total control, progress is blocked. CPT feels that a change of culture is absolutely essential in Strathclyde.

- CPT welcomes the fact that 30% of the voting membership of a statutory regional transport partnership will be drawn from the business sector and other organisations in the area. If the private sector is to be encouraged to provide funding, skills and resources, it must also have a say in how projects develop

- CPT has already written to the Minister for Transport seeking representation on all regional transport partnerships.

- CPT wants to work in real – not nominal partnership – with strong, effective regional transport partnerships

- CPT welcomes the overhaul of utilities’ road works supervision. It is totally unacceptable that 50% of current road replacement is sub standard and has to be re-done.

- Road works are a major cause of congestion and result in delay / inconvenience to bus passengers.

- CPT accepts that they are necessary but greatly welcomes the policy to ensure that in future they will be better co-ordinated, completed faster, resurfacing improved and traffic disruption minimised.

- We support the introduction of a Road Works Commissioner and that the Commissioner will be able to impose heavier penalties on defaulters.

- CPT has lobbied for improvements in this area because road works are a major problem affecting the reliability of our bus and coach services.

- Our research demonstrates that reliability is the most pressing passenger requirement pertaining to bus and coach services. Road works are often the cause of unreliability, and are a cause which operators can, at present, do little about.

- The points CPT expressed in response to the Utilities Road Works consultation are:
  - Bus operators should be at the top of the list of consultees; and bus services must cease to be treated as an afterthought
  - Bus users are often the greatest casualties of road works. Motorists will find another route or set off earlier but bus users often have to endure road works for the duration.
  - Worse still, some bus users on the disrupted routes never even see the road works as they do not travel on the section of route where the road works are. Their bus
service collapses and they have no idea why. So they blame the ‘useless’ bus operator and eventually stop travelling.

- Unannounced road works are even worse. The motorist finds out when he joins the queue of traffic, so can see the problem for himself. He might even see a sign which tells him how long they are likely to last so that he can make other arrangements.
- The bus passenger waits at the bus stop much longer than usual with no knowledge of what is causing the delay. Passenger faith in bus service reliability is badly shaken; when they do reach the affected stops, drivers are bombarded with complaints; and repeat custom may well be lost.
- There is a limit to how far good customer care skill training can help in such circumstances.
- It all contributes to the perceived relatively poor image of the bus – and yet is beyond the industry’s control.

Road works should be an opportunity for the bus industry to show what it can do to alleviate disruption whenever practical. Let the buses through and divert the other traffic. Give bus users a clear advantage so that motorists have an incentive to change mode. Elevate the status of the bus: change the existing culture.

- When roads are closed altogether local authorities and utilities should be required to pay for either free shuttle services, or extra buses to maintain the normal timetabled service as far as possible. This ensures that the real cost of the road works falls in the appropriate place and that passenger inconvenience is minimised and bus operators do not lose short term revenue or long term business.
- It will also ensure that the length of the disruption is minimised as there will be a significant cost penalty that will encourage contractors to minimise the duration of the works – which is not the case, as currently, when the bus passengers’ inconvenience has no financial cost to the contractor and / or the operator is footing the bill.

A simplified, more effective, enforced structure – giving a level playing field to all the relevant stakeholders – will maximise efficiency, fairness and accountability.

- CPT greatly welcomes Scottish Minister taking powers to run a national concessionary travel scheme
- CPT has consistently stated that long term administration and reimbursement through the current 16 local schemes is unsustainable long term.
- The current 16 local schemes give “post code” differences in benefits and entitlement to concessionaries and do not provide adequate reimbursement to operators.
- If control of concessionary schemes were to pass to the proposed 5 statutory regional transport partnerships, 16 sets of beneficiary variations and operator negotiations would be reduced to 5, but the current underlying problems would remain. CPT does not support this solution, as it is a “half-way house” retaining many of the problems of 16 schemes, but failing to deliver the benefits of 1 scheme.
- CPT supports one national scheme, one set of definitions, one set of benefits, and with reimbursement agreed at the national level.
- CPT welcomes the correction to the Transport (Scotland) Bill 2001 whereby the constituent local authorities of Strathclyde will get back their powers to establish quality partnerships, quality contracts and joint ticketing schemes. Many bus service improvements - for example, multiple occupancy vehicle priority - are best served at the local level.

Marjory Rodger, Director Government Relations
CPT UK
SUBMISSION FROM GLASGOW CITY COUNCIL

Evidence from Glasgow City Council on Proposed Regional Transport Partnerships

Background

The City Council welcomes the opportunity to present evidence to the Committee on the Executive’s proposals to establish Regional Transport Partnerships (RTPs) as set out in the Transport (Scotland) Bill and in the Executive’s consultation paper on statutory RTPs issued in October 2004.

The Council has not yet had the opportunity to consider formally the detailed implications of these two important documents. Consequently, this evidence is based on the Council’s agreed position which was submitted to the Executive in December 2003 in response to the initial consultation document – ‘Scotland’s Transport – Proposals for a New Approach to Transport in Scotland’. The Council intends to consider and submit a formal response to the current consultation paper by the closing date of 19 January 2005.

It is also important to note that the Council’s response of 2003 should be viewed as a coherent package since there are important links between the functions, governance issues and accountability of RTPs and these elements should not be considered in isolation.

The Council’s Position

The Council stated that the current problems in relation to the delivery of major transport projects need to be viewed in the context of the existing convoluted procedures for delivering such projects and the need to recognise that there are difficulties in delivering integrated public transport in the framework of bus deregulation and privatised railways.

However, the Council accepted that there was a need to create a structure which aimed to deliver better transport projects and improved integration. The Council also accepted the Executive’s desire to see additional transport investment spent effectively and on time. It therefore concluded that this was best achieved through the development of Regional Transport Partnerships.

In this context, the Council agreed that a Joint Board model with its statutory footing provided a robust decision making and budgetary framework for the basis of new RTPs. Joint Boards are a proven vehicle for delivering local authority services across administrative boundaries. They can employ staff, own property and enter into contracts to provide pooled local authority services over a wider area. Crucially, direct democratic accountability is maintained through elected members representing Councils on Joint Boards.

Clearly, in west central Scotland, any Joint Transport Board would need to work in tandem with Strathclyde Passenger Transport (SPT) to provide a more integrated solution. In this context, the Council proposed that the Joint Board should comprise the same elected members as those nominated by local authorities to sit on the SPT authority, which currently involves a total of 34 elected members. Members of the Joint Transport Board would be provided in proportion to the population of each council area and in this context the Council currently provides 8 representatives representing Councils on Joint Boards.

In terms of the Joint Board’s administrative boundary, the Council suggested that there was considerable logic and benefit in ensuring that the new regional body covers a cohesive and coherent area which has common transport interests and is based closely on travel to work patterns. The Council concluded that this area should encompass the 8 Councils in the Glasgow and Clyde Valley Structure Plan area, the 3 Ayrshire Councils and ideally the Helensburgh, Bute and Cowal Peninsula areas of Argyll and Bute.

The Council envisaged that the Joint Board would produce a regional transport strategy and an associated 10 year programme of network projects and improvements. The Joint Board could also deliver a range of functions currently provided by local authorities and SPT such as management of
the regionally strategic road network, development of cross-boundary bus priority measures, delivery of major roads, rail and transport interchange projects.

On finance, the Council envisaged that the Joint Board’s revenue would be retained via Local Authority Grant Aided Expenditure but requested that the Executive should re-assess the total value of transport-related GAE in relation to asset values and traffic levels as opposed to only road length and car ownership. The Council also urged the Executive to explore opportunities for increasing the current level of revenue expenditure given the importance of the roads and transport network to Scotland’s economic wellbeing. In terms of capital funding, the Council envisaged this coming to the Joint Board from the Executive via direct grants for particular projects.

The Executive’s Proposals (as set out in the Bill and Consultation Paper)

It is important to view the Executive’s proposals in the context of the establishment of a new national transport agency designed to improve, amongst other things, the delivery of the Executive’s own transport functions. In addition, provision is made in the Bill to transfer SPT’s rail powers to the Scottish Ministers.

At a regional level, the Executive proposes a new type of statutory transport partnership body which will have at least two thirds of its voting membership coming from constituent councils but with as much as one third comprising external, non elected individuals from a range of organisations and perspectives.

The Executive has proposed that councils will be represented by only one elected member but will, depending on council area populations, be allocated a weighted number of votes up to a maximum of 4. Council members will be able to be represented by substitutes and the Executive expect external members to provide a personal contribution and to be detached from any political or purely geographic constituency. The Executive also acknowledges that not all potential interested parties can be represented on this type of Board and therefore envisages the appointment of additional, non-voting members.

The boundary for the proposed RTP that includes Glasgow differs significantly from the area supported by the Council in that it includes Dumfries and Galloway. In further contrast, the Executive also proposes that Arran, the Cumbraes, Bute and the Cowal Peninsula should be covered by the Highlands and Islands RTP.

In terms of functions, the Executive proposes that the RTP covering the west and south west of Scotland would have regional strategy and significant public transport powers. This unique model could include the future integration of roads and public transport functions and is an extension of the Passenger Transport Authority/Executive model.

On finance, the Executive proposes that RTPs will receive the majority of their revenue support to cover running costs through requisition from constituent councils. It is also proposed to fund capital investment through a combination of prudential borrowing and direct grants from the Scottish Executive.

Issues Arising

An initial assessment of the Executive’s proposals raises the following issues and these may feature in the Council’s formal response to the Executive’s current consultation on statutory RTPs.

Democratic Accountability

The Executive proposes to restrict severely the democratically accountable element of RTPs with as much as one third of the voting membership reflecting the personal interests of unelected individuals. By discounting the Joint Board model, the Executive dilutes and diminishes the clear and direct connection between actions and accountability. At the same time, the Executive also provides for the inclusion of non-voting members which will create 3 categories of membership.

Similarly, by imposing a maximum of 4 votes for a local authority, the Executive gives a disproportionate influence to smaller Councils. In this respect, it should be noted that Argyll and
Bute Council would be entitled to one vote in the RTP for the west on the basis of the proposed inclusion of Helensburgh.

Although, the Executive considers that the majority of decision-making within RTPs will be via consensus, it is acknowledged that major issues will require to be voted on and the Executive are seeking views on what these should be and the level of voting majority that should be required. It will be on these important issues that the imposed limit to democratic accountability will become most apparent and the level of safeguards put in place should reflect this reality.

**Area of Operation**
The inclusion of Dumfries and Galloway makes little sense in terms of strategic transport delivery. However, it does avoid the situation where a single local authority is involved in a RTP. It is not considered sensible to determine RTP boundaries on this basis and a clear and robust transportation justification should be provided by the Executive in this respect.

Similarly, the inclusion of Arran and the Cumbraes (North Ayrshire) within the Highlands and Islands RTP is difficult to justify in terms of transport issues.

**Functions**
Now that the Executive’s proposals, particularly for the West of Scotland, are clearer, the Council will need to look closely at the implications for those transport services currently provided by SPT and the City Council and on the consequences for the delivery of planned and future transport projects.

However, it is clear that the proposed governance arrangements for RTPs are significantly different from the Joint Board model supported by the Council and other authorities in the west and that a detailed re-assessment will therefore be required. At this stage, therefore, it would be premature to provide further formal comment.

**Finance**
The Executive’s funding proposals reveal a lack of ambition to alter effectively the current funding arrangements. It is disappointing that the Executive appear unwilling to respond on this aspect with the same enthusiasm that is being applied to other proposals. In this respect, it is not clear how maintaining the current arrangements will facilitate substantial and sustainable improvements to the delivery of better transport in Scotland.

It is worth noting that in support of requisition powers, the Executive regards this as an opportunity to ensure there is a proper democratic link and will avoid any one council refusing to co-operate in funding the implementation of the regional transport strategy. This contrasts starkly with the notion of consensual decision-making cited earlier in the consultation paper.

**Conclusion**
The Executive, in shaping these proposals, appears to place a high value on producing a uniform and consistent solution across Scotland on certain aspects such as governance and funding arrangements but seem more flexible on other issues. For example, they intend to apply a maximum weight of four votes no matter the range in scale of authorities within a RTP but offer three functional models to reflect the current diversity of transport provision across Scotland. No RTP will have more than two thirds of its voting membership from constituent councils but no limit is placed on the numbers of non-voting members.

It could be concluded that greater flexibility across more aspects should be promoted to ensure an accountable and effective regional transport partnership capable of making a real and lasting difference.
Introduction

This memorandum of evidence is submitted on behalf of Strathclyde Passenger Transport Authority and Executive. Under the terms of the relevant legislation, the Passenger Transport Authority and Executive are legally distinct bodies but together have responsibility for ensuring the effective planning and delivery of public transport for their area. The Authority is the political policy-making and budget-setting body, to which the Executive is accountable in its professional advisory, planning, and implementation roles. The title Strathclyde Passenger Transport – SPT – is used as a joint identity, to express the common purpose of both organisations.

SPT sees the present Bill and White Paper as an improvement on last year’s consultation document, and welcomes the fact that the Scottish Executive has addressed some of the issues raised in SPT’s consultation response. Nevertheless, SPT retains significant concerns about the Bill, and it is important to note that the adverse consequences of the current proposals will be concentrated entirely on the west of Scotland.

The form of the Bill, and its reliance on extensive order-making provisions

SPT is also extremely concerned that key elements of the proposals in the White Paper which have major direct implications for itself are not included on the face of the Bill. Sections 1, 10 and 12 are potentially fundamental in their impact on existing public transport delivery in the west of Scotland, but they are drafted in general enabling terms, leaving the manner and scope of implementation for subsequent determination by Ministers. Consequently, it is impossible to gauge the full extent of the Scottish Executive’s proposals and therefore to ensure that during the Bill’s parliamentary passage there is proper democratic scrutiny of Ministers’ intentions and of the legislation’s complete effects.

Purpose of the legislation

Paragraph 4 of the Policy Memorandum states that “...the overarching objective for the Bill is in line with that set out by the White Paper for transport as a whole: ‘to promote economic growth, social inclusion, health and protection of our environment through a safe, integrated, effective and efficient transport system.’”

But the Policy Memorandum does not explain how the proposals as they affect SPT contribute towards that “overarching objective”; instead, it is difficult to avoid the conclusion that this part of the Bill is more about administrative change than about making a real contribution to improving transport policy delivery, in the west of Scotland or more generally.

Since the UK General Election in 1997 and the establishment of the Scottish Parliament and Executive in 1999 there has been an almost continuous stream of consultative and policy documents dealing with transport. The Scottish Executive consulted on the advisability of establishing statutory regional transport partnerships in 1999, and following this consultation it decided not to proceed on a statutory basis. It concluded, just four years ago, that “in general it would be counterproductive to impose a new layer of government between the local authorities and Executive and Parliament”.

In the light of this previous review and also of the powers already available to Ministers, it is difficult to see what has now changed and what policy value will be added by the sections of the Bill dealing with Regional Transport Partnerships. Their primary statutory function, the drafting of a regional transport strategy, is already provided for within Sections 1-2 of the Transport (Scotland) Act 2001 (2001 asp 2). This gives Scottish Ministers wide scope to direct public bodies in Scotland jointly to prepare statutory transport strategies.

References

If, as the Policy Memorandum suggests, the underlying objective of the Bill is to improve transport delivery in Scotland, it is unfortunate that the Scottish Executive has chosen to ignore key parts of the advice provided to it by its own appointed consultants as recently as last year. Colin Buchanan & Partners identified several constraints which currently limit the effectiveness of transport policy delivery in Scotland when compared with examples of good practice in other countries. Among the crucial factors analysed by the consultants were:

- The comparative inadequacy of the revenue as well as the capital funding available for public transport in Scotland.
- The level of public transport fares.
- Poor integration of existing services.
- The deregulated structure of the bus industry.\(^{154}\)

On the last point, the consultants observed: “In no city or region that can be considered to be delivering better or exemplary practice in transport policy delivery is the local roads-based public transport system deregulated”.

The Bill does nothing to address these real obstacles to improving transport policy delivery which were identified in the Scottish Executive’s own commissioned research.

**SPT’s rail powers**

A particular example of the lack of correspondence between generally-accepted good practice and the current Bill is the proposal in Section 12 that Ministers may transfer any of SPT’s transport functions to themselves by order. Paragraph 22 of the Policy Memorandum makes it clear that this relates to SPT’s existing rail powers.

The analysis in the Policy Memorandum is however flawed. Transfer of SPT’s rail powers will not enable Ministers to take “the strategic responsibility for the Scottish rail passenger franchise”. That will only come when Westminster legislation abolishes the Strategic Rail Authority and transfers its Scottish functions to the Scottish Executive. This Section of the Bill could only transfer SPT’s regional rail powers. The legislative context of these powers requires that they be exercised on a regional rather than a national basis, so Ministers would themselves be undertaking directly some of the functions of a regional transport body.

Such an outcome would be entirely contrary to the stated intentions of other parts of the Bill, which is to ensure more effective and integrated transport planning and delivery under the oversight of accountable regional bodies. It would also be contrary to the very explicit assurances which the Transport Minister, Nicol Stephen MSP, gave in the Parliament in 16 June 2004. He stated: “I expect the new regional partnership to continue to have a key role in the development, management and monitoring of rail services in its area” (Official Report, Col 9097) and “I still expect SPT to have a direct role in the management and development of rail services in the west of Scotland”: (Col 9099).

Discussions are still taking place between the Scottish Executive and SPT on this matter, but as yet there is nothing to give legislative comfort that the Minister's express undertaking will be delivered. This is however crucial if the existing effective delivery of public transport in the west of Scotland, which the Minister went out of his way to acknowledge, is to continue.

Glasgow is the only city in the UK apart from London where more peak hour commuters travel into the city centre by rail than by bus. Residents of the west of Scotland make more rail journeys per head than those of any other part of the UK except Greater London: more than a quarter of all fare-paying public transport journeys in the SPT area are made by rail.

SPT believes that this proportionally high reliance on rail in the west of Scotland is a significant factor in the relatively low use of private road transport in the region – with 42% of Scotland’s

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population, Strathclyde accounts for only 37% of Scottish road vehicle km. Rail is therefore an integral and crucial component of the regional transport mix in the west, giving a policy outcome which appears to match the Scottish Executive’s own objectives. But unless SPT or a successor body retains the direct influence over this form of transport that the Minister promised, the continuing effectiveness of integrated transport delivery in Scotland’s most populous region and largest city will be critically undermined. The Westminster government is currently examining how the Mayor of London can be given more control over regional rail services; it is difficult to understand why the Scottish Executive is now proposing a completely opposite policy for London’s closest UK comparator in transport terms, Glasgow and its region.

It should also be emphasised that, although SPT’s current expenditure on the ScotRail franchise is now largely funded by direct grant, this does not result in a disproportionate call on the Scottish Exchequer. With almost 70% of all Scottish rail journeys taking place on its sponsored services, SPT accounts for only 55% of the total ScotRail subsidy. Moreover, the build-up of central funding for SPT’s Special Rail Grant has largely been provided for out of resource transfers from the Westminster government, while SPT has continued to provide significant amounts of discretionary local funding to underwrite rail service development in its area. Since 1996 this has amounted, at current prices, to almost £57 million of capital investment and £4.4 million of extra revenue support.

**Bus powers**

Section 43 proposes some apparently minor amendments of the Transport (Scotland) Act 2001 which would have the effect of enabling local councils within the SPT area to introduce local ticketing schemes and bus quality contracts and partnerships, in addition to SPT itself.

SPT is disappointed that this provision has been included. So far as SPT is aware, there is no support from the councils within the SPT area for such a change, and it is at variance with the logic of the remainder of the White Paper, which emphasises Best Value and the achievement of economies of scale at the regional level. To legislate to create a situation where individual councils within the SPT area with no existing public transport functions and expertise might have to staff up to discharge complex bus responsibilities which remain more appropriately exercised at the regional level is therefore entirely contrary to the White Paper’s stated approach.

Furthermore, for the Scottish Executive to claim, as it does in paragraph 6.9 of the White Paper, that this change is to give effect to the original intentions of the Transport (Scotland) Act 2001 is entirely disingenuous – if this was indeed the legislative intent, it was a very closely guarded secret, as it was the only part of that Act’s proposals that was not consulted upon.

**Finance**

SPT has also been asked to give evidence to the Parliament’s Finance Committee about the financial provisions of the Bill, and will comment in detail on those aspects in that evidence. However, SPT considers that the Bill’s basic financial premise – that the funding already available for transport in the local government settlement and through the Scottish Executive’s existing direct provision will be sufficient to ensure the transformation in Scotland’s transport to which Ministers aspire – is fundamentally flawed. The Scottish Executive research report quoted in paragraphs 8-9 concluded that an increase of about 50% in capital funding and 20% in revenue funding is needed for effective transport policy delivery in Scotland.

This is consistent with SPT’s own experience over the period since local government reorganisation, during which its funding has been substantially less than prior to 1996 and well below that available to comparable English PTEs. Recent announcements of additional funding for

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156 Transferability of best practice in transport policy delivery, p viii.
major public transport infrastructure projects in Scotland may go some way towards recovering lost ground in capital investment. However, this does not address the persistent and chronic shortage of revenue support for maintaining and developing existing public transport provision and ancillary facilities such as integrated ticketing and passenger information.

**Transition**

As noted in paragraph 7, SPT does not believe that the Bill’s regional proposals add real policy value that could not be delivered through existing legislation. However, it welcomes the Minister’s acknowledgement that any new transport partnership for the west of Scotland will continue to have a strong regional public transport delivery function, and that the new structure “will have at its heart the management, the staff and the functions of SPT at present”. (Official Report, 16 June 2004, col 9099.)

If this undertaking is delivered, it will address some of the concerns which SPT raised during last year’s consultation process. However, SPT considers that the supporting documentation accompanying the Bill does not reflect the real risks and costs of the transition process, which is envisaged as taking place in 2006-7.

In particular, there appears to have been no analysis of the potential impact on the progress of two major schemes, the Glasgow Airport Rail Link and the Glasgow Crossrail Scheme. It is hoped to begin the Private Bill processes for these schemes in 2005 and 2006 respectively, so there is a real risk of slippage or even deferral if the parliamentary status of SPT as promoter is put in question during this time.

This risk is one which is unique to SPT, as it is the only organisation which faces the compulsory transfer of its powers and duties to a new structure under the White Paper proposals. Other bodies – such as TIE in Edinburgh – would retain their present powers and functions unless and until the relevant regional partnership seeks to transfer them. It is unlikely that any responsible local government body would wish to do this at a time when it might put critical Private Bill processes at risk.

In addition to these specific concerns – which are directly relevant to Ministers’ stated transport delivery objectives – SPT also has doubts whether the opportunity costs of the proposed re-organisation have been properly taken into account. Already too much senior management time within SPT is being diverted to such issues, at the cost of positive policy development and delivery which would be of real value to transport users in the region.

**Conclusion**

In SPT’s view, those parts of the Bill dealing with transport delivery at the regional level, whilst an improvement on last year’s consultation proposals, have little positively to commend them. In substantive terms, they add nothing that could not be achieved under existing legislation, while introducing profound uncertainties about the scope and method of future transport delivery in the west of Scotland.

It may be that some of these issues will be clarified, and perhaps addressed more effectively, when the subordinate legislation is available, but SPT retains considerable reservations about the appropriateness of a process where primary legislation leaves so many powers in the hands of Ministers, without further specification of the proposed terms in which they will eventually be exercised.
A RESPONSE BY GLASGOW CITY COUNCIL ON THE SCOTTISH EXECUTIVE’S PROPOSALS TO ESTABLISH STATUTORY REGIONAL TRANSPORT PARTNERSHIPS (RTPs)

Introduction

The Council is pleased to have the opportunity to comment on the consultation paper on RTPs and notes the parallel introduction of the related Transport (Scotland) Bill in the Scottish Parliament. In addition to specific answers on the questions as set out in the consultation paper the Council would wish to preface these with some general comments on areas of concern raised by the Executive’s proposals.

Maintaining Momentum

The Council views transport as a vital element in the city’s economic and social well-being and considers it to be a key component in the continued regeneration of Glasgow and the surrounding region. As such, transport cannot be considered in isolation and its important role as a delivery mechanism for national, city-region and local plans needs to be reinforced. In this respect, the Council has never argued for maintaining the status quo but is eager to ensure that proposals for change lead to practical improvements and sharper, more effective delivery. The Council’s primary concern is that current service delivery and future projects should not be jeopardised by untested, theoretical models which do not command local support.

Underplaying Consensus

The Council is not convinced that the Executive has given sufficient attention to last year’s joint submission forwarded by South Lanarkshire Council on 11 December 2003 on behalf of 12 Councils in the West and Strathclyde Passenger Transport (SPT). This submission set out in detail the support for a Joint Board as the initial basis for providing a stable and robust mechanism to agree and deliver an effective regional transport strategy in the West of Scotland. The Council remains disappointed that no specific mention has been given by the Executive to the broad consensus that was formed in the West. The Council regard this as a serious omission and a profound lost opportunity. Furthermore, it needs to be stressed that the Council’s 2003 response which supported a Joint Board approach needs to be viewed as a coherent package of measures for the West of Scotland and individual elements should not be considered in isolation.

In this context, the Council urges the Executive to clarify why the consensus in the West for a Joint Board has been overlooked.

Reducing Democratic Accountability

The Executive proposes to restrict severely the democratically accountable element of RTPs with as much as one third of the voting membership reflecting the personal interests of unelected individuals. By discounting the Joint Board model, the Executive dilutes and diminishes the clear and direct connection between decision-making and accountability. Furthermore, with Councils restricted to one member there is likely to be a reduction in the number of political parties represented on RTPs and less opportunities for opposition parties within Councils to be involved fully in these bodies in the future. At the same time, the Executive also provides for the inclusion of non-voting members which will create 3 categories of RTP membership.

Similarly, by imposing a maximum of 4 votes for a local authority, the Executive gives a disproportionate influence to smaller Councils, particularly in the West where there is a substantial range in population sizes. In this respect, the Council notes that Argyll and Bute Council would be entitled to one vote in the RTP for the west on the basis of the proposed inclusion of Helensburgh.

Although, the Executive envisages that the majority of decision-making within RTPs will be via consensus, the consultation paper acknowledges that certain major issues will require to be put to
the vote and the Executive are seeking views on what these should be and the level of voting majority that should be required. It will be on these important issues that the imposed limit to democratic accountability will become most apparent and the level of safeguards put in place need to reflect this reality.

Reducing Regional Coherence

The inclusion of Dumfries and Galloway makes little sense in terms of strategic transport delivery. Although this avoids the situation where a single local authority is involved in a RTP, it is not considered sensible to determine RTP boundaries on this basis. Similarly, the inclusion of Arran and the Cumbraes (North Ayrshire) within the Highlands and Islands RTP requires to be justified fully in transport terms by the Executive.

Requisitioning Finance

The Executive’s funding proposals reveal a lack of ambition to alter effectively the current funding arrangements. It is disappointing that the Executive appear unwilling to respond on this aspect with the same enthusiasm that is being applied to other proposals.

It is worth noting that in support of requisitioning funds from constituent councils, the Executive regards this as an opportunity to ensure there is a proper democratic link and will avoid any one council refusing to co-operate in funding the implementation of the regional transport strategy. This contrasts starkly with the notion of consensual decision-making cited earlier in the consultation paper.

It should also be noted that only one response from a total of 176 presented a significant argument in favour of requisitioning funds and the Council, therefore, calls on the Executive to explain in detail why this is the option that is being proposed.

Limiting Flexibility

The Executive, in shaping these proposals, appears to place a high value on producing a uniform and consistent solution across Scotland on certain aspects such as governance and funding arrangements but seem more flexible on other issues. For example, they intend to apply a maximum weight of four votes no matter the range in scale of authorities within a RTP but offer three functional models to reflect the current diversity of transport provision across Scotland. No RTP will have more than two thirds of its voting membership from constituent councils but no limit is placed on the numbers of non-voting members.

The Council, therefore, asks the Executive to explain why greater flexibility across more aspects cannot be promoted to ensure accountable and tailored regional transport partnerships capable of making an effective and lasting difference.

The questions as set in the consultation paper followed by relevant council comments.

Boundaries

The Executive would welcome views on these proposed regional transport partnership (RTP) boundaries. Would you suggest any modifications?

The Council favours a more cohesive area than is proposed and the RTP should share common interests and be based closely on travel to work patterns. This area would therefore exclude Dumfries and Galloway but include the Clyde islands and ideally the Helensburgh, Bute and Cowal Peninsula areas of Argyll and Bute. However, the Council would wish the establishment of a Joint Board to take precedence over decisions on specific boundary issues.

What are the benefits and/or disadvantages of these proposals from the perspective of your organisation or the council area in which you live? Could a regional partnership based on these boundaries deliver improvements to transport in your area?

Although the proposals may deliver some improvements it is difficult to see any common transport issues between greater Glasgow and Dumfries and Galloway. The Council believes that more
effective integration would be achieved by aligning the RTP’s boundary more closely with the Council areas within SPT.

Constitution

What should the role of external members be?

To what extent do you think that external members should be: (i) representative of other stakeholder organisations; (ii) experts in particular spheres related to transport; (iii) representative of interests outside the transport world?

Do you agree that external members on the board of the partnership once approved should be there on the basis of the personal contribution, skills and experience they bring rather than representing a particular organisation or interest group?

It will in most cases be possible for RTP boards to have a sufficient number of external members to cover a range of interests.

The Council supports a Joint Board in the West of Scotland made up of the same numbers of elected members that currently comprise the SPT authority. This arrangement does not envisage any external members with voting rights. The Council does not therefore support the role of external members as board members since it dilutes the well established and accepted principle of direct public accountability.

The Council invites the Executive to provide a meaningful and detailed justification on why unelected individuals should be given so much power both in terms of access to and scale of voting rights. At the same time the Executive should also explain how cross-party working and the involvement of opposition parties within Councils will be promoted by these proposals.

Do you agree that decisions on who are appointed as external members are taken by RTPs themselves in conformity with guidance issued by Scottish Ministers?

In line with the Council’s support for a Joint Board in the West, Joint Board members would be nominated by constituent councils, in similar proportion to the current membership of SPT. If external members are required to be appointed this should be a responsibility of the RTP.

How should the RTP involve people and stakeholders within its region? For example:

Is there merit in co-opting key stakeholders to work at management team level?

Would a stakeholder forum be a practical way of including broader interests?

Are there any other means of ensuring wider engagement?

How can RTPs make best use of Community Planning to deliver better transport solutions? What should the Executive do to support them in this?

The Council would support wider engagement between the RTP and a range of stakeholders and interested parties. The detail of this engagement should be determined by the RTP in line with best practice methods of consultation and participation. The Council would envisage that this engagement would involve transport operators, the business community, transport user groups, representatives of equality groups including older people and disabled people, local communities and relevant partner agencies. It is clear that RTPs will need to adopt a flexible approach in responding to the emerging demands of community planning, particularly at more local levels.

Are there some particular organisations that you believe ought to be represented on some or all of the new partnerships? Are there any organisations that should not be represented?

It is important that the new partnerships are responsive to local circumstances and needs and the Council believes that a Joint Board would be best placed to determine which organisations should be involved since this will relate closely to local circumstances. Clearly, it will be essential to ensure that potential conflicts of interest are avoided and this is best assessed locally.
Do you agree that on occasions when a vote is needed to reach a decision, that this ordinarily be decided by a simple majority?

The Council’s Joint Board proposal envisages that only elected members would be able to vote and that Glasgow would have access to around a quarter of the total votes in line with its current representation on SPT. Votes on SPT business are extremely rare but when required are subject to a simple majority of those present. It is not clear what impact the involvement of unaccountable, external members will have on the broad and cross-party consensus which is currently a feature of working arrangements within SPT and existing Joint Boards covering Police and Fire Services. However, the Executive’s proposal to allow only a maximum of 4 votes to any Council and to provide up to one third of voting rights for external members diminishes the direct link between responsibility and democratic accountability by facilitating a sizeable voice to unelected individuals. Furthermore, in comparison with SPT, the Council’s voting share would drop considerably and compared with smaller Councils, Glasgow would be significantly under-represented under the proposed arrangements.

As the proposals stand, Glasgow’s uniqueness in terms of population and prominent transport role receive insufficient account and the Council should seek a more flexible, fairer arrangement that increases the level of democratic accountability. It should also be noted that population is a relatively crude indicator of transport need and there must be a more proportionate link between the level and type of representation and transport responsibilities.

The Council, therefore, invites the Executive to explain clearly how these proposals match the weight of the Council’s transport responsibilities or the current level of funding (27%) provided by the Council to SPT.

On what issues (e.g. on issues involving the sharing or transferring of local authority transport functions) should decisions require a larger majority?

The notion of differential levels and applications of majority voting is alien to the Joint Board model and is a necessary consequence of the Executive’s desire to create a sizeable, unelected element. However, rather than prescribe issues and voting majority thresholds, it would be less complicated and fairer to require that only those parties which could demonstrate an accountable public interest should be entitled to vote on a particular issue. For example, if a decision was required on budget allocation or transfers of powers the vote would be restricted to those accountable bodies who contributed to the budget or who were directly involved in the transfer of powers.

If this suggestion is not accepted, the Council would wish to comment further on the particular arrangements the Executive intend to implement to ensure proper safeguards are in place to maximise democratic accountability. The Council would expect that major decisions on constitutional issues, strategic policy, budget allocation and any decisions involving transfer or sharing of powers should be subject to at least a two-thirds majority. It should be stressed that under current Joint Board arrangements such additional safeguards have not been found to be necessary.

Functions (questions 9-14)

The Consultation paper outlines 3 functional models to accommodate the current diversity of strategic transport planning and delivery across Scotland and asks six related questions on this issue. Model 1 is the most basic arrangement with the RTP producing a regional strategy and having limited transport powers which are held concurrently between the RTP and local authorities. The second model is viewed by the Executive as an evolution of the first, with the RTP now receiving some transport powers currently held by councils.

The Executive regards Model 3 as an expansion of the second model and suggests it reflects the current arrangements in the SPT Area in west-central Scotland where significant public transport functions are already delivered at a regional level. Clearly, it is this model that the Executive intends to develop in the West.
The Council’s initial Joint Board model envisaged the RTP having responsibility not only for developing cross-boundary bus priority measures but other functions such as the management and development of a regionally strategic road network including traffic control systems (with functions such as road maintenance and traffic management continuing to be provided as a service by local authorities).

However, since the Executive has chosen to reject the Joint Board model and is committed to establishing untested, uniform and less accountable arrangements it is proper for the Council to reconsider its position on RTP functions in light of these developments. Any future transfer of functions should only proceed on the basis that it is supported by those affected constituent councils and after detailed agreement has been reached on any separation of activities and responsibilities between regional and local levels.

With the prospect of new, untried governance arrangements and a large non-elected element, it is appropriate to adopt a more cautious approach in considering possible transfer of powers. Furthermore, given that so many important matters are unclear and still subject to consultation, it would not be sensible to come to a definitive view at this stage on the questions raised regarding transfer of powers to the RTP.

The Council, therefore, wishes to reserve its position on this aspect until there is more clarity on matters such as the precise role of external members, issues which will be subject to voting, allocation of votes, the rights of stakeholders and the application of majority voting thresholds.

**Funding**

*Do you agree that there is no alternative to requisition if regional transport partnerships are to have a stable and secure source of funding?*

*What classes of expenditure (e.g. core staffing, running costs, provision of services, capital investment) are best met through (a) requisition, (b) prudential borrowing, (c) grants from the Scottish Executive?*

The Council envisaged that the Joint Board’s revenue should be retained via Local Authority Grant Aided Expenditure but requested that the Executive should re-assess the total value of transport-related GAE in relation to asset values and traffic levels as opposed to largely road length and car ownership. The Council also urged the Executive to explore opportunities for increasing the current level of revenue expenditure given the importance of the roads and transport network to Scotland’s economic wellbeing. In terms of capital funding, the Council envisaged this coming to the Joint Board from the Executive via direct grants for particular projects.

It is extremely disappointing that the Executive are proposing to use requisitioning and not to introduce any significant improvements to the current funding arrangements. The Council invites the Executive to justify this position and explain in detail how maintaining the current funding arrangements will lead to any significant improvements to the scale and pace of current transport delivery.
Scottish Parliament

Local Government and Transport Committee

Tuesday 30 November 2004

[THE CONVENER opened the meeting at 14:06]

Transport (Scotland) Bill: Stage 1

The Convener (Bristow Muldoon): I open the 27th meeting in 2004 of the Local Government and Transport Committee. The main item on the agenda today is our further consideration of the Transport (Scotland) Bill, on which we will take evidence from four groups of witnesses. I welcome our first witness, Gordon Dewar, who is the commercial director of First ScotRail. Thank you for your submission, Gordon. I invite you to make some introductory remarks, after which we will move to questions from the committee.

Gordon Dewar (FirstGroup plc): Thank you, convener. It is a great pleasure to be before the committee and to have the opportunity to give evidence again. As you said, my title is commercial director of First ScotRail, but I am before the committee as a representative of FirstGroup plc, which means that I am representing both its bus and rail interests. The committee has our submission and I will not dwell on the evidence that it contained, other than to pick out a few of the salient points that we raised.

We broadly welcome the creation of a single transport agency and the regional transport partnerships that underpin the agency and provide a mechanism for going forward. The creation of a single transport agency also represents the creation of a single transport plan for Scotland. That will mean that some of the interruptions of the current three-year spending cycle will no longer apply, as there will be more surety of funding as we go forward. It will also allow us to look across authority boundaries and so remove a constraint that has been on transport for a number of years.

As I am sure all committee members are aware, First is the largest surface public transport operator in the United Kingdom. It is also the largest operator in Scotland, given our recent acquisition of the ScotRail franchise. We look forward to engaging with the transport authority and the transport partnerships and to taking up our role in delivering many of the exciting schemes that the Scottish Executive and its local authority partners are considering.

We are delighted by the way in which the Executive is going forward on concessions, a subject on which I have given evidence before. It is a key area, on which we can make quick progress through the new agency to deliver a national scheme that is sustainable, fair and equitable. It is also important that the scheme has a longevity, as that will allow operators to respond in a way that will deliver the benefits that customers want within a scheme that society has decided is the right way in which to confer the benefit.

The current concessions were delivered quickly, effectively and in partnership in a short space of time. We are sure that the national scheme, as it is set out in the bill, will allow us to address the residual issues. The new scheme will give us a fantastic foundation on which to go forward and upon which to build.

The Convener: Thank you for those introductory remarks.

Bruce Crawford (Mid Scotland and Fife) (SNP): I want to have a quick chat with you about regional transport partnerships and the transport agency. In your written submission, you say:

“The creation of statutory Regional Transport Partnerships also gives the potential for strategic transport decisions to be taken more effectively, across a wider geographic area.”

Decisions might be taken more effectively, but will that be effective enough, particularly given section 8 of the bill—headed “Duty of constituent councils and other public bodies as respects transport strategies”—which says that a council will comply “so far as possible”? Do you think that the regional transport partnerships will have enough teeth to do the job? They might do it more effectively than it is done at present, but will they be able to do it as effectively as they could?

Gordon Dewar: In advance of seeing how the RTPs deliver transport projects, it is impossible to say how that will work out. However, the creation of the new boundaries and the fact that the funding for the projects will come through the RTPs will remove the two most obvious hurdles that are holding things back at the moment. In most of the exciting projects that we are considering, there are cross-boundary issues. That is certainly the case for projects that involve the largest cities in Scotland, in which the surrounding authorities’ interests and needs tend to be a little different from those of the cities. Most such projects have funding cycles that genuinely need to be longer than three years—with the planning stage, the cycles can often be five or six years. To be able to set up project plans, involve others—including the operators—in the partnerships and have a plan of delivery over five or six years, which typically includes the first two years of operation, gives us a huge advantage over our starting point.
On whether we will be in a position to do everything that we want to do, the proof of the pudding will be in the eating. I see a huge amount of ambition in the local authorities, which is sometimes matched by frustration about the long-term planning and the resources that are available to them. The RTPs will be bodies to which the operators can talk and they will enable the setting up of skill bases and the provision of resources that are capable of delivering the demanding projects that we are signed up to delivering in consensus.

**Bruce Crawford:** There might be consensus about what needs to be done, but my concern is that achieving consensus about how to apply the cash from the various local authorities might be a different issue, particularly as the bill contains an opt-out that says that the local authorities will comply “so far as possible”. We have evidence that, although the transport partnerships that already exist, such as the west of Scotland transport partnership and the south-east Scotland transport partnership, can pull a transport plan together, the local authorities cannot match the plans with resources, so what makes you think that it will be any different for the regional transport partnerships?

**Gordon Dewar:** My understanding is that a regional transport partnership will be an organisation with a long-term future, on which specific duties are imposed; it will have the funding to match those duties and will be able to use that funding because it will have the resources for the planning and delivery of the project management and can bid for capital and revenue funding. That is what is missing at the moment. Bodies such as WESTRANS and SESTRAN are a good start and have demonstrated that the position is much improved when there is consensus across local authority boundaries, but they do not have teeth. The bill provides for a huge amount of what they are missing. We need to follow that through and ensure that we give the RTPs the tools that they need to enable them to start delivering.

**Bruce Crawford:** I will just dig underneath the issue of whether the regional transport partnerships will have teeth, because that is the crux of the matter. A local authority will be able to decide that it is not going to play ball with the regional transport partnership. My understanding is that the RTPs will have no more teeth than do the transport partnerships that already exist. There will be a statutory requirement for the councils to talk to one another, but will the RTPs have enough powers to make things work?

**Gordon Dewar:** We are still at an early stage as far as developing the detail is concerned, but my interpretation is that, in their residual areas of involvement as stand-alone organisations, the councils’ most important role will remain the granting of planning permission. The provisions that relate to powers for highways development, the ability to promote bills and the ability to spend the cash that will be allocated to the partnership rather than through the councils’ block grants seem to supply most of the tools that are needed to deliver most of the transport projects that are currently on the drawing board.

14:15

**Bruce Crawford:** The submission from FirstGroup says:

“The creation of a single Transport Agency to prepare and oversee a National Transport Plan will facilitate the delivery of the large-scale infrastructure investments”.

Why can a single transport agency do that better than a Government minister can?

**Gordon Dewar:** There would be benefits of having a bespoke agency that would have continuity of staff and the ability to buy in specialist transport skills. The agency would also provide a structure that enabled us to harness the best of what Scotland has to offer and, I hope, to attract people from outside Scotland to bring in some of the expertise that we perhaps do not have at the moment. Stability would be provided and the funding streams and commitments would be understood.

There would be no harm in a slight separation from the political cycle, as that would mean that people could look beyond the next election and acknowledge that we need to make hard decisions, fight our corner for projects and be aware of what has to be in place to deliver challenging projects. A single transport agency would provide for the lifespan for some of the large-scale infrastructure on the five to 10-year horizon, rather than just considering the two to three-year horizon. The longer-term horizon is challenging in the current environment and we must make progress in that respect. I can envisage no better mechanism for doing that than an agency that would take a longer-term view, which is what the bill offers.

**Bruce Crawford:** That is useful.

**The Convener:** The FirstGroup submission says:

“the boundaries for Regional Transport Partnerships should be contiguous with existing local authority boundaries and should use travel to work areas as watersheds.”

However, it has been suggested that some local authorities have two travel-to-work areas. For example, the northern part of Fife gravitates towards Dundee, whereas the southern part gravitates towards Edinburgh. How would
authorities such as Fife Council fit into the framework that you describe?

**Gordon Dewar:** A couple of authorities are pegs that do not fit as easily into the holes as others might do—Fife is a good example. That is why we suggest that authorities should have the opportunity to be observers in partnerships of which they are not necessarily a full member. As operators, we would be comfortable with and support such a pragmatic mechanism to allow for the sensible representation of constituency and local issues.

**The Convener:** You welcome the opportunity for RTPs to include non-local authority members, including representatives of the business community. Which organisations from the business community would be appropriate RTP members? Are you thinking about individual transport operators or umbrella organisations that represent business interests? Would there also be a role for bus user or rail user representation?

**Gordon Dewar:** I think that the answer is yes to all of that, but it is horses for courses. When we were thinking about the benefits of the involvement of the business community, we had in mind in particular the north-east Scotland transport partnership model, which has worked extremely well. NESTRANS includes representatives from umbrella organisations such as Aberdeen and Grampian Chamber of Commerce, as well as individual operators, because there are not many such operators. However, in areas where there are many more operators, the involvement of an umbrella organisation that represents operators has worked well and provided a good voice for the industry.

There is no need for an umbrella organisation that represents rail operators, because there is only the ScotRail voice and some smaller interest from Great North Eastern Railway Ltd and Virgin Trains, or whoever is successful in securing franchises in future. That is a small enough number of players to allow for an individual view to be taken. However, there would need to be a manageable process for the representation of bus operators, perhaps by including the Confederation of Passenger Transport UK or another organisation that operators would accept as representative.

**The Convener:** Would RTPs help to secure partnerships between the public and private sectors and improve public transport?

**Gordon Dewar:** I think so. There is a huge appetite out there for the private sector to get involved, particularly in infrastructure projects. Companies consistently see the absence of that involvement as a constraint on their economic development and their ability to expand their businesses. Their involvement would have two benefits. First, there would be an increased understanding of the genuine constraints and challenges that face us, both as operators and as providers to the public sector. Secondly, private sector companies have a huge amount to offer when they get involved in projects, whether in project management skills, in promoting projects or in looking for more innovative sources of funding.

We must not forget that one of the most successful ways of talking to the commuter market is through the employer. That avenue has been underutilised—there is a raft of benefits to be gained from engaging with the private sector and employers. However, we need to find an efficient way in which to do that. The system will not be welcomed if it is another talking shop that makes huge demands on people’s time; there must be a focused engagement that allows people to comment on strategy and support the development of specific projects.

**Paul Martin (Glasgow Springburn) (Lab):** I have two brief questions. First, on the boundaries issue, I will ask the same question as I asked other operators last week. How would you be willing to change the structure of your company to fit in with the boundaries relating to the partnerships? FirstGroup is telling us that we should consider amending the boundaries, but what are you willing to do to fit in with those structures?

**Gordon Dewar:** It is probably best if I use First ScotRail as an example, as it is the national rail network and will have to deal with the regional partnerships. We have given a commitment to, and we are rolling out, regional forums that are deliberately designed to fit with what we anticipate the regional partnership boundaries will be. We see that as essential, because our future projects will be managed through those forums—that will be where funding will come through and where we will get engagement, develop consensus and agree how to prioritise and deliver projects. That is an obvious way of setting up the structure and of finding a mechanism—with agreement—to plug in our customer relationships, our stakeholder relationships and, of course, our partnership relationships with the regional authorities.

Bus operations fall quite neatly into the boundaries, as bus companies tend to operate over smaller geographical areas. The only area where we would straddle a boundary, under the current proposals, is in the east of Scotland. The Stirling area of our east operations, which is under one company, would fall under whatever we call the central transport partnership, whereas the rest would fall under SESTRAN. We would make every effort to understand that. We would have...
representation on both sides and would reflect the interests of the areas through our involvement with the regional transport partnerships.

**Paul Martin:** Secondly, you mentioned the need for politicians to look much further ahead than the two to three-year gains and the next general election. Is there also a need for the industry to look further than just profit, towards strategies? What evidence is there that your organisation has a five or 10-year plan that is motivated not only by profit, but by the need to deliver an effective service?

**Gordon Dewar:** I do not see the two as mutually exclusive. Only by delivering a good and effective service will we have more customers and, therefore, improve our bottom line. I see the two as being absolutely in agreement with each other.

Every time we invest in a vehicle that has a 15-year lifespan, that is a demonstration that we are prepared to invest in the future. Some of the largest-scale investments of the past 20 years have been made in the past five years in Scotland, and our bus fleet is now much more modern than it was 10 years ago. We also have ambitious plans, under the new ScotRail franchise, for £40 million of investment and a whole raft of improvements covering property, fleets investment, closed-circuit television and so on. We very much view the five-year horizon as the minimum horizon: that is, effectively, where our assets start to produce a return on the investment.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** On the issue of business representation, does FirstGroup recognise the need to have a voice for freight on the RTPs, if we are to have them? Up to now we have—as I think we will hear later—focused on the carriage of people, whereas roads are used largely for the transport of freight. That is likely to continue to be the case for the foreseeable future.

Another issue to consider is tourism. I was at the Scotland united conference in Aviemore yesterday, where the clear view was expressed—I think that Marjory Rodger might have articulated it—that, as we want people to come to Scotland, we must consider what the tourists want and must think about what they are looking for from their perspective. The utilities are the other major organisations that are affected. I could go on; I will certainly not mention RSPB Scotland. Freight, tourism and utilities are three key areas. Would it be sensible for their voices to be heard on each of the RTPs?

**Gordon Dewar:** That must be sensible. How such bodies choose to be represented effectively is a matter for them and for the partnerships. Wherever freight, tourism and so on share infrastructure, whether road or rail, it is essential that we take a balanced view of what is in our best interests. A huge amount of public money is going into supporting the infrastructure, whether road or rail, and we need to know that that investment is being utilised in the best way for the wider economy, the wider environment and society as a whole. That is an ambition and a requirement that we understand. Naturally, we will fight our corner by making the case for where we think that we can make a contribution to what our customers need, but we fully understand that a balanced view must be taken across all those areas.

**Fergus Ewing:** Spoken like a true politician, if I may say so.

I have a slightly more challenging question. We are not entirely sure what the Executive wants the RTPs to do, other than to produce regional strategies. At the moment, that will be their sole duty. The explanatory documents suggest that they may be given other powers, but we do not know what will happen. As you have reminded us, we know that FirstGroup has the ScotRail franchise, which I think is for seven years, and that it has an option to continue thereafter—

**Gordon Dewar:** For a further three years.

**Fergus Ewing:** So for a decade the franchise is set and the routes are specified. Would I be right in saying that the role of the RTPs means that they will not be able directly to require any additional routes? That ability will remain with the Executive, but I presume that it will not choose to exercise it, given that it concluded the new franchise arrangements only recently. Do the RTPs have any role to play in the rail service and, if so, what? Setting aside the case of Strathclyde Passenger Transport, would FirstGroup prefer those matters to continue to be dealt with at national level?

**Gordon Dewar:** It is essential that the overall authority to change the franchise stays at national level, because some very large sums of public subsidy are associated with the franchise. As the railway is a national railway, any decision that we make on it has national implications for the timetable and the interaction of the rolling stock, for example. That is not to say that there is not a great deal that regional transport partnerships can do. I fully anticipate that delivery of some of the schemes will be dealt with most effectively at regional level.

I will mention a few examples from recent years and some things that we plan to do in the future. The Invernet project, which will start in December 2005, was initiated by the Highlands and Islands strategic transport partnership and the Highland rail partnership. It is a fantastic model for engagement, which we want to adopt in the franchise. Funding was sought from the Executive, but the specification for what the partners wanted
to do was drawn up in co-operation with the operators through the franchise process. The authority to proceed has been provided and we are planning to deliver the project from December next year.

There have been a huge number of small developments round stations, such as improvements in access. Examples of other interesting developments are additional services and tweaks to the timetable. All those improvements can be delivered at regional level, in so far as their implications are regional. It is only matters such as the authority to spend on a substantial, large-scale project that has wide implications that need to come back to the centre. That is a good model with which to proceed.

David Mundell (South of Scotland) (Con): I remain unclear about why the new arrangements are necessary if local authorities can work together under the existing arrangements. At our evidence session with the Scottish Executive, we were informed that one of the reasons for bringing forward the bill was that local authorities could not work together, yet so far we have not had any evidence of a major project being impeded because local authorities were not working together. Can you present any evidence from your long experience of buses or your short experience of rail franchises of any strategic development or planning being impeded because local authorities were not working together?

14:30

Gordon Dewar: It is difficult to prove a negative. However, although there is a huge degree of consensus on some of the projects that we need to deliver, there has been a limited amount of delivery in the past five to 10 years, which leads me to conclude that something is not working as well as we would like it to.

In the past few years, there has been no shortage of available funding from a number of grant opportunities through the Scottish Executive. I have spent the past five years of my career talking to local authorities about shared ambitions and projects that we all agree should be delivered, but few of those projects turn up in concrete form. We should celebrate the ones that we have delivered—I do not slight them—but there is frustration at the fact that we could have done much more had we found the mechanisms to get over the funding barriers and to agree prioritisation of competing projects.

Although I cannot point at a specific example of where things have broken down through lack of co-operation, the fact that at local authority level we are all individually competing for restricted funds and—necessarily, perhaps—fighting our own corners means that the consensus has not been realised as readily as it might have been.

David Mundell: I do not know whether you are familiar with it, but at last week’s evidence session Glasgow City Council presented us with the model of a joint board working arrangement with other authorities in the former Strathclyde Regional Council area. I am not clear why that model, which does not require legislative change, would not be better at delivering the aspiration that you refer to than the requirement to set up another organisation.

Gordon Dewar: With a will and a lot of effort, almost any organisational structure can be made to work, if there is a consensus. The difficulty arises with long-term planning and funding, which has involved people expending a lot of energy trying to do things to an unrealistic timescale or reinventing the wheel. When the round of funding dries up, people have to go through another round of funding to prove the business case again, to redesign the issues and to go back through consultations whenever there has been a change. We are talking about trying to take a streamlined project management approach that crosses the political boundaries of local authorities and crosses the boundaries and timescales of the budget.

The willingness of Glasgow and the surrounding authorities to co-operate on some of the projects that we have been involved with, such as quality bus corridors, and the huge amount of investment that has been attracted from public transport funding regimes and us as an operator show what we could have done. It is hugely frustrating that it has taken so long to get to where we are and that we do not already have another three schemes on the back burner ready to go when the current scheme is completed. That is largely because of the huge effort that has been required to co-ordinate getting us where we are. We have proved that there is willingness to co-operate, that schemes can work and that it is possible to fund them, but we do not have a mechanism that makes them consistently and efficiently deliverable.

David Mundell: Is that not a strong argument for the Executive to fund partnerships directly, rather than use the proposed funding mechanism, which is effectively a form of requisitioning funds from local authorities? You will probably know that there is controversy over voting arrangements, which means that the proposed mechanism is likely not to be the smoothest. If we are going to have partnerships, should the Executive not directly fund them?

Gordon Dewar: I do not have strong feelings on how the funding works, as long as it is ring fenced and reliable. However, there is a huge amount of
value in retaining local input. Expecting the centre to understand the nuances of local priorities and conditions is probably asking a little too much.

There is no doubt that a regional understanding from transport professionals who know their patch well and who understand where the constraints are and the history will be a huge asset in ensuring that we do the right things at the right time. If we have project-by-project funding, to which you may be referring, we lose the ability to manage limited resources sensibly in a tight timeframe. I would be reluctant to lose that ability.

Continuity of staff resources and funding at a reasonable level that allows people genuinely to understand the transport network and the infrastructure with which they work adds value. How funding is secured for that group of knowledgeable individuals is not for me to comment on.

Dr Sylvia Jackson (Stirling) (Lab): I will ask about buses and utilities road works, which keep cropping up. Your submission says that you would like to be made to road works provisions?

Will you elaborate on the changes that you would like to be made to road works provisions?

Gordon Dewar: It is worth expanding on why the impact on bus services is disproportionate. The effective work-around on road works is to advertise planned road works and diversionary works. People respond to conditions, which we all know can be unpredictable. The most knowledgeable transport planner sometimes gets wrong the implications of road works.

Unfortunately, as a bus operator, we have fixed routes and fixed diversions, so we depend wholly on others to manage the process. A car driver can decide to travel at a different time of day or to take a different route, and can respond tomorrow to what he found today after trying a route that he thought would work but which did not. The options that are open to car drivers are not so open to public transport. We are hit hard by such problems.

Our big road works issues are the proportion of roads that are reinstated to a poor quality and which require reworking, and the lack of co-ordination of repeat road works when two utilities companies enter an area one after the other without any thought about co-ordination. Another problem is the total lack of incentive to complete projects on time. The implications of delays, overruns and poor on-street management do not seem to be understood.

A cursory look at road works on streets around Scotland will show that, often, they do not need to be operated in the peak hours during the morning rush, when the implications can be far greater than they would be an hour later. Often, people carelessly and unnecessarily park works vans in areas that are constrained by the loss of lanes and signals. We need to set far higher standards for utilities companies and their contractors to require them to take responsibility for the implications of their work. The most profound measure that we could take, which would be the easiest one to police if we could get it right, would be to ensure that if reinstatements are substandard, compensation and probably a penalty for causing unnecessary problems would be paid.

Dr Jackson: I assume that you are talking about compensation for bus companies, but we have heard a suggestion that compensation should be paid to the local authority if an inspection must take place. What is your view on the payment of compensation to different bodies?

Gordon Dewar: I do not think that it is necessary to pass compensation on to the road user. There should be an incentive regime that prevents problems from arising in the first place, by ensuring that utilities companies manage their work so that they never have to pay a fine or
compensation. I suspect that that would be sufficient payback for most road users and operators. We should incentivise companies to manage their work properly in the first place.

It would not be for us to determine the details of how compensation would be paid or how administrative charges would be funded in such a regime; such issues would need to be worked out among the utilities companies, the local authorities and the Scottish Executive. It is absolutely clear that the current system is unbelievably inefficient, because there is no recognition of the implications of failure to do a job properly in the first place. I cannot think of many industries in which such laxness would be acceptable—certainly not when the implications are passed on to third parties as visibly as in situations such as we are discussing.

Dr Jackson: You stressed the importance of RTPs in bringing people together. Could the issue about road works and the utilities be addressed at regional level? I acknowledge that a national solution is important, but that might not happen overnight and a more local approach might be needed. RTPs might provide a useful forum in that context.

Gordon Dewar: A national scheme must identify the duties of the utilities companies and their contractors and should set out reasonable management techniques for the incentive regime, so that there is a fair and even situation throughout Scotland and the utilities can be clear about what is expected of them. It would not be right if completely different management techniques were used on different sides of a geographical boundary. However, work with utilities and contractors to minimise day-to-day management issues is very much a local matter that relies on local transport professionals’ knowledge and on there being understanding of local issues.

The approach should also consider the importance of the utilities’ work and the speed at which it must be delivered—we do not forget that the utilities carry out essential works that often deliver major benefits. Work with the utilities on the management and monitoring of their work to minimise disruption should take place at regional level. In that context, management of the roads network and the public transport networks would be of use, so there would be a good fit.

Bruce Crawford: I think that we all acknowledge that the current process is inefficient. However, at the committee’s meeting two weeks ago, civil servants told us that the Scottish road works commissioner’s office will in effect be two men and a dog—the size of the operation will be such that very few people will be monitoring the process. If that is the case, is the establishment of a Scottish road works commissioner worth the effort? Would it be better to give local authorities and the utilities a statutory responsibility to work together to put together the Scottish road works register, instead of adding another layer of administration?

Gordon Dewar: I am probably not best equipped to comment on how we deal with management of the process. The key principles are that there should be an incentive regime and a realistic checking procedure, which is properly resourced to ensure that the regime is rigidly adhered to. We can consider whether one organisational structure would do that better than another, but the procedures can be made to work.

The important thing is that enabling powers are in place—as long as we are realistic about how we will manage things and as long as we understand the scale of the task, understand what a sensible sampling regime will be and understand that a sensible administrative scheme will be one that works efficiently and at relatively low cost. All those considerations will be important, although it is probably not for me to say exactly what the best structure would be.
transport operator in Scotland, and you are keen on rigorous penalties for problems involving reinstatement of road works. Is that a fair comment?

Gordon Dewar: We would like an incentive regime that imposed a duty of care and in which not carrying out that duty of care would have implications. We have no interest in having associated revenue streams or compensation; we are interested in roads being reinstated to a high quality and on time.

Tommy Sheridan: I just wanted that point to be clarified so that we can pursue it with the minister.

You say that you would welcome a national concessionary fares scheme. You go further by saying that the Welsh model offers an “excellent way forward”. Why do you think that?

Gordon Dewar: First and foremost, in Wales there is one formula that is well understood by all local authorities and operators. The formula takes into account the number of people who travel because a journey is free, as opposed to the number who would have travelled if they had had to pay. The formula also includes the costs to operators of having to put in additional resources. There is compensation to take account of lost fares and an adjustment to take account of people who are now travelling who would not previously have travelled. Compensation is based on the average adult fare. The formula is realistic and covers operators’ costs with a bit of a margin. Operators are therefore in a position to invest further, to gear up to carry people, and to ensure that the fleet is kept up to date.

In Scotland we have 16 schemes—there is a huge advantage in Wales because of the simplified administration. The same conditions can be offered to all passengers, as opposed to a geographically based offer being made that has boundaries and conditions that are different from what is on offer in other areas. I do not understand why it is reasonable to expect a pensioner in one local authority to receive a completely different offer from a pensioner in another area. I suspect that that is what is driving the legislation.

As with any product, it is important to be able to explain to customers the conditions that are attached to it. Customers have to know what to expect when they get on a bus, so that they can better enjoy the service that is being provided.

Tommy Sheridan: From what you say, I take it that you would support a non-time-limited scheme, similar to the Welsh scheme. One of my worries is that the Executive might still be considering an off-peak travel scheme. In Wales there is no time restriction, which helps with the simplicity of the Welsh scheme. As the largest operator in Scotland, would you suggest that there is no requirement for a time-restricted scheme?

Gordon Dewar: Because of the importance of the morning and afternoon peaks, there would be a cost implication to making the travel scheme apply at all times; it would affect the number of buses that we need in the fleet to enable us to carry all the passengers. However, if compensation to the operator in terms of revenue lost was sufficient to cover that cost—as it is in Wales—and made investment in additional resources sensible, most operators, and certainly FirstGroup, would have no problem in offering that.

At the moment, however, we are carrying all the concessionary passengers under various schemes at a loss. Therefore, there is no prospect of our responding to an all-day travel scheme at those levels because the only way we could recover the money that would be lost would be to put other people’s fares up, which would be nonsensical and would fly in the face of policies that are trying to encourage people to use public transport.

Tommy Sheridan: When you talk about simplicity and ticketing incentives and schemes, you seem to be suggesting that we could have a multimodal concessionary scheme that would operate not only on buses. Do you agree that the technology exists to enable us to develop a multimodal ticket for bus, train and ferry travel?

Gordon Dewar: There would need to be significant investment in the technology. However, we do not need technology to run free travel schemes, as there is no value in the token. That said, there is a significant challenge to our ability to implement a free scheme on trains. A free scheme generates twice as many customers as there are when everyone pays the full adult fare. Although it is easy to add capacity to bus routes, that is not the case with rail. There would be a significant problem in trying to accommodate the level of growth that would result if rail travel were free. It is more difficult to introduce additional capacity into the rail system than it is to do so into the bus system because of the infrastructure and rolling-stock implications. We can go out and buy hundreds of buses over the next three years, but we cannot go out and buy lots more railway in the next three years.

Tommy Sheridan: As you are the new operator of the ScotRail franchise, I hope that you will accept that you have not been able to deal with the overcrowding problems in Scotland’s busiest networks and that, often, you supply far too few carriages for those networks at peak times and far too many carriages at off-peak times, when you operate with empty carriages. Do you think that there is a role for you, as the manager of this mode of transport, to try to get that balance right?
Tommy Sheridan: It probably is not, but given the amount of times in the morning and night that I get it in the ear from people who have to stand for entire journeys, I felt that I had to take the opportunity to raise the issue with Gordon Dewar.

Gordon Dewar: I will be happy to go through those points after the meeting.

Tommy Sheridan: Okay.

As a result of the Welsh Government’s ability to accommodate a free and non-time-restricted scheme, there was a massive increase in journeys taken. The report that we have seen tells us that that was dealt with consensually by the industry, the Government and the users. Do you, as the largest transport operator in Scotland, believe that a similarly consensual and positive scheme could be developed in Scotland?

Gordon Dewar: In relation to buses, we could do exactly what Wales is doing, as long as the funding was in place and we had a sensible administration scheme that would let that happen efficiently.

Paul Martin: You have stressed continually the need for the scheme to be appropriately funded. There are a number of companies that provide support to the elderly in various forms—for example, some do-it-yourself stores provide subsidies to the elderly. Why should not operators such as FirstGroup take a hit with regard to providing help in relation to elderly people’s social need? Why should the Government have to fund a substantial subsidy?

Gordon Dewar: We have quantified it and have given evidence to the Scottish Executive and our local authority partners. About 15 per cent of all our passengers are passengers only because there is a free-fares scheme. Also, to say that we would be running buses anyway is simply not true. If 15 per cent of my passengers vanished overnight—which they would do if we abolished the concessionary scheme—we would no longer run 1,000 buses in Glasgow, 400 buses in east Scotland and 250 buses in Aberdeen.

Paul Martin: Perhaps there could be independent scrutiny of the issue.

Gordon Dewar: Information is on the record with the Convention of Scottish Local Authorities and the Scottish Executive, and through a number of papers that I have given at conferences.

The Convener: I thank Gordon Dewar for giving evidence.

I welcome our second panel, which is made up solely of Gavin Scott, who is the policy manager for the Freight Transport Association. I thank you for coming to the meeting and for the advance paper that you have submitted. I invite you to speak to that paper—if you want to do so—before we move to questions.

Gavin Scott (Freight Transport Association Ltd): There is not much that I want to add to the paper. Perhaps we could explore parts of it in more depth later. I reiterate the fact that the Freight Transport Association is a multimodal organisation. The vast majority of our work is road based, but we are certainly interested in other modes, too, although not in passengers.

The Convener: How well does the freight transport industry interact with the existing voluntary partnerships around Scotland? How could that interaction be improved or developed and greater cognisance be taken of the views of the freight transport industry in developing transport strategies?

Gavin Scott: I suppose that we have had mixed meetings with the various partnerships. We have a strong link with the north-east Scotland transport partnership, as we have a freight quality partnership that is based in Aberdeenshire, which
has helped the work with NESTRANS. We exchange minutes with the Highlands and Islands strategic transport partnership—that is about the size of it—and we have had various meetings with it. We keep in touch with some members of such organisations, probably more on a personal basis than on a formal basis. We are in touch with SESTRAN and WESTRANS, but do not deal with them in any great depth.

15:00

The Convener: Looking to the future, what are your views on how the regional transport partnerships that are proposed would best interact with the freight transport industry? Do you agree with Mr Ewing that the freight transport industry should have representatives as partners in those organisations?

Gavin Scott: The proposals deal only with the movement of people. Why that should be, I do not know. It does not matter where we go, we deal with movement of people. As far as the vast majority is concerned, transport is about people. Transport is not in my opinion given the profile that it deserves, probably because it does not have a vote. The problem that we have is that when the word transport is used, people immediately think of buses and trains, and the movement of self-loading freight—as I sometimes call people—rather than the movement of goods and services. I hope that if the transport partnerships are set up, they will include representation from the freight side, merely to act as a brake—if nothing else—on some of the potential excesses if the partnerships concentrate purely on transporting people.

The Convener: What do you mean by “potential excesses”?

Gavin Scott: When we consider the movement of people, there are many things that can be done that are not in the best interests of movers of goods. Gordon Dewar talked about bus quality partnerships. They are fine, but every time we put in a bus corridor we take away road space from other road users; the road users that I talk about are the freight interests. Here in Edinburgh we are just about to open the Straiton to Ocean Terminal bus corridor, which will take a lot of space from other road users. We can say that we do not give a damn and that car drivers can do what they like, but we have to remember that the vast majority of goods in this country are moved by road, and that the shops need to get the goods so that the shoppers who are coming on those quality bus corridors can buy them when they get to the shops. That is the problem. There is the potential for a dilemma, and there exists the potential that if the partnerships deal purely with the movement of people, there will be a downside for the freight industry.

The Convener: You said, quite correctly, that the vast majority of freight is transported by road. Do you think that the proposed national transport agency and the regional partnerships will be able to develop further the amount of freight that is transported by rail or sea?

Gavin Scott: There is potential for that. We have achieved a lot in Scotland over the past few years in respect of movement of goods by rail—especially—and by water. Water freight is one area in which we can make fantastic savings, for example by shifting stuff from Campbeltown to Ayr, rather than moving it all the way by road. That is a perfect example of something that can be done by modal shift. However, the problem is that modal shift is limited, mainly in that it is good for long distances, although one organisation is considering the possibility that moving freight from Grangemouth to Hunterston might be economically viable by rail. Generally speaking, we are talking about bulk goods.

The vast majority of goods in this country move very small distances—the average distance is about 50km or 30 miles. Such distances will never be viable by rail, except in particularly specialised merry-go-round trains that shift aggregates over short distances, which means that the vast majority of goods will for the foreseeable future be moved by road, particularly in urban areas.

Michael McMahon (Hamilton North and Bellshill) (Lab): I represent the Bellshill area and I am sure that you will be aware of the problems relating to the A725 Bellshill bypass, which has Shawhead junction at one end and Raith interchange at the other. That area has been identified as an area of major road distribution and many companies have set up at Righead industrial estate, Strathclyde business park and Motherwell food park specifically because of the road network in that area. However, I am constantly speaking to companies in that area that have never had any discussions with either the local authority or the Scottish Executive about what is required in order to establish better transport for the public in the area. Obviously, the nearby Eurofreight terminal is specifically located in the area in order to take freight from road on to rail. Do you feel frustrated that the bill might have missed the opportunity to bring an organisation such as the Freight Transport Association into the regional transport partnerships?

Gavin Scott: You say that the companies there do not get in touch with the local authorities. We see our role as being to represent those companies in contacts with local authorities and the Scottish Executive. You will be aware of the policy document that we produced in June and the trade routes document that we produced for road and rail. Our members identified the contents of
those documents as being the needs of the transport community.

We need to say where we want to be in 20 years’ time. Various people will have various suggestions as to how we might get there, but we need to agree on the vision. The transport partnerships offer the possibility of doing something along the lines of what we have suggested. When we first discussed how many transport partnerships there should be, we said that there should be only one because travel-to-work areas are not relevant to goods transport. However, that is a freight pipe dream. I can see the arguments for having more than one partnership in relation to the movement of people.

Bruce Crawford: Your written submission says:

“The proposed boundaries of the RTPs are based, once again, on the travel patterns of people”.

However, if most of the journeys involving the transportation of goods are less than 30 miles and most of them are done in urban areas, how is that different from travel-to-work areas?

Gavin Scott: It is true to say that the movement of goods in the urban areas tends to be over short distances. When we are talking about the average 30-mile journey, we are including refuse collection vehicles, for example, which make 5-mile journeys. Obviously, some journeys are much longer than that. Most supermarkets, including those in Inverness and Aberdeen, are served from the central belt—from the very places that Mr McMahon was just talking about. Everything comes from that M8 corridor, from where goods are transported right up to Stornoway, Lerwick and Shetland.

Bruce Crawford: I understand that, but I am still trying to unpick exactly how we can best help the freight industry. You have said that most of the journeys that involve the transportation of goods—whether they involve a refuse wagon or a joiner’s van—will take place within the travel-to-work area. It is quite important to establish that if we are trying to find a way to help the freight industry. I think that you are talking about how to get the freight industry much more involved in the national plan on how we deliver throughout the whole of Scotland. I would like to know how that can be done better, how the industry can be better involved and how the new transport agency might allow you to participate much more in developing that national plan.

Gavin Scott: I take your point about a lot of journeys being made in the travel-to-work area. We could probably play a role in that context with the transport partnerships—I would certainly not like to take my bat and ball away and say that the partnerships have nothing to do with us because we do not think that there is the right number of them. We would certainly want to be involved with such things. The business community and the logistics community—whether it is the Freight Transport Association or other bodies such as the chambers of commerce—need to get involved with the partnerships. We are talking about the infrastructure that we all want to use and there are differences—although this does not sound sensible—between what the passenger-carrying industry and the goods-carrying industry see as an ideal. There must be a compromise between the two.

Fergus Ewing: I hope that most of us recognise the essential role that heavy goods vehicles play. Some MSPs seem to be very much against freight, as if it is a sort of original sin. Admittedly, some of those MSPs are in the Green party and have not shown a particular interest in turning up to the committee yet.

On the problems that the freight industry faces, am I right in saying that there is an immediate problem with the working time directive, which will be the subject of statutory instruments that are about to be introduced fairly quickly, although you do not know what they involve?

Gavin Scott: We have the draft instrument now.

Fergus Ewing: Secondly, in the longer term, the iceberg on the marine horizon is the introduction of lorry road-user charging as a pilot. Charging would affect lorries but not cars, for some reason. You should feel free to mention other problems, but I mention those two matters because, with respect to the bill, the ministers have a proposed national function and you call for a national strategy. You also seek representation—or at least to be heard in some way—in the regional transport partnerships. What do you and representative colleagues in the Road Haulage Association want most? Do you want a national strategy or a place in the regional transport partnerships, or will both be required to ensure that haulage interests are not overlooked? To me, that seems to be an extreme danger from the bill and the apparatus that it proposes to create.

Gavin Scott: Let us have everything. If regional transport partnerships are to be set up, we will certainly look for representation of the movement-of-goods industry on them. However, we would like to see a national freight strategy for Scotland. We have done a lot of work in other parts of the country on freight strategies, such as for the north-east and north-west of England, and we would certainly like to look towards a national freight strategy for Scotland. To a certain extent, we are talking about a national transport strategy for Scotland, and we should put freight within that strategy.
You mentioned problems that are on the horizon. Several bits and pieces are coming up. On the working time directive, if the regulations stay in their current format and are not changed to any great extent, things might not be as bad as we thought they would be come 25 March next year. However, we have another problem, which perhaps impinges on the evidence. The European Union is currently considering a redraft of the drivers’ hours rules. In its current format, it is likely to take away the exemption for highway maintenance operators, so they would not have the facility that they currently have to work, in effect, for seven days a week, if that is necessary. Workers would say on Friday night at 5 o’clock, “That’s us for the weekend, guv. We’ve got to have our 45-hour weekend break.” If we cannot get that exemption put back into the legislation, a problem might arise.

On lorry road-user charging, again we have the potential for some problems, particularly in relation to Scotland. What the Treasury and HM Customs and Excise want to do is not clear. We hear all sorts of wheezes and buzzes, but I do not think that they are clear about it. One of the indications that we have had is that there will be differential charges depending on what road one is using. Therefore, when we get the whole scheme in all its beauty, motorways will be cheapest, to encourage us to use motorways, and urban roads will be the most expensive. We are all well aware that there are no motorways north of Stirling and that it is all trunk roads from there. If lorry road-user charging comes in on the basis of differential charging, we shall be arguing strongly that trunk roads in Scotland should be treated as motorways as far as the charging regime is concerned.

15:15

**Fergus Ewing:** As far as it is possible to glean what the Department for Transport is proposing, it does not seem to be arguing for that. It seems to be proposing simply that motorways should have the lowest charges, but the fact is that Scotland has the lowest number of motorways.

**The Convener:** I would like to encourage us to go back to issues relating to the Transport (Scotland) Bill rather than Westminster issues.

**Fergus Ewing:** I was thinking of section 12 of the bill, which gives Scottish ministers powers to bring forward a national strategy. I thought that, as we have Mr Scott here, we should give him an opportunity to explain some of the problems that might be faced in that regard. However, I appreciate that that is not directly relevant to the bill. It might be in the future, though.

Mr Scott, do you think that regional transport partnerships should consider all modes of transport or that their role should be restricted? What functions should they have?

**Gavin Scott:** It is funny that everything that the Executive produces on the subject of transport seems to be about people and roads. There seems to be little effort being put into an examination of the other modes, such as train and ferry. It seems stupid that a regional transport partnership in the Highlands and Islands would not deal with ferries and the few train services that there are in the area as well as road usage.

Similarly, given that people are talking about the possibility of having fast ferries across the Forth from Kirkcaldy to Granton, it would seem stupid for a regional transport partnership not to have some influence over that sort of service.

**David Mundell:** I fall into one of the categories that Fergus Ewing was talking about in that I am supportive of the freight industry. However, I would be interested to know what you would like to contribute to discussions in the regional transport partnership and what conflict issues you think might arise as a result of a distinctive contribution being made by the freight industry.

**Gavin Scott:** In the first instance, we would like to have a watching brief. Almost inevitably, the transport partnerships will concentrate on the movement of people. That is axiomatic. Therefore, we would like to ensure that, when people formulate policies, they do not forget the people who move goods and, instead, take a step back and ask what effect the policies will have on the logistics industry.

In a similar way to what we envision in that regard, we have representation on the Caledonian MacBrayne shipping service advisory committees. The vast majority of the work that those committees do relates to passenger movement, but the logistics industry needs to have an input into the committees so that someone can make them step back and think about the effect that, for example, certain timetable changes might have on the industry.

We would hope to act as a moderating influence rather than as a force that pushes forward the freight industry’s point of view.

**David Mundell:** Would there be any scope for a discussion on a regional level of, for example, agreed routes?

**Gavin Scott:** Again, we have been involved in that sort of thing, in connection to the timber transport routing work that is being done in the south-west and in Perth and Stirlingshire. If industry can get involved in discussions on areas like that, we can help.

The ideal would be that anybody could drive anywhere they like and take anything anywhere.
However, we have to be sensible and accept that we cannot just keep on doing that for ever. We have to be much more sensible and say that we will move goods only on roads that are suitable for moving them. Sometimes, we might want to use a particular route because it is a service road or something but, increasingly, the industry is prepared to accept voluntary routing of vehicles, in the first instance. As I said, we have been doing a lot of work in that regard. South of the border, where there are many freight quality partnerships, as we call them—in Scotland, we have only one, in Aberdeen and Aberdeenshire—much work is being done on lorry routing and the production of maps of those routes. That is something that we could work towards with the transport partnerships in Scotland.

Dr Jackson: I do not think that anyone disagrees that the national freight strategy needs a more Scottish focus and, having been involved with some of the timber transport meetings in Stirling, I know that a lot of work has been done in that regard already. Obviously, however, there is a lot of work still to be done. What other work have members of your association done to get a more co-ordinated vision?

Gavin Scott: There is still a lot of work to be done. The problem that we have is that, although all of our members are involved to a greater or lesser extent in the moving of goods, they are a disparate bunch of people and organisations, ranging from the joiner with bits and pieces in his van to Exel, which is the biggest logistics company in the world. The problems that they have are extremely different and the problem that we, as the organisation that represents them, face is trying to bring together all the needs of those people.

As I said, in England, my colleagues have been working on freight strategies for the Government office areas, which follow a sort of natural boundary. It would be our ambition to do something similar for Scotland. Of course, it would not just be us; we would have to involve bodies such as the various chambers of commerce, the Confederation of British Industry, the local authorities and, where appropriate, the Scottish Executive—I ain’t going to do it myself.

Dr Jackson: On road works, your written submission says:

"FTA understands that due to financial constraints less than ten per cent of reinstatements are inspected. Further works caused by poor reinstatement is a major cause of disruption."

It goes on to say that if the local authorities were permitted to recover 100 per cent of the inspection costs, that could prove to be an effective method of making them better in the first place. Could you elaborate on that point?

Secondly, your submission states that it would be good for various local authorities to come together to co-ordinate road works. Given that that involves cross-boundary working by local authorities, would that be one of the jobs for the regional transport partnerships?

Gavin Scott: I would certainly hope so. The problem is that each proposed regional transport partnership would share a boundary with another RTP, so there would have to be co-ordination in some cases. The last thing that we need, for example, is for Kincardine bridge to be closed for painting when the A8000 is being upgraded. However, that area comes under SESTRAN, so I hope that such a scenario would not happen. You will get the drift of what I am trying to say, though.

We need co-ordination when work is being carried out on roads, to ensure that there is as little disruption as possible to traffic flow. In the past, when roads have been blocked to allow work to be done on them, natural alternative routes have been closed at the same time, for whatever reason, which has caused massive disruption. It was known in advance, in such cases, that a route would be blocked—there was no emergency situation. There must be co-ordination to avoid such cases happening.

No doubt, people think that they are doing that kind of work as well as they can, but there must be much more co-ordination between local authorities when they allow roads to be dug up. Similarly, the utility companies must co-operate when they plan to dig up a road so that we do not get situations like the one on Old Dalkeith Road in Edinburgh many years ago, when some part of the road or another was being dug up over a 10-year period. They would get to the bottom of the road, then start at the top again and dig up the same trench. The joke went round that the foreman had lost his lighter and they were looking for it.

Dr Jackson: You suggest in your written submission that local authorities could claim for 100 per cent of the cost of inspecting road reinstatements. Do you have ideas for any other measures?

Gavin Scott: That suggestion arose from the fact that less than 10 per cent of reinstatements are inspected—one of my colleagues got that figure for me—so there is a fair chance that many bad reinstatements will be overlooked. There must be a better way of operating than inspecting less than 10 per cent of the reinstatements. For example, local authorities could do reinstatements and charge contractors for that, or local authorities could do proper inspections of reinstatements and recover the cost of doing that from contractors. I am not qualified to say whether it should be one or the other, but there must be a better system than the current one, in which only one in 10
reinstatements of roads that have been dug up is properly inspected by a roads engineer.

Michael McMahon: On the idea of utility companies co-ordinating their work, I have spoken to utility companies about that and they hold up as an example a road work that was conducted in the centre of London near Buckingham Palace. The utility companies agreed to dig one hole and to do their repair work at different times. However, the problem is that utility companies work at different times. Although the authorities in London gave that work an award, the utility companies found the work problematic because the road remained dug up for much longer than it would have been if the companies had done their repairs at different times of the year. Have you heard of arguments along similar lines?

Gavin Scott: I am aware of that example. The question is whether it is better for utility companies to dig up a road at three separate times or to do one big job together. That question would need a bit of working on to decide what kind of working would cause the least disruption. I do not know whether it would be less disruptive if, for example, there was three months between each utility company working for a week in a particular road, or whether it would be better if all the companies worked in the same road for a solid month.

There must be forward planning when utility companies want to do work that will disrupt roads. There are situations in which a company says, “Here is my 10 days’ notice that I am going to dig up the road, Mr Local Authority, thank you very much,” then off he goes, dig, dig, dig. Two weeks after he has patted down his lump of tar on top of the filled-in hole, the next utility company comes along and says, “Here’s my 10 days’ notice, Mr Local Authority.” There must be forward planning for such work. Emergencies are obviously a different matter, but there must be a way of co-ordinating utility companies’ planned work in roads. It might cause less congestion if utility companies did such work at separate times. However, somebody should be able to work out the best way of doing it and that is what we should work towards.

15:30

The Convener: That brings us to the end of the questions for you, Mr Scott. Thank you for your evidence. We will move on to the third panel.

I welcome to the meeting representatives of the Rail Passengers Committee Scotland, particularly Robert Samson, the director, and James King, a member of the RPC. The committee has given us a written submission, but I invite Robert Samson to make introductory remarks before we move into question and answer mode.

Robert Samson (Rail Passengers Committee Scotland and Caledonian MacBrayne Users Committee): I thank the committee for the opportunity to give evidence.

There is not a great deal to add to our written submission. However, the bill’s explanatory notes refer to the need to get business involvement in the proposed regional transport partnerships. There must be recognition that, as well as getting the business, tourism and freight sectors involved in the RTPs, there should be a mechanism for the RTPs to capture the passenger voice. We are concerned that the RTPs might get a bit unwieldy because everybody wants to be part of them in one form or another. It would be difficult for us, as a consumer organisation, to be part of an RTP while at the same time standing back from it and commenting on it. Therefore, we want a mechanism that would allow us to engage with RTPs in the future.

Bruce Crawford: Your written evidence shows that you feel that HITRANS, NESTRANS, SESTRAN and WESTRANS do a good job, despite being inadequately funded. If those non-statutory bodies do a good job, how could the proposed RTPs take on their work more successfully, given that the bill states that councils would take part in the process only “so far as possible”? How would the RTPs improve matters?

James King (Rail Passengers Committee Scotland and Caledonian MacBrayne Users Committee): The proposed strategic set-up would have three advantages over the current largely voluntary set-up. First, the proposed RTPs would have a greater engagement with their various user communities and would allow for a better articulation of such communities’ needs.

Secondly, RTPs would be able to engage in more regionalised experiments that could lead to best practice. We are bringing out a report next week on an experiment that we undertook in relation to the Executive’s choose another way campaign. In co-operation with ScotRail, we gave 10 car drivers free rail season tickets and encouraged them to keep diaries for a month on their experiences of journeying by rail. Five months later we went back to look at what had happened to their mode of transport. We discovered that seven out of the 10 had transferred to rail, largely because they were now previously aware of its benefits, and that another two were potentially going to transfer to rail. The conclusion that we drew from that was that, by encouraging a sustained trial, modal shift can be achieved and we can get commuters out of their cars. That is exactly the kind of experiment that a regional transport partnership could encourage.
The third point, if I have not already mentioned it, is that passengers and freight users would benefit from the sharing of best practice among the RTPs.

Bruce Crawford: Okay, engagement, sharing best practice and running pilots are all good things that the RTPs could do, but what would happen if the local authority were to invoke its powers under section 8(1) and say, “Sorry, we’re not giving you the cash”? Would the RTPs have the teeth to be able to make the changes that are required?

James King: We support the answer that Mr Dewar gave to that question. That is where the national strategic body comes into play.

Bruce Crawford: But the local authority still has an opt-out, because the bill says that it will partake of the RTP’s activities “so far as possible”. The organisations that you have already named in evidence—HITRANS and SESTRAN, for example—have done a job and the regional transport partnerships will take that job on a bit, but will they be effective enough? Will they have real teeth?

James King: We have not so far spoken about what is core here, which is the fact that what is in the interest of business, a local authority and passengers is usually largely the same. It is a matter of degrees of what can be achieved, so I perceive much more consensus on the RTPs than your question implies.

Fergus Ewing: I was interested to hear about the experiment that you mentioned, but regional transport partnerships are not necessary for us to be able to run such experiments.

James King: Indeed, but the experiment is an example—the only one that we have to hand—of an easily controlled, localised experiment that has led to considerable benefits.

Fergus Ewing: However, surely HITRANS, for example, could have done that.

James King: Yes. Earlier, Mr Mundell asked Mr Dewar to give an example of local authorities not working together, and I will answer that question. Cast your minds back to the consultation on strategic priorities for Scotland’s railways. During that consultation, it fell to a local consumer pressure group—rail action group east of Scotland—to try to co-ordinate a common view from Scottish Borders Council, East Lothian Council and Midlothian Council on the strategic priorities for the east coast main line. There was no joined-up thinking between those local authorities, and that is exactly the kind of scenario that an RTP could address.

Fergus Ewing: I understand that, but you are answering not only another member’s question, but another member’s question to a different witness, which is a novel and innovative approach to questions. You represent rail passengers, and although, as we heard from the self-same Mr Dewar, the regional transport partnerships will not be able to do very much about rail transport, you are ultra-enthusiastic about them, despite the fact that, as you have just said, HITRANS could carry out the experiment that you mentioned. That was one of the three reasons that you gave as to why you should support the partnerships, but they are not required for that, and you do not seem to be bothered by the evidence that we took in our meeting with local authority representatives from the Highlands and Islands—perhaps you are not aware of that evidence. I think that it was the councillor from Shetland Islands Council who argued that the local authorities will have to pay up to four times as much as they do currently because the funding is being requisitioned. If the local authorities have difficulty in coming up with the funding, will that not jeopardise the efficacy of the RTPs and would that not be a reason to oppose them, rather than give them a blank cheque as you seem to be doing?

James King: Robert Samson is rather more familiar with that evidence, so I will ask him to answer that question.

Robert Samson: You have rightly highlighted a potential problem. However, one of the frustrations for passengers is that there is a myriad of proposals for improvements, not only to railways but to bus services. As has been highlighted, one of the RTPs’ core responsibilities—if not the only one—will be to produce a regional transport strategy, which will tie into the national transport strategy. Because there will be some form of prioritisation not only for a two or three-year period, but for a 10 or 15-year period, passengers will be able to draw down a menu and see when a certain improvement will come about. That is one way in which the regional transport partnerships will bring about improvements and be of benefit to passengers.

There are a number of projects of one form or another that have stalled for various reasons. For example, the redevelopment of the interchange at Markinch station in Fife has been going on for a number of years. The regional transport partnerships will, we hope, be able to engage proactively not only with the operator but with the railway infrastructure owner, Network Rail. The lack of such engagement is one of the major stumbling blocks. If passengers can see the menu and if, rather than fighting about the merits of one station or service over another, we can get some form of consensus on how to make progress, it will be far better than working on the small cycles on which we work at present.
You have rightly highlighted a problem, but we consider that to be a potential solution.

**Fergus Ewing:** You might be right about the long-term nature of the strategies that the RTPs will have to devise, but where in the bill does it say that they must be long-term strategies or, indeed, strategies of any specific duration? I cannot see anything in the bill that says that. If I have just missed it, I put my hands up and admit it, but if I am right, are you not assuming something that is not in the bill?

**Robert Samson:** You are correct that it is not specifically stated in the bill, but, from the lessons that we have learned over the past four or five years, it would be foolish for a strategy to cover only a small timescale. One of the arguments that we have made time and again when we have meetings with the Scottish Executive is that the problem with the railways is that, unlike with buses, there is a long lead-in time for projects. To deliver a project from inception to completion, we need continuity of funding, resources and operations. One way to achieve that is to have a long-term strategy, and we hope that the bill will encourage that, rather than short-termism.

**Fergus Ewing:** So if the strategy is not long term, you would not be so supportive.

**Robert Samson:** We would not be so supportive of regional transport partnerships or a national transport agency that only dealt in short-term strategies, because that would not be a solution for the railways.

**Fergus Ewing:** You would also not be so supportive if local authorities could not afford to participate in the RTPs.

**Robert Samson:** No, we would not.

**The Convener:** Given that many of the Executive’s transport priorities and many of the projects to which it is committed are medium to long-term measures, not simply short-term fixes, would it not be reasonable to assume that the national transport agency would adopt that approach following ministers’ lead and that the regional transport partnerships would do likewise?

**Robert Samson:** Yes, indeed. I could not view optimistically the creation of a national transport agency that considers only the short term, which obviously does not need legislation. That would defeat the purpose of what we have been trying to achieve in transport since the creation of the Parliament.

**The Convener:** It would be an unlikely development.

**Robert Samson:** Yes, it would be very unlikely.

**Fergus Ewing:** Do you want to be on the regional transport partnerships?

**Robert Samson:** That presents a problem. Next year, the Rail Passengers Committee Scotland will cease to exist. The Railways Bill that is going through the Westminster Parliament at the moment will dissolve the eight regional committees—there are six in England, one for Wales and one for Scotland—and replace them with a national rail passengers body. Apart from the fact there will be 14 committee members for the whole of Great Britain, the body's structure and size are still to be decided. There will be mechanisms for getting in touch with passengers by e-mail and over the internet, but those have still to be developed.

One other problem presents itself. We represent passengers on Caledonian MacBrayne ferries. From next year, once the Westminster Railways Bill is passed and the Rail Passengers Committee is dissolved, there will be no consumer organisation to represent Caledonian MacBrayne’s passengers.

An opportunity might have been missed to take advantage of the fact that the Westminster Railways Bill and the Transport (Scotland) Bill are running in parallel. Railways account for only 4 per cent or 5 per cent of passengers. However, there are buses, ferries and internal flights from the islands. It would be possible to have separate bodies representing passengers on all those forms of transport—which is the case at the moment, with the National Federation of Bus Users and so on—or we could have an all-embracing public body that represents the interests of all public transport users. I believe that such a body would be better able to demand a seat at the table. I think that a trick has been missed.

15:45

**Fergus Ewing:** However, perhaps the trick can be recovered in an amendment at stage 2, when it might be competent to introduce such a measure.

**Robert Samson:** Indeed. I was just planting a seed in your minds just now.

**Fergus Ewing:** The decision about whether we can do that at stage 2 lies with the convener, who has sole discretion. The power lies at that end of the table.

**The Convener:** We will see whatever ingenious amendment you come up with, Mr Ewing, and consider it at that time.

Fergus Ewing asked about what influence over the rail industry the regional transport partnerships will have. It is possible that they could perform the role of promoters of pieces of new railway infrastructure. For example, the smallest mainland local authority was the main promoter of the Stirling-Alloa-Kincardine line. It might be more
appropionate for the regional transport partnerships to promote that sort of development with support from the Government, through the national agency. Do you agree?

James King: Yes. For example, the Airdrie to Bathgate line would embrace west and east regional transport partnerships. The Executive has the laudable objective of having that route reopened. However, in relation to service provision on that route, it might be that the regional transport partnerships have a better understanding of passengers’ needs at each end of the line.

As my colleague has acknowledged, rolling-stock and other infrastructure has a long lifespan. Scotland’s rail passenger numbers are growing and if the current regime exists when that line is reopened—and it might take longer for it to reopen under the current regime—there might not be sufficiently strategic thinking on rolling-stock provision and destinations served. For example, the Airdrie to Bathgate line is being thought of as an alternative Glasgow to Edinburgh route, but there is a rolling-stock requirement for the Edinburgh to North Berwick route, there is a rolling-stock requirement in Glasgow to replace the ScotRail class 314 trains in the not-too-distant future and there is a greater need than ever before for through journeys. Perhaps, working together, the regional transport partnerships could devise a scheme to provide a better North Berwick to Helensburgh service and, therefore, provide greater financial justification for a new fleet of higher-specification trains.

That is the kind of thinking that we expect to come out of the regional transport partnerships, underneath a strategic overview set by the Executive.

Robert Samson: There is another example. Regional transport partnerships in Aberdeen and Inverness could promote the infrastructure improvements that are needed on the rail line between those cities in order to increase the train frequency and reduce the journey times.

Bruce Crawford: The problem with what you have been suggesting in your useful answers to the convener’s question is that we do not know what the regional transport partnerships are going to do because a great deal of power is being given to Scottish ministers to say by order what the partnerships will do. That is concerning because we will not be able to scrutinise the orders, which will be either affirmative or negative statutory instruments, to the degree that we are able to scrutinise the bill. Would it be better for the Executive to bring forward to stage 2 an explanation of what the regional transport partnerships might undertake, so that we can get real discussion going about the shape of what is going to happen and the delivery mechanism? Right now I do not think that anybody can say what the system will look like.

James King: Passengers would find it helpful if they could understand at an earlier stage than might otherwise be the case what the bodies might do.

Paul Martin: I want to ask you about your pilot programme. Seven out of 10 car commuters converted to other modes of transport, which is an impressive statistic. Can you explain why they converted to taking the train? You said that you made them aware of information of which they were not aware before.

James King: I am not sure that this is within the scope of your inquiry, but I will be brief. We discovered that many car commuters fell into the habit of car commuting within travel-to-work areas simply because they lacked knowledge of the rail infrastructure. We had 35-year-olds who were totally unfamiliar with trains. Once they were introduced to rail and they could compare their car journeys with their rail journeys, the perceptions of rail journeys that they got from media reports or friends were not borne out. What astonished us was that those on the rail side were often more punctual than those on the car side. A whole bunch of such findings came out of the report.

Paul Martin: It is impressive and, to be honest, hard to believe.

James King: It astonished us. The trial was conducted towards the end of the winter, which might have contributed to there being slower journeys than there would have been in the summer. However, the fact that those people transferred to rail and, five months later, during the summer, they were still on rail, is a powerful testament in relation to long-term sustained trials of rail versus road. We have to give people an incentive to transfer in the long term.

The Convener: I return to the issue of the rail powers that are changing. One of the issues that SPT has raised is the proposed transfer of rail franchise powers to Scottish ministers. Does the RPC have a view on that proposal?

Robert Samson: We have no particular view other than that SPT has provided the services over the years in a professional and passenger-oriented manner. The SPT evidence was that the region has the highest number of passengers commuting on the rail network in the morning and the evening outside London. SPT’s stewardship of the rail network has been second to none. We only hope that that is not diluted by the transfer of powers. We know that in some quarters people envy SPT’s record and we hope that ministers can replicate it Scotland-wide. SPT has provided a wonderful service for passengers over a long time.
**The Convener:** Thanks. We move on to questions on part 3 of the bill, which deals with concessionary fares.

**Bruce Crawford:** I am interested in a couple of aspects of your evidence. If I have understood your written evidence, you are calling for a degree of local flexibility in the implementation of a national concessionary fares scheme. Will you expand on how that might work and justify why a minimum standard would be acceptable? What are your views on introducing a concessionary scheme for those who are using ferry services to the islands? What benefits might it bring to your passengers?

**James King:** I am rereading the responses to the committee. There is a slight conflict between the two paragraphs to which you are referring. Our aim is to see a level playing field in a national concessionary fares scheme. At the moment passengers report enormous difficulties in crossing boundaries and understanding journey options. The operators sometimes have great difficulty applying the right discount. A national, level-playing-field concessionary fares scheme is in everybody’s interests. That is our primary point.

**Bruce Crawford:** That clarifies your position.

On that point, though, do you think that a national concessionary scheme should apply to the railways as well? What is your view of off-peak issues and the Welsh model, under which the concessions are available at all times?

**Robert Samson:** I think that the scheme should apply across all modes of public transport. The Welsh model raises issues of capacity on the railway, which would have to be addressed by significant funding for new infrastructure and carriages and an improvement in the frequency of the services. There are a number of overcrowding hot spots in the network and increasing the number of passengers carried by rail would make journeys extremely stressful and more uncomfortable for passengers than they are just now. I am not trying to paint too black a picture of the railways, but some routes would become unsustainable in the long term. That means that, if you were to introduce a national concessionary fares scheme, you would also have to think about who would fund the on-going necessary infrastructure and rolling-stock improvements in the short, medium and long terms, which would have a significant cost.

**James King:** There is a parallel with the issue of taking bicycles on trains. It is commendable that the Executive’s policy is to encourage people to use their bikes rather than cars. However, because of the constraints that have just been mentioned, the railway can take only so many bikes. That means that there is conflict on the platform when passengers wish to use the transport but are unable to. The same could happen in relation to concessionary fares.

**Bruce Crawford:** Are you saying that a national concessionary fares scheme should be a long-term aim and that we should recognise that there will be difficulties in the short term?

**James King:** Yes.

**The Convener:** To some degree, your view mirrors that of Gordon Dewar, who talked about the problems that the rail industry would face if a free concessionary scheme were introduced at peak times. Do you think that there is scope for such a scheme to be introduced at off-peak times?

**Robert Samson:** Yes. The trains are running to timetables protected in the franchise for seven years. Rather than running some of the trains at one third of their capacity, we should have a concessionary fares scheme and run them at two thirds of their capacity.

**Bruce Crawford:** Of course, the Executive would say that all that has cost implications and that a balance must be found. Some people have suggested that one of the ways in which to strike that balance would be to have a half-fares scheme rather than a free scheme so that the savings that were made could be used to make the service available on trains as well. What do you think about that?

**James King:** Someone has to pay for the scheme. Mr Dewar’s evidence made good sense in relation to where the pressure for payment comes from. We would generally favour some form of payment so that only those who needed to make the journey would make it and the operators would get some form of recompense.

**Robert Samson:** However, the payment would have to be at such a level that it was not restrictive.

**Bruce Crawford:** Because there would still have to be an incentive for people to use it.

**Robert Samson:** Yes, you have to strike a balance between, on one hand, encouraging those who are entitled to the concessionary fare to use the service and, on the other, charging to use it, which could be restrictive.

**Bruce Crawford:** Even if the concessionary fare was only a quarter of the full fare, it would still enable some resources to be diverted toward ensuring that there was some level of off-peak concessionary fares on trains.

**James King:** That would also encourage the train operating company to collect the fares. That ties into a wider view that we have about encouraging off-peak travel. Passengers want to travel at off-peak times but, sometimes, they do...
not do so because of concerns—often incorrect—about safety. The more schemes that we can put in place to encourage off-peak travel and to encourage the operator to collect the revenue, the more uniformed people we will be able to have on trains to assure passengers of their security. As with other issues in the rail environment, the issue that we are discussing ties into a wider agenda.

Fergus Ewing: If you argue that a concessionary scheme for rail should include some element of payment rather than being free, should that principle not apply to the current proposed bus scheme?

James King: Yes, for the same reasons.

Fergus Ewing: So it would be better to have a scheme that did not provide free travel but which offered half fares or fares of some other proportion.

James King: Yes. The more consistent the scheme is, the more it will be used.

Fergus Ewing: It is safe to say that all parties represented here acknowledge that there is no magic pot of unlimited cash at the end of a rainbow. Parties that take that view are not represented here at the moment.

The Convener: There might be disagreement about that.

16:00

Fergus Ewing: I was trying to find consensus. We have a pot of £100 million or thereabouts. Would you, as rail passenger representatives, not be better arguing for—or indeed are you arguing for—a multimodal or omnimodal scheme whereby instead of bus passengers getting free travel, all passengers, including rail passengers, get half-fare travel? Would that not be better for the people whom you represent than having no extra concessions, which is what you appear to support in your paper?

James King: Rail and ferry passengers tell us that they want a common scheme that is simple to operate and which they understand. The level at which that is set is a matter for the Executive.

Fergus Ewing: Perhaps I did not put the point clearly. As I understand it, the Executive is offering a national concessionary scheme for senior citizens and those with a disability that will apply to buses, travel on which will be free. We do not know exactly what form the scheme will take, but travel will be free. I am asking whether for the same money—or perhaps less—it would be better, particularly for rail passengers, to provide half-fare travel on buses, ferries and trains than to provide free travel on buses to those who are entitled to it.

Robert Samson: There are advantages and disadvantages. Concessionary fares on the ferries would be advantageous to people living in island communities, because that is the main, if not the only, mode of transport by which to get to the mainland. The problem with off-peak travel on the railways is the cost of the rail fare against the bus fare, which is why trains are sometimes two thirds empty. Nine times out of 10 the bus fare is cheaper, so most people use the local bus service or the city bus service. For example, off peak, the trains from Motherwell to Glasgow are two-thirds empty, while the buses are full, because of the price difference. It is about trying to strike a balance. The problem in getting the concessionary fares on the railway the same as those on the buses permanently relates to infrastructure and rolling stock. Passengers using Caledonian MacBrayne ferry services tell us that they want to see a concessionary fares scheme not just on buses but on ferries.

Fergus Ewing: I am becoming increasingly puzzled about why you are not arguing for concessions for rail passengers, given that those are the people whom you represent. If the argument that the cheaper the bus the more incentive there is for rail passengers to transfer to bus applies now, in future such transfers will happen in spades. If everyone in the categories that I mentioned can travel by bus free, you will lose more customers. I am not attacking you in any way; I am just genuinely puzzled about why you are not knocking on the Executive's door and saying, “We want a concessionary scheme that benefits rail users. Would you not consider a multimodal scheme in which everybody gets the half fare, quarter fare or three-quarter fare, which would take the same amount of money as a scheme that applies just to buses or ferries?”

James King: That is what I was trying to say earlier—I obviously failed. We want a national scheme with fares at the same level for all modes, whether half fares, three-quarter fares or whatever.

Fergus Ewing: Would that be better than a scheme that was just for buses?

James King: It would seem so, because a bus scheme would encourage people on to the roads disproportionately.

Fergus Ewing: I think that we got there, convener.

The Convener: Sylvia, we touched on ferries. Do you want to ask anything else?

Dr Jackson: No, Bruce Crawford covered what I was going to ask.
The Convener: That brings us to the end of questions. I thank Robert Samson and James King.

We move on to our last witness for the afternoon. I welcome to the committee Neil Greig of the AA Motoring Trust.

Many thanks for the written submission that you made in advance of appearing before the committee. We give you the opportunity to highlight any of the points in it or add any supplementary points and we will then begin the questioning.

Neil Greig (AA Motoring Trust): Good afternoon, and thanks for inviting me to the committee. I have taken a tight interpretation of the invitation to talk about road works only, although we have views on matters such as regional transport partnerships. We do not have a remit to discuss the boundaries of regional transport partnerships, but we are supportive of the concept of a regional transport partnership that is focused on the customer and on delivering projects. You have been talking about long-term strategies, but we would prefer the regional transport partnerships to produce long-term delivery plans rather than long-term strategies. I will try to answer questions on regional transport partnerships as well as on road works, which are the main thrust of my written submission.

The Convener: Thank you for that. We will explore your views on regional transport partnerships, but I will leave that aside for the moment, because I know that Sylvia Jackson is keen to question you on road works and I do not think that she has long with us today.

Dr Jackson: You state in your submission:

“The new Commissioner can only be judged a success if drivers are aware of his activities and know who to contact to enforce the new regulations.”

Will you encourage motorists to contact the new commissioner? Should the commissioner be proactive by promoting their services to motorists?

Neil Greig: Yes. The problem at the moment is that motorists do not know who is in charge of the road works that cause them problems. The road works are often short term, it is unclear who is running them and it is difficult to contact someone to find out what is going on and get something changed. Several freephone numbers for highlighting defects, such as the road and lighting faults service, or RALF, and the customer lighting and roads enquiry centre, or CLARENCE, have been in operation for many years, but they do not attract many people to use them, and it would be much easier if there was one simple way of reporting a bad set of road works and getting something done about it. If that could be clearly marked at the road works and advertised in some form, it would be an easy way to interact with the consumer.

Dr Jackson: The Freight Transport Association has called for roads authorities to be able to recover 100 per cent of the reinstatement inspection costs. Would that aid the commissioner to enforce high standards of reinstatements?

Neil Greig: In an ideal world, there would be incentives for people to finish early and no fines. Everything should be finished on time to the right standard. It is a bit like speed cameras: the best speed camera never catches anyone, because everyone is driving past safely, not speeding and not having an accident. One of the problems that we have come across when we have spoken to local authorities is that they do not have the resources to get inspectors out to inspect the works—the FTA mentioned that local authorities inspect fewer than 10 per cent. The key issue for us is that the income from the fines should be channelled back into better inspection of road works so that, ultimately, the standards improve and the chances of being caught increase, because when a set of road works is in place for only a couple of hours, it might cause chaos on the roads, but by the time anyone gets there to inspect it, it is long gone and the problem is forgotten about. There is a strong requirement for more resources to go into inspections and, even though much more money is being spent on local authority road maintenance, I do not see any other source for the money to spend on inspections.

Dr Jackson: Your written evidence comments on the necessity for a practical relationship between the commissioner, the local authority enforcement inspectors and the utility companies. You state:

“It is not clear from the legislation exactly how this relationship will work.”

Will you comment on the way in which the relationship should work and develop?

Neil Greig: It is clear from the bill that those who will go out to inspect the works will continue to work for the local authorities, but they will also be working with the road works commissioner, so unless they have a good relationship with the commissioner, who will take information from them and pass information out to them, the system will simply not work. Over many years with the Automobile Association—far too many, in fact—I have come across voluntary schemes to improve road works information. It is a complex area. I have seen some of the maps that show the layers of complex apparatus under the roads and know that, in many cases, councils and so on do not know what is there. If that information is not being distributed to someone who is working for another organisation, we will not get the full value out of...
the register. It is great that people will be statutorily required to use the register, which we hope will work better than the voluntary arrangements, and that we have the computing power to present the information graphically and so on, but if the people who are sent out to inspect the road works do not have that information, they cannot put that information into action.

I agree that we should have a Scottish road works commissioner—a leader who can take responsibility for standards and can oversee the register—but it is important that they work with the 32 local authorities that will be implementing the good practice that he is trying to encourage.

Dr Jackson: Where do you think that the regional transport partnerships come into this?

Neil Greig: They could be a useful forum for talking about road works. I have not thought about the regional transport partnerships in terms of road works. I had thought about them more in terms of the bigger projects.

Fergus Ewing: On the Scottish road works commissioner, I have read your written submission and heard what you have got to say. Am I right in saying that the AA is not signing a blank cheque for support of the road works commissioner or the proposals in part 2 of the bill and that that support depends on a number of factors? Is that a fair summation of your paper?

Neil Greig: The detail of the targets that are set for the commissioner will be all-important to us. If those are customer-driven targets, such as reducing the amount of time wasted at road works, rather than simply targets for the number of fixed penalties issued, for example, that would go a long way towards allowing us to say that we think that it is a good idea.

The problem with most initiatives in the past was that they all took place in the industry and nobody knew about them unless they were interested in that area of activity. People would have to make an effort to find out what the joint utilities group or the monitoring of local authority safety schemes initiative was about.

Fergus Ewing: Where in the bill does it provide for the setting of targets or the achievement of what you say is necessary for it to succeed?

Neil Greig: The bill does not do that.

Fergus Ewing: It does not, does it?

In your submission, you said that local authorities must have the resources to be able to undertake the necessary monitoring, supervising, checking and so on. I gather that, at present, that is done by the councils on their own rather than in conjunction with the utilities. The bill does not propose any changes to the level of resources; it simply provides for the establishment of a road works commissioner, or road works tsar. However, he will be a tsar without a Russian army. He will have only a wee office and £200,000. Rasputin will be at the gates and he will be inside with a handful of staff.

According to your paper, the commissioner will have to “work at a practical level with local authority enforcement inspectors”.

How many inspectors are there in Scotland?

Neil Greig: I do not know. Information is quite difficult to find on specific budgets for reinstatements of road works in particular. Even in the consultation document, the information on exactly how many works are going on was fairly scant.

There is an obvious trend at the moment to spend more on roads maintenance, which we welcome. Recent reports by Audit Scotland show the parlous state of local authority roads. In my submission, I have tried to say that local authorities cannot spend more money on roads maintenance if they do not have tight control on people digging up those roads the week after.

In nearly every area involving transport, resources are the key issue, even for the regional transport partnerships. Having one’s own income gives one a degree of independence and the ability to work in a long-term manner. We would be keen for the fines income that arises from the bill’s proposals to be channelled back to the road works commissioner, who could use the moneys to improve systems and to have more inspectors.

Fergus Ewing: That means that you must be in favour of sufficient fines being imposed to provide a ready stream of income to fund the tsar’s office and general expenses.

Neil Greig: I do not think that fines income should be the only income; it should be supplementary to an allocated budget that would allow the commissioner to undertake his task. Obviously, a complex computer system could not be set up from fines income because it could not be predicted what the income would be. If there were the kind of financial circle that I described, the money would not be lost to elsewhere and there would be an incentive to keep things going.

16:15

Fergus Ewing: I do not think that we have heard previously an argument for fines being an income stream. Now that you have raised that suggestion, it seems to me that it would be difficult to put into practice. For example, how would it be ensured that fines would be constantly available for the future? If there were a reliance on fines for
30 or 40 per cent of income, there would be an in-built incentive to ensure that that income continued to pour in from the utility companies in order, let us say, to keep Joe and Maisie in a job.

Neil Greig: It has been done—for example, speed camera partnerships.

Fergus Ewing: Yes, but I gather that they are not universally popular.

The Convener: Do you want to make a confession, Fergus?

Fergus Ewing: I was not declaring an interest.

Moving swiftly on, we have heard views that there is a kind of two-tier, apartheid system in road works. The bill would amend the New Roads and Street Works Act 1991 to make the utilities subject to fines. However, local authorities would be subject to a different regime that would involve the Accounts Commission and in which, as far as I can see, there would be no fines. Equally, the utilities currently must enter details of the road works that they do in the register. From what I glean from the evidence, that seems to happen without complaint. However, in a few cases, local authorities must put details of their road works in the register. Do you agree that it would be necessary for the customers—the poor old drivers, if anyone is allowed to speak up for them—to know what would be happening and that therefore everybody would have to put details in the register? Would the AA support that?

Neil Greig: Very much so. When drivers arrive at road works, they do not care who is mounting the works. The situation can differ slightly because road authorities tend to do road improvements rather than dig up roads for a purpose that is hard to see. Ultimately, drivers benefit from road improvements such as road widening or resurfacing. As far as I am aware, the best local authorities work closely with the utilities. The case that we cited in our written submission involves West Lothian Council, which seems to have taken it on board that the council should do reinstatements. Its system seems to work well. However, that has taken place against a background of greater spending on roads, so the council has the money to enforce its system—other councils do not have the money to do the same.

Fergus Ewing: Obviously, utilities by and large have a clearly discernible commercial interest in doing road works quickly because until the roads are reinstated, they cannot get income in from the customers—they cannot start charging anybody. Therefore, the sooner they get the work done, the better. However, local authorities do not have a similar direct interest in the outcome of the speed and efficiency of their road works. Should there be a level playing field for utilities and local authorities whereby they would be treated equally and it would not matter whether it was a utility or a local authority that was at fault and got fined?

Neil Greig: It comes back to what we discussed about targets. The target should be congestion reduction. The overall thrust of the bill, the traffic commissioner’s advice and local authorities’ views is about minimising disruption and delays on the roads. Technically, codes of practice are in place for that, but it has been shown that they do not work well. If the local authorities were brought into the remit and made to adhere to it, they would have to plan their road works to keep traffic delays to a minimum.

We referred in our written submission to lane-rental contracts. There is no fundamental reason why a council should not pay to rent space on a road. However, it would start to get a little silly if a council were paying itself in circles to do something on one of its own roads. Therefore, it would perhaps be difficult to implement the lane-rental model. As for the lane-rental experiments of which we are aware, we supported the idea that councils should pay for the amount of time that they occupy space on a road. Payment would start on day 1 and, if they overran what was budgeted for—for example, taking 12 days instead of 10 to do the work—they would pay more. Similarly, if the work was done in 8 days rather than in a budgeted 10 days, they would pay less.

Unfortunately, the feedback from the experiments has not been positive. They have not been the huge success in Camden and Middlesbrough that we had hoped for. However, lane rental has not been tried to any great extent in Scotland, so the traffic commissioner could still pilot it here. I have no problem with local authorities making congestion reduction their number 1, overriding priority when planning their road works. That is how it should be for all people who dig up the roads.

Fergus Ewing: That is interesting. I read your proposal about lane rental, but my question was whether utilities and local authorities should be treated in the same way. Would you answer yes to that question?

Neil Greig: Yes.

Fergus Ewing: Finally, if there is to be a system of fines, which you have said would be necessary in order to fund the road works commissioner’s office, would the real cost not simply be passed on to the public? The utilities would simply increase their charges if they had to pay fines to the proposed new creature of the Government, and local authorities would have to do the only thing that they can do currently to raise cash, which is to put up council tax. Is it not the case that the AA is urging the imposition of an additional burden and
tax on consumers, whose interests, you said at the outset, are your primary concern?

**Neil Greig:** If the fines system works as planned and the targets are set properly and everybody works together, the amount of time spent on road works overall will reduce, which will bring benefits for everybody. I cannot see why fines would lead to increased charges for gas or electricity customers or increased council taxes.

**Fergus Ewing:** To pay the fines.

**Neil Greig:** If existing funds and new funds from fines were used efficiently, the overall efficiencies should lead to a better position. I could get into a wider argument about the fact that drivers generally pay far too much in tax anyway and that they should get some advantage from a fines system. The problem is that the drivers are the ones who suffer the congestion, but there is no way of recompensing them. If the proposed fines system worked, the recompense to the driver could not be financial—it would be far too complicated to arrange that—but there could be recompense in terms of better management of road works leading to less congestion and time saved, which would be of benefit to drivers, who suffer at the moment.

**Michael McMahon:** I will ask Fergus Ewing’s question in another way, although you have almost answered it already. The other side of the coin of his analysis is that if the AA demands better reinstatement of the roads and quicker work from either the utilities or the local authorities, it is arguing for greater efficiency. If the AA is focusing on that argument, are you confident that greater efficiencies could be delivered through the bill’s proposed commissioner?

**Neil Greig:** As I said, the detail would be in how the targets were set and in the whole thrust of the commissioner’s work and much of the local authorities’ work. I have high hopes for the bill. We support the idea of a road works commissioner, but the commissioner must be customer focused. If the commissioner’s office became just an extra layer of bureaucracy, that would be a waste of everybody’s time. The voluntary schemes have not worked. There have been several attempts over the years and many big reports have been done on them, such as the Home report many years ago, but the voluntary approach has not worked. The important issue for us is that our roads are getting busier and we must make better use of what we have. Because of the rising number of cars, we must almost be more efficient in order to stand still. There is a lack of new roads coming along, though there will eventually be some. However, more road maintenance is being done. If we put things together properly, we should have an improved roads system that is better run and more efficient.

**Michael McMahon:** I have a question that follows on from questions that were put to the Rail Passengers Committee. Obviously, you will want the regional transport partnerships to work, but do you, as a users’ group, feel that you can have a role in them?

**Neil Greig:** It would be useful to have some form of motoring information input into the RTPs. Currently, we work with all the existing partnerships. In terms of a direct relationship, the NESTRANS area has included us at a more institutional level and tends to involve us from the start of whatever it does. However, like everyone else, we tend to be involved with WESTRANS and SESTRAN only when consultation documents come out and we put our responses in as required. The important issue for us is resources. If all the RTPs were set up and it was said formally that there would be a motoring representative in each one, that would be difficult for us because I am the only such representative in Scotland. There is definitely a need to have at an early stage in the thinking of any regional transport strategy direct input from an organisation representing the vast majority of transport movements in the area.

**David Mundell:** Surely not everyone can be involved in these partnerships. One of the points that were made early on in justifying the bill and the partnerships was that we needed a decision-making body, because everything got too bogged down, as everybody wanted their say. If we are going to bring in everybody, will we not achieve the same thing?

**Neil Greig:** The AA Motoring Trust does not need to have a vote on investment in small-scale public transport schemes, but many of the bodies sometimes do not get the emphasis right in trying to integrate the car with public transport. When people talk about transport integration, they tend to be talking about integrating the bus and the train and forgetting about trying to integrate the car. We have a big interest in park-and-ride schemes, which are the biggest example that I come across of where a regional transport partnership can add value. In areas such as Glasgow in particular you will see a lot of work being done on a bus corridor and bus lanes into the city centre, but at the far end of the bus lane there is no park and ride—there is nowhere for people to choose to come out of their car and use the improved services. Getting all that matched up is important. It would be useful for us to have input in the decision making at an early stage before the partnerships go down tracks that they find do not get people out of their cars or reduce congestion, which should be their key aim too.

**David Mundell:** I am not focusing on your evidence. The suggestion is that cyclists will also have to be involved so that cycle issues are taken
into account and walkers will have to be involved so that the Executive’s walking strategy can be implemented as part of the work. There must be a limit to the number of consultees. Surely there has to be a decision-making body, given that one of the justifications for the bill was that it would allow us to cut through many of the things that have clogged up decision making. If we have a system in which every single interest group has to have its say, we will be just where we are at the moment.

Neil Greig: I agree. Delivery should be the focus, particularly for the national agency, but also for the regional transport partnerships. I do not think that our involvement has ever led to delays in projects in the past. A lack of funding has tended to cause long delays, particularly in major road schemes. We have gone through a lot of consultation of late. There was even another consultation as part of the bill, with the publication of the consultation document on regional transport partnerships. We are just unable to get involved in every single partnership and meeting, but we would like to be involved in some form at an early stage in the deliberations, although we are not seeking a vote.

David Mundell: The Executive will not fund the partnerships directly; they will operate on the basis of a form of requisition of funding from local authorities. That method of funding will not necessarily facilitate easy decision making if and when there are conflicting interests between those involved in the partnerships.

Neil Greig: We have long been advocates of ring fencing of funding and of having some kind of stand-alone motoring trust fund into which a certain amount of motoring taxation is top sliced. I think that could be done in Scotland, which could pilot the approach, although it would apply more to the funding of the national agency. We would have an independent fund that could not be raided year after year. The main problem with transport funding is that it tends to get cut when there is a bad year in other areas of local government funding. Given the way that the funding is set up, that will continue to happen. If there are problems in education and social work, transport spending will be cut. There needs to be some long-term, guaranteed funding and the bill does not seem to change the situation.

16:30

David Mundell: I agree with you on that point.

Am I correct in thinking that your view is that it is clear that there is no point in having a framework of legislation on road works if nobody enforces it?

Neil Greig: Yes. There have been registers before and there have been efforts to promote good practice before but, if that is not enforced at a street level and people can see that nothing is happening on the ground, nothing will change. There have to be more inspectors enforcing the legislation.

The Convener: One of the problems that the local road network in Scotland has suffered from is that some pretty significant A-roads, which are designated as local roads, pass through several local authorities’ areas. Do you think that the new regional transport partnerships will be able to coordinate the maintenance and improvement of those roads?

Neil Greig: I would hope so. Over the years, we have held out against de-trunking roads. We have felt that long-distance A-roads should be run by one authority to ensure that there are consistent standards along them. There is no doubt that the main road safety problem in Scotland is not in towns and cities. Around 75 per cent of the people being killed die outwith towns and cities, on our A and B-roads. The worst accidents—the fatal and serious ones—take place in the countryside. There is a great need to have consistent signage and standards of maintenance along our A-roads. The regional transport partnerships could provide an opportunity to ensure that that is the case and could implement the findings of the various studies that are being done into ways in which we can improve our rural road safety record.

The Convener: Currently, congestion charging powers lie with individual local authorities. Leaving aside the AA’s views about whether congestion charging is the right or the wrong way in which to approach the issue of congestion, is it your view that that power would be better held at a regional level than a local authority level, in order to ensure that the interests of the areas around cities are taken into account?

Neil Greig: The regional transport partnerships would be well placed to ensure that any congestion charging scheme would have regional benefits. We have seen already that there have been some initial problems, as the only scheme of that type that we can currently examine, the one in Edinburgh, seems to be focused on the city rather than the surrounding areas. Aspects of any such scheme, such as exemptions, need to be consistent. In the long term, there will probably be some sort of consistent charging system across the network and we have to ensure that the local systems join up to that and work together so that the same hardware and so on can be used.

I have no particular problem with the regional transport partnerships having a say on congestion charging. I am more worried about what might happen in relation to, for example, demand management in the west of Scotland, where it is not quite clear how people intend to work together to ensure that the result that is intended to be
achieved in the east by congestion charging is delivered in the west by demand management. That situation needs to be clarified.

The control of congestion charging and the money relating to it should always be at a regional level so that people can be caught by the system before they reach the city and have more options about how they travel in.

The Convener: Thank you very much for your evidence. As a representative of West Lothian, I was pleased to read your commendation of the excellent work that is being undertaken by West Lothian Council in the area of road works.

Meeting closed at 16:34.
FirstGroup plc is based in Aberdeen and is the largest operator of bus services in Scotland and the UK and a large operator of rail services including First ScotRail. First is committed to developing the quality, attractiveness and the coverage of public transport to assist in delivering economic, environmental and social inclusion benefits for Scotland. First is a leader in delivering investment projects in partnership with local authorities and has taken, and will continue to take, a proactive role in integration of all modes of transport with all other operators.

You have asked for our views on the proposals to create regional transport partnerships and a national concessionary fare scheme and the following is a summary of our views on these issues. We would also like to welcome the proposals on the enhanced management of roadworks contained within the Bill where poor quality and badly managed roadworks represent a very significant cause of delay that impacts disproportionately on bus services.

Regional Transport Partnerships

General Principles

The proposals to create a single Transport Agency for Scotland and Regional Transport Partnerships covering the whole of Scotland are supported by First. The creation of a single Transport Agency to prepare and oversee a National Transport Plan will facilitate the delivery of the large-scale infrastructure investments that are currently under consideration, particularly the financing of these plans over the long-term and outwith the current budgetary cycle of three years.

The creation of statutory Regional Transport Partnerships also gives the potential for strategic transport decisions to be taken more effectively, across a wider geographic area. Many of the services that First currently operate cross local authority boundaries. Statutory Regional Transport Strategies will allow differences in funding and policy between local authorities to be overcome.

That the Regional Transport Partnerships should take into account the National Transport Plan when drawing up their Regional Transport Strategies is also welcomed by First. This allows for one strategic vision for the future of transport to apply across Scotland. This will be complemented at a regional level with all stakeholders pushing in the same direction.

First looks forward to working together with both the national transport agency and the statutory regional transport partnerships to transform travel in Scotland and bring greater benefits to the travelling public.

Regional Transport Partnership Boundaries

Our governing principle with regards to the boundaries for the Regional Transport Partnerships is that they should be large enough to allow for long-term strategic planning and coordinated and focussed delivery of the strategy. They should be small enough to have a real understanding of the transport challenges at a local level and to be able to reflect all parts of any disparate needs adequately.

We believe that the boundaries for Regional Transport Partnerships should be contiguous with existing local authority boundaries and should use travel to work areas as watersheds.

We believe that it should be a matter for local authorities themselves to determine which Regional Transport Partnership to join, but support the principle that each local authority should be a member of a Regional Transport Partnership that includes more than one authority, as the founding principle of the RTPs is to promote strategic transport planning across local authority boundaries that are not recognised by the travelling public.
As part of this strategic partnership approach, we have some concerns that there is a significant imbalance between the compositions of different Regional Transport Partnerships, with a related risk that the largest could dominate policy and funding decisions. Consideration should be given to a prior review to ensure that there is not a continuation of any current sub-optimal policy or practice and to ensure that the scale of the one RTP is not out of proportion with the other RTPs.

We believe that where a local authority borders a Regional Transport Partnership but is not a member of it there may be some merit in allowing some local authorities observer status on the neighbouring RTP.

**Membership of Regional Transport Partnerships**

We agree with the general principle that the Regional Transport Partnerships should be efficient decision making bodies, capable of effecting strategic change through focussed decision making. This implies a limited number of members.

We also welcome the representation of other industry organisations as voting members of Regional Transport Partnerships, particularly from the business community.

We believe that the requirement to have two-thirds representation from the local authority may impose an artificial constraint on the numbers of other members, particularly in the smaller RTPs such as NESTRANS. Subject to the principle above of efficiency, there may be a case to reconsider this requirement although agree that the majority of voting members should be drawn from local authorities.

We believe that there should be an opportunity for organisations and experts to nominate themselves for membership of the Regional Transport Partnership. The Regional Transport Partnership is the correct body to determine the membership of non-local authority members, subject to a right of veto and appeal by Scottish Ministers.

We believe that consideration should be given to automatic representation for some organisations, such as MACS and Transport Operator representatives.

**Powers of Regional Transport Partnerships**

As a general principle, all Regional Transport Partnerships should have access to the same responsibilities and powers.

Whilst it will ultimately be a decision for the Regional Transport Partnership themselves to decide which local authority powers they take, the more commonality of powers across RTPs the better. Commonality of responsibilities across RTPs will allow for better national strategic planning and a better public understanding of their roles and responsibilities.

There should be commonality of powers and responsibilities within each Regional Transport Partnership, although some localised delivery functions may be appropriate in the larger RTPs.

**Funding of Regional Transport Partnerships**

We agree that requisitioning needs to be the core method of funding for RTPs to give them budgetary assurances for the appropriate periods. However, we believe there is still a role for Scottish Executive grant funding (such as ITF and PTF) for capital schemes beyond the requisition budgets to provide fair and equitable access to additional funding for all.

**National Concessionary Fares Scheme**

First believes that the delivery of the free scheme since 2002 is an extremely strong and positive example of how the operators and local authorities can co-operate to deliver across a range of shared objectives.
However the reimbursement trend:

- Has been falling over the last three years
- Has diverged from equivalent commercial fares (driven in part by the need for operators to recover these losses from remaining commercial parts of the market) and
- Is now at levels that are below the cost of provision

This is not sustainable and a move to an appropriately funded national scheme is essential with the Welsh model offering an excellent way forward.

While it would be possible for a new national scheme to be administered in a number of ways, we believe that administration through a single national body offers simplicity, efficiency and clarity.

We also believe that the delivery of a single national scheme opens up a number of other avenues for improvements in ticketing and investment. If designed well and efficiently, new technology such as smartcard will be conducive to the development of ticketing that will greatly improve auditability of the concession scheme and may also allow the development of more innovative integrated ticketing.

SUBMISSION FROM THE FREIGHT TRANSPORT ASSOCIATION

The Freight Transport Association (FTA) represents the transport needs of UK industry. Its membership is comprised of manufacturers, retailers, logistics companies, hauliers and organisations in the public and private sectors including local authorities and NHS Trusts. The Association's transport interests are multi-modal and in addition to consigning 90 per cent of freight carried on rail and over 70 per cent of sea and air freight its members operate in excess of 200,000 goods vehicles, approximately half of the UK fleet of commercial vehicles.

Regional Transport Partnerships

The whole tenor of the Regional Transport Partnerships seems to be biased towards moving people. There is nothing inherently wrong in being interested in the efficient movement of the population to and from work and leisure activities but there is a lack of any mention of the importance in moving freight.

The 'Delivering the Vision' section of Scotland's Transport Future mentioned freight several times, mostly in connection with modal shift. The Delivery Structures section, however, lacks any direct mention of freight, referring to the needs of all travellers by whatever mode.

The proposed boundaries of the RTPs are based, once again, on the travel patterns of people and that is as it should be, but the needs of the freight industry must not be forgotten in the running of these partnerships.

In deciding the membership of the partnerships mention is made of external members being drawn in part from the business sector and other organisations in the region. FTA hopes that the interests of the freight moving community would be taken into account when selecting the external members and that guidance to this end would be given to the constituent councils who will eventually be appointing them.

Whilst great advances have been made in the last few years on modal shift from road to rail and water it is an undeniable fact that the vast majority of freight movements will for the foreseeable future be made by road and the Executive and Regional Transport Partnerships must keep this in mind when framing policies.

The Transport Strategies prepared by the Regional Transport Partnerships are likely to be dominated by the movement of people. FTA would like to see advice from the Executive for these Strategies to take into account the different needs of the logistics industry. Ideally FTA would like to see a Freight Strategy for the whole of Scotland prepared, covering all modes and industries.
Road works

FTA members are concerned about the delay and disruption caused by road works. Such works impact on business in a number of ways by creating access problems for deliveries to frontages adjacent to excavations, general noise and visual impact and most importantly disruption to traffic flow causing delays to goods vehicles effecting essential deliveries.

According to the OECD (Organisation for Economic Co-operation and Development) estimates, delays caused by congestion costs the UK £20 billion per annum. Scotland's 'share' of that might be estimated at £1 billion taking account of population density. It is essential that disruption caused by all road works is reduced to a minimum and that works are properly managed to negate the need for works to be undertaken on a repeated basis.

In 2002 the Executive conceded that there was no systematic evidence to say whether the problem had got better or worse since the New Roads and Street Works Act came into effect in 1993.

It is FTA's understanding that half of all street works are undertaken by Roads Authorities. According to The Scottish Roadworks Register, utility companies submit more than 90% of registrations. FTA understands that a proportion of roadworks are not required to be recorded on this register and we are concerned that conclusions drawn from this statistic may not be sufficiently accurate to determine the extent to which utilities are responsible. If a register is to be of any use it must be comprehensive.

FTA supports the Executive in addressing this issue and press for unnecessary disruption caused by all roadworks to be resolved.

FTA understands that due to financial constraints less than ten per cent of reinstatements are inspected. Further works caused by poor reinstatement is a major cause of disruption. If these authorities were permitted to recover 100 percent of inspection costs this could prove to be an effective method of ensuring that the quality of work was acceptable before utilities left the site.

Along with the duty of undertakers to co-operate with authorities and other undertakers there should be a requirement for roads authorities to co-operate with each other so that disruption is not exacerbated by two or more works being carried out in the same general area belonging to different authorities.

Gavin Scott
17 Nov 2004

SUBMISSION FROM THE RAIL PASSENGERS COMMITTEE

Introduction

The Rail Passengers Committee Scotland (RPCS) welcomes the opportunity to provide written evidence to the Local Government and Transport Committee. RPCS is the official, independent voice of rail passengers in Scotland. Underpinning our mission to champion the interest of rail passengers are five long-term goals:

- to understand and represent the views of passengers
- to be an effective and influential force for change
- to raise the profile of the RPC network with passengers, the industry, the media and Government
- to develop, update and promote a passenger centred vision for public transport
- to improve the capability of the RPC network to champion the interests of passengers

In recent years RPCS has been developing a more strategic approach to the interests of current and future rail passengers and has seen increased involvement with Scottish Executive and Strategic Rail Authority (SRA) consultations on the future of the rail network. A key priority for 2004-5 has been to develop a strategic view of the economic, environmental and social inclusion aspects of the ScotRail franchise replacement.
Proposal to Establish Regional Transport Partnerships (RTPs)

The RPCS welcomes the proposal to establish RTPs. In submitting written evidence to the Transport and Environment Committee of the Scottish Parliament Inquiry into the Rail Industry in Scotland in 2002, the RPCS stated:

“With regard to local government for transport (in particular, planning) the present arrangements appear designed to frustrate rather than facilitate. This is recognised by local authorities themselves who have, commendably, formed voluntary partnerships, e.g. HITRANS, NESTRANS, SESTRANS and WESTRANS to deal with transportation on a regional basis which Strathclyde Passenger Transport (SPT) does statutorily for twelve unitary authorities in west central Scotland – and does it well despite the unsatisfactory nature of its funding.

Effective organisation of transport planning and provision has to be based on what are variously described as “city/regions” or “travel to work” areas and should be developed through development of the “regional transport partnership” concept.”

The core function of each RTP will be the production of a regional transport strategy. These strategies will be used to steer the funding priorities of the RTPs themselves, their constituent councils and the extent to which they contribute to the achievement of the national strategy.

This is to be welcomed, as at present there are a number of individual transport projects that all have intrinsic merits which vie for attention and funding but delivery is hindered by the lack of a coherent regional and national strategy.

However, it is essential to ensure that the proposed RTPs put the passenger at the heart of their work when considering their regional transport strategies.

Public involvement could be widened by bringing transport matters into the community planning process. This is a fundamental tool to address local representation, planning, police matters, health and social inclusion. Transport is equally important in its own right as it affects the day-to-day lives of most people. Community planning also allows for decision-making to be influenced from the bottom up.

Consumer groups giving a voice to all passengers in all forms of transport will be essential. They should be strongly proactive in promoting the needs and expectations of transport users. The RTPs should have clearly defined mechanisms so that they can engage with such interests which allow for meaningful dialogue and consultation when considering regional transport strategies and other matters for which it has remit.

It is important to recognise the need for better linkage with Scotland’s economic strategy in the planning of transport services. We would also suggest that RTPs consult regularly with all economic development agencies in Scotland (from councils to Scottish Enterprise) so that all forms of transport planning, not just road, are considered at the formative stage in large scale or long term economic developments. Passenger representative bodies should be round the table at that formative stage.

An inclusive approach is essential to ensure that regional transport strategies are not considered in isolation and that buy-in is secured from a wide range of interests in the development and delivery of regional transport strategies.

Establishment of National Concessionary Fares Schemes

The RPCS welcomes the proposals to introduce national concessionary fares schemes. Currently there are sixteen local authority concessionary travel schemes run by individual local authorities and groups of local authorities. These schemes have been developed locally over the years to meet the needs of people in the area served by the particular scheme. As a result each scheme is different – in terms of the categories of people who qualify the transport modes on which travel is available and the nature of the concession on offer.
The Transport (Scotland) Bill gives the Scottish Ministers discretionary powers, by order to make national travel concession schemes. An order would set out the fundamental details of a scheme and, in particular, define ‘eligible persons’, ‘eligible services’ and ‘eligible journeys’.

The Transport (Scotland) Bill does not therefore prescribe the terms of national concessionary fares schemes but gives the Scottish Ministers power to prescribe such terms, and the points which that prescription – in the form of an order – should cover.

The establishment of national concessionary fares schemes does not restrict the schemes solely to buses or any other specific form of transport and any proposed scheme should endeavour to meet the legitimate expectations of young, elderly and disabled passengers, on all modes of public transport.

We welcomed the fact in September 2002 that all sixteen schemes were adjusted to introduce a national minimum standard of free local off-peak bus travel for older people and people with disabilities.

The establishment of national concessionary fares schemes could similarly prescribe national or regional minimum standards, leaving local authorities to operate more generous schemes if they wish, e.g. in enabling a reduction but not full remission of fares on peak time services, as is the case on bus travel in East Lothian.

However, a consistency of approach would be welcomed by passengers and would avoid the problems that are encountered at present by people who travel from one local authority area to another at present, e.g. Tiree residents have unlimited free travel if eligible for the SPT scheme, while the same ferry serves Barra but residents of Barra are only entitled to one free journey per year.

We note that the Partnership Agreement commits the Scottish Ministers to extending concessionary travel with the introduction of a national bus, rail and ferry concessionary travel for young people, initially for those in full time education or training. Introduction of such a scheme would be particularly welcomed in island communities, given the number of young people from island communities who have to leave home for further education or training.

The establishment of national concessionary fares schemes offers a number of opportunities for young people, older people and people with disabilities. We attended a workshop last year, held by the Scottish Executive which included a wide range of stakeholders including, local authorities, transport authorities and user representatives and all taking part in the workshop were in general terms, favourable to such national concessionary fares schemes.

In conclusion the Committee supports the creation of RTPs and the establishment of national concessionary fares schemes.

SUBMISSION FROM THE AA MOTORING TRUST

The AA Motoring Trust was established in 2002 to create a single charity through which the AA’s historic public interest work developing motoring and road safety could be focused.

The AA Motoring Trust sponsors and undertakes research and provides advocacy, advice and information across the fields of motoring, roads and transport and the environment. It has a special interest in social issues surrounding car use.

AA Trust comments on the Transport (Scotland) Bill’s main provisions;

Make the Scottish Roadworks Register a statutory single national register for planning and co-ordinating road works.

The AA Trust welcomes the requirement to force undertakers to use the register as the main point of contact and information. Previous voluntary schemes have not worked. Maintaining a good
database is only half the story - the information in the register must become the basis of actual action on the ground. Co-ordination of roadworks will depend on the quality of information held on the register and the availability of good staff to act on it. Many Councils do not hold complete inventories of their own structures let alone those of statutory undertakers. Surveys to provide baseline data should be encouraged at the start of the process.

**Provide for a new public appointee, the Scottish Road Works Commissioner.**

The AA Trust believes that the main problem with roadworks in Scotland is the lack of clear management at street level. Currently no one appears to be in control!

The new Commissioner can only be judged a success if drivers are aware of his activities and know who to contact to enforce the new regulations.

Consumer rather than industry driven targets should be set for the Commissioner. For example, keeping traffic moving on the most traffic sensitive routes, plating over works at weekends, removing works that are causing local problems and ensuring consistent standards of signing and site operation.

The Commissioner can make a major contribution to the overall improvement of Scotland’s roads by enforcing high standards of reinstatements.

The AA Trust believes that the Commissioner must work at a practical level with local authority enforcement inspectors and the industry as well as bodies such as the police. It must not merely add a further level of bureaucracy. The Commissioner must not ‘poach’ staff from local councils or be drawn into ‘turf wars’ over who is responsible for which stretch of road. It is not clear from the legislation exactly how this relationship will work. Partnership will be the key with resources, best practice and information shared openly and transparently.

The Commissioner should act as a ‘centre of excellence’ encouraging pilot schemes and trials on different approaches to the co-ordination and control of works. For example ‘lane rental’ pilots have been tried in Camden and Middlesborough and in England permits are issued for works on a defined network of ‘traffic sensitive’ routes. In the future we also need to encourage new approaches to infrastructure location such as placing apparatus in verges rather than under the road.

**Introduce tighter requirements for directing the timing of works, reinstating roads and new provisions on resurfacing roads.**

The AA Trust welcomes tighter regulation of works and better co-ordination of work on the same stretch of road. The AA Trust commends recent work undertaken by West Lothian Council to force undertakers to work together and then take over the final resurfacing to their own standards.

Roadworks authorities will be able to direct undertakers to resurface roads to set standards and to specify times and dates of work. For example; any road subject to substantial works may have follow up work restricted for up to 3 years to minimise disruption.

Nothing demonstrates more clearly the lack of management of roadworks than the same road being dug up time and time again. Poor standards of reinstatement also jeopardise future plans to deal with the backlog of road maintenance on Scotland’s roads. It will not be possible to get full value for money from extra funding for road maintenance if undertakers continue to produce reinstatements which fail too soon.

**Change the enforcement regime of offences under current legislation, including the introduction of fixed penalty notices.**

The AA Trust supports a fine regime that sets fines at a level which will have an impact on the activities of large statutory undertakers. Combined with increased enforcement undertakers must know that if they break the regulations they will be caught.
The AA Trust would welcome clear guidance from the Scottish Executive on the use of income from new fixed penalties and heavier fines. In our view income must be used to employ more inspectors and be ‘ring fenced’ to improve roadworks.

**Tighten the requirements for training of personnel involved in carrying out, supervising or administering road works.**

The AA Trust welcomes any moves to improve the training of street level operatives and their supervisors. Poor training leads to deaths and injury on the roads – most often to the workers themselves! The West Lothian ‘Considerate Contractor Scheme’ is a good example of a customer focus in roadworks operations.

NEIL GREIG  
HEAD OF POLICY, SCOTLAND
Transport (Scotland) Bill: Stage 1

14:12

The Convener: Our third item is further stage 1 consideration of the Transport (Scotland) Bill. Our first group of witnesses represents the Convention of Scottish Local Authorities. I welcome to the committee Councillor Alison Magee, who is the transport spokesperson for COSLA; Councillor Andrew Burns, who is the transport spokesperson for the City of Edinburgh Council; Councillor Dr Joan Mitchell, who is the chair of the Dumfries and Galloway Council planning and environment services committee; James Fowlie; and Councillor Alison McInnes, who is not on the list in front of me.

The presentation is, on the whole, by COSLA members about COSLA’s overall position, but I draw attention to the fact that Councillor Mitchell also wants to present the Dumfries and Galloway Council perspective and we felt that, rather than taking evidence from her at two separate meetings—and if it is okay with the other COSLA representatives—we would allow her to put across the council’s views on boundaries and whether Dumfries and Galloway fits well with other proposed regional transport partnerships.

I invite Councillor Alison Magee to make some introductory remarks.

Councillor Alison Magee (Convention of Scottish Local Authorities): Thank you for giving us the opportunity to speak to you this afternoon. We have tried to bring a balanced membership to you. Councillor McInnes is from Aberdeenshire Council and I am from Highland Council, so you can see that we have tried to give you a north-south, east-west representation. As you have said, Councillor Mitchell will speak for Dumfries and Galloway Council on a specific issue, but I will give a brief overview of COSLA’s initial response to the bill, which I hope the committee will recognise is an interim response. I also hope that you have the paper that we have written and that it has been circulated.

The Convener: Yes.

Councillor Magee: It would be fair to say that, when local government first learned of the proposals for a new transport agency, we had serious concerns about what might lie ahead. We did not want a single, stand-alone agency that simply sucked up powers from local government, because we feel that local government has a great deal of experience and skill in delivering transport across the widest spectrum.

I am glad to say that, since the publication of the white paper, a lot of our concerns have been
addressed, both by the white paper and in discussions with the minister. We are particularly glad that the white paper highlights the case that we made for the importance of the links with economic development, community planning and structure planning. We should not lose sight of that as the bill progresses.

14:15

Over the years, we have also argued strongly for a proper, long-term national transport strategy for Scotland, so we particularly welcome the commitment to that. We believe that that strategy should be developed by the Executive in partnership with local government and other stakeholders. The voluntary regional partnerships have been developing regional strategies, so the lack of an overarching, long-term national strategy at the top seemed to us to be a complete hiatus. We would like to see all that fitting together.

I highlight the good track record of the existing voluntary partnerships and we hope that what lies ahead will build on those. The partnerships have been good at developing their own strategies, at lobbying for increased transport funding and at securing outside funding from Europe and elsewhere. In many cases, their membership includes the private sector, whether that is chambers of commerce or other bodies—the partnerships are not limited to local government.

We agree that transport partnerships should not just come into being in April 2006. A lot of preparatory work has to be done to effect the transition. I will return to the question of funding in a minute.

Dumfries and Galloway Council is represented here today because some local authorities have concerns about boundaries and voting systems—a lot of debate is going on about that at the moment, but I do not want the whole debate to be bogged down with those issues. COSLA would like the existing transport partnerships to be able to come up with an acceptable solution where there are particular issues about boundaries and voting systems. Only as a last resort should anything be imposed.

It is important to recognise, as the white paper does, that it is not a case of one size fits all in Scotland. The existing partnerships are of a different size and are at a different stage in their development and it is important that they can negotiate the arrangements that best suit their particular needs and pressures. As I have said before, we welcome the option to have external members. The regional transport partnerships should be able to consider what sort of external membership they want.

Obviously there is concern about funding. We welcome the £34 million grant that the Executive is making available, but we are concerned that start-up funding appears to be for one year only. We feel strongly that there should be a longer lead-in time and we argue for transitional funding to apply during the lifetime of the forthcoming spending review—over the next three years. If start-up funding is to be given only for a year, it might not deliver what the Executive wants.

Local authorities’ other concern relates to how the partnerships are to fund themselves. There is an issue around requisitioning, which is the system that the joint boards currently use. At the moment, we do not have a consensus across member councils. Some councils are fairly relaxed about requisitioning; others have strong concerns about it. However, there seems to be unanimity that, if we end up with a system of requisitioning, only those regional transport partnership members who represent local government should have a vote on the matter—members from the private sector or an enterprise company should not have a vote on requisitioning.

The alternative seems to be that local authority funding would simply be top-sliced and handed directly to the partnerships. An initial trawl of members’ views has found that that would be even less acceptable than requisitioning. However, we are unable to give a conclusive answer on the question at the moment. A longer period of start-up funding and what I would loosely call transitional funding might help to cushion the funding problem.

The other main aspect of the bill is concessionary fares. The cities and Strathclyde Passenger Transport have an on-going concern that funding for concessionary fares has been insufficient to meet demand. Conversely, the concerns in remote and rural areas relate to the fact that concessionary fares money is used to deliver support to a range of services, such as inter-island ferries, demand-led bus services, supported taxis and supported bus services. We do not want the bill to create a concessionary fares scheme that delivers less than the current scheme. There should be flexibility for local enhancements to continue.

I will stop there and ask Alison McInnes and Andrew Burns whether they want to add anything that I have omitted in my remarks.

Councillor Alison McInnes (Convention of Scottish Local Authorities): I will expand on the point made by Councillor Magee about the need for flexibility and local solutions in the constitution of regional transport partnerships. In particular, I refer to the proposals in the consultation document for the membership of the regional transport partnerships, which are that there will be one
councillor per council, with the other third of the membership made up of external members. Although that is probably acceptable for most of the proposed partnerships, it will have a particular impact on the proposal for the north-east of Scotland regional transport partnership, which will be composed of only two councils. Under the bill, we would create a board of possibly only three people. That seems inappropriate in reality. I submit that there has to be some flexibility within the parameters of the partnership constitution to reflect that local situation. Perhaps the way round the problem would be to stipulate a minimum and maximum membership of a transport partnership board.

Councillor Andrew Burns (Convention of Scottish Local Authorities): I have nothing to add at this stage.

The Convener: Okay. Would Councillor Mitchell like to make opening remarks, or shall we deal with the points that she wants to make in questions later?

Councillor Dr Joan Mitchell (Dumfries and Galloway Council and Convention of Scottish Local Authorities): I would like the opportunity to make opening remarks. On behalf of Dumfries and Galloway Council, I thank the convener, the committee and COSLA for allowing us to make our own presentation.

We have some concerns that the consultation process is being progressed in parallel with the progression of the bill. I understand that the consultation process does not end until the middle of January and I hope that the results will be in no way anticipated. We, as a council, maintain the view that Dumfries and Galloway should remain a regional transport authority for its own administrative area. If that sounds like special pleading, the consultation document says that Dumfries and Galloway is different. I quote from paragraph 18 of that document:

"The geographical position of Dumfries and Galloway means that its partnership options are limited."

The proposal to include Dumfries and Galloway in the current Strathclyde Passenger Transport area is recognised as “uniquely” requiring the transfer of powers to SPT. Therefore, the consultation document recognises that we are different and a bit awkward. I will explain to the committee why that is.

The first reason is the geography of the area. I have a map in front of me—members might not be able to see it, but they have been to Dumfries and Galloway, so they are aware of the issues—on which Dumfries and Galloway is the big green-shaded bit in the south-west adjacent to the Solway firth and across the watershed from both Edinburgh and Glasgow. We do not fit into any city region or any travel-to-work area of any city in Scotland. We are a large rural area. There is no problem of scale—we are as big in terms of acres as Aberdeen and Aberdeenshire. The area is sparsely populated and rural and has little commonality with central belt travel-to-work areas.

The committee was kind enough to go to Stranraer, so it is aware that Dumfries and Galloway Council has a successful record of delivering the transport function locally. We have a consistent track record of delivering transport against national expenditure programmes and priorities, in consultation with partners. That culminated in our winning the rural authority award in this year’s Scottish transport awards. The council and the service are not failing.

We have no problem with partnership working. We believe and have an acknowledged record in community planning, because we have the great advantage—of which I am sure the committee has often heard—of coterminosity within our boundaries. We work closely with agencies and communities in our boundaries. We also have partnership links in transport with the private sector, with Northern Ireland, through our north channel partnership, and across the border to England. The authority is not one that does not work in partnership.

There is nothing isolationist about our position. In the spirit of the bill, we have attempted to form partnerships with other local authorities. We asked South Ayrshire Council, East Ayrshire Council and Scottish Borders Council whether they were interested in forming a rural southern partnership, but for understandable reasons those councils place themselves in Glasgow or Edinburgh travel-to-work areas.

The most important point is that we are being uniquely targeted as the only authority that will suffer compulsory removal of its transport function, staff and budget to an established statutory agency—SPT. That is different. SPT represents model 3 in the consultation document—the most established model that is available. I hope that I have shown that the proposal would remove a statutory function from a local authority to a situation that does not suit that authority’s special circumstances. That has profound constitutional implications.

The committee will hear no strategic transport or service delivery justification for the proposal, because there is none. Agencies that we have worked with support the Dumfries and Galloway case. The committee will hear no governance or accountability argument for the proposal, because the proposal goes in the opposite direction. The only justification that members will hear for uniquely targeting a local authority is bureaucratic
convenience and conformity. For a country as diverse as Scotland, that is unacceptable.

The Convener: I thank the COSLA representatives and Councillor Mitchell for their comments.

Fergus Ewing: I welcome all the witnesses. I will ask about COSLA’s general approach to the bill, especially the funding aspects. Alison Magee said that COSLA’s submission was an interim paper. Am I right to say that, unless the funding position is made clear and is satisfactory, COSLA will not support regional transport partnerships?

Councillor Magee: I would not use such black and white terms. COSLA has no final position on funding, because its member councils have diverging opinions, as I said. However, there is a common position on the fact that one-year start-up funding will not be sufficient. We cannot support a system that would allow non-local authority members of partnerships to have a vote on requisitioning from local authorities, because we think that that is undemocratic. We also have concerns about how any prudential borrowing would be funded.

I stress something that I highlighted earlier: the voluntary partnerships have a varied approach to funding and try to obtain it from a variety of sources. There is an issue about revenue funding, which Councillor Burns might want to comment on. It reflects what Councillor Mitchell said about the diversity of Scotland. In remote and rural areas, the priorities still tend to be big infrastructure projects, such as causeways and major road upgrades, but in urban areas the situation is different. The funding question is complex and we have not yet got to the bottom of it—we need to do further work. What I am describing is work in progress, on which we have reached a common position. Andrew Burns might want to say something about revenue funding for cities, which is an important issue.

14:30

Councillor Burns: First, to answer Fergus Ewing’s question, a move away from one-year transitional funding, which we regard as inadequate, to a three-year transitional fund would alleviate some of the concerns that members of COSLA have about requisitioning. I am not saying that every constituent authority in COSLA would then support requisitioning, but a three-year transitional fund for the period of the spending review—up to April 2008—would go a long way towards alleviating most of the concerns.

I will expand on Alison Magee’s comments on revenue funding. Some of the larger urban authorities are concerned about the continuing revenue costs of the regional transport partnerships. Without doubt, all the large urban authorities support the RTP route and we recognise that large capital sums will be required for the majority of the projects, particularly in rural areas, but many of the transport infrastructure projects in urban areas will require significant continuing support. There is little mention of that in the bill and its accompanying documents, which bothers several members of COSLA. There is no detailed discussion of either the potential need for continuing revenue support for RTPs or mechanisms for raising revenue.

Fergus Ewing: At the committee’s meeting on 23 November, Councillor Gordon pointed out that only one respondent out of 176 favoured requisitioning. A councillor from Orkney was virulently opposed to the funding arrangements, because he said that it could result in a fourfold increase in the contribution that his council currently makes to the voluntary partnership. We do not know how much funding there will be, which councils will be in which regions, what the powers will be, where the boundaries will be or who will have votes. We know that COSLA opposes various aspects of the proposals and that you are not satisfied that the funding arrangements have been sorted out because you have not been told about them, but what puzzles me is why COSLA does not oppose the bill as it stands. Why do you not say, “Until we have answers to our questions, we will not support the bill”? It seems to me that to half-support it, as you are doing, is tantamount to signing the political equivalent of a blank cheque. I am genuinely puzzled about why COSLA is taking that approach.

Councillor Magee: You have outlined many of the concerns that we had at the outset, when we thought that a one-size-fits-all solution might be imposed on local government and that functions would be removed from local government. However, we think that the bill recognises many of those concerns.

Voluntary regional partnerships already exist and in our view they work well. We welcome the suggestion that it will be up to the partnerships to determine issues such as boundaries and voting systems. We welcome the fact that the partnerships will be able to come up with their own solutions rather than have a one-size-fits-all solution imposed on them.

As I said, we welcome the commitment to a national transport strategy. We welcome the fact that transport has risen up the Executive’s agenda and that it is receiving considerably more funding, although it is arguable that it will never receive enough funding. As I recall, when the Scottish Parliament and Scottish Executive first came into existence, the priorities were things such as the
education, social work, police and fire services, with no mention of transport.

We have reservations about the lack of detail and the lack of clarity in some aspects of the bill. Clearly, there will be on-going discussions between COSLA and the Scottish Executive on all those issues. We may well want the bill to be amended. However, it would be counterproductive for us to tell the Executive simply to go away because we dislike the bill and will have nothing to do with it.

Councillor McInnes: Let me elaborate on that. We welcome the bill. Having talked at great length with the minister and the Executive last year about the need to raise awareness of transport issues, we now have a proposal to implement a national transport agency. In our view, it would be wrong not to have a regional transport partnership in the middle to reflect the need for subsidiarity. The bill will mean that we will have a strategic level, a regional level and a local level. It would be entirely wrong to implement one thing without the other.

The Convener: In practical terms, what benefits will passengers on public transport gain from the establishment of regional transport partnerships that could not be gained from the existing partnerships?

Councillor Burns: Economies of scale will be gained in both urban and rural authorities from the development and implementation of regional transport partnerships. As Alison Magee said in her opening comments, the existing voluntary partnerships have made significant gains for transport infrastructure delivery, but there is a limit to what can be achieved under the current arrangements. That is why, collectively, we broadly welcome the principles and the thrust of the bill while still having concerns about some details. A lot of that is to do with timing, as the consultation on the detail is still continuing.

For projects such as congestion charging, which is causing so much discussion here in Edinburgh, a regional approach would arguably be much more beneficial and effective than a single-authority approach. That is just one of the numerous examples in which transport infrastructure bears no relation to local authority boundaries, which are purely administrative. For that type of cross-boundary project, of which there are many in both urban and rural Scotland, a regional approach could be hugely beneficial.

Councillor Magee: Another example is the work of the Highlands and Islands strategic transport partnership—HITRANS—which has done a lot of work on air travel, including work on public service obligations, slots and routes. No single local authority could have done that working on its own. As HITRANS moves to being a statutory partnership, it will be able to strengthen that work and, with more clout, it will be able to take that work forward. Each area of Scotland can see different benefits from having a regional approach. That does not detract from the fact that some issues still need to be debated and some concerns still need to be addressed. However, by and large, we have moved forward considerably from our initial position, when we thought, “Oh my goodness, a single transport agency—what does that mean?”

The Convener: As Councillor Burns raised the issue, let me explore further the general issue of congestion charging. I will not comment on City of Edinburgh Council’s current proposals, as I am sure that I will have plenty of chance to do that in other forums over the next few months. As the present witnesses may be aware, I have already asked a couple of previous witnesses whether it would be appropriate that the power for congestion charging be transferred from individual local authorities to the new regional partnerships once those are established. Would the cross-boundary issues that Councillor Burns raised be addressed by ensuring that the interests of people in all parts of a travel-to-work area were properly taken into account?

Councillor Burns: My current understanding is that the Executive has no intention of including that type of transfer within the scope of the bill.

The Convener: Basically, I am suggesting that it might be sensible to consider such a proposal. Does COSLA or any of the individual authorities have a view on that?

Councillor Burns: I think that it would potentially be a backward step in the current environment, given that the Transport (Scotland) Act 2001 has been on the statute book for almost four years and not a single local authority has taken forward one of its key elements. It would be a retrograde step to slow the process down at this very late stage. I am speaking personally, as the matter has not been discussed at a COSLA level.

Councillor Magee: There is a case for the partnerships having greater insight and more input into the plans. Integrated transport, which it is extraordinary that we have not mentioned today, is one of the key matters that a statutory partnership should get into.

I will give an example from the Highlands and Islands. Although bodies such as Caledonian MacBrayne and Highlands and Islands Airports Ltd are key to transport in the Highlands and Islands, they do not have a presence on HITRANS. I am not suggesting that HITRANS or whatever succeeds it would want to run ferry services or air services, but there is an opportunity for bodies such as Caledonian MacBrayne to have
much greater input and to have a seat at the table when the matter that is being considered is relevant to them. For example, I understand that Highlands and Islands Airports Ltd recently drew up a 10-year capital plan with no reference to other agencies and other bodies. The partnerships should have the capacity to overcome those kinds of problems. There is potential for two-way traffic.

The issue of trunk roads is another example. Is there a case for going for greater reintegration there? There is considerable potential to broaden the scope of what some partnerships are currently doing.

Bruce Crawford: The convener asks a relevant and pertinent question, particularly of the City of Edinburgh Council. On the one hand the council, which I assume is part of COSLA, is saying that regional transport strategies are a good idea, but on the other I think that Andrew Burns is saying today that that is apart from on congestion charging.

I have not been as close to the argument in this part of the world as the convener has, but to me there seems to be a contradiction there. That throws up concerns that have been raised in earlier evidence sessions about the fact that under section 8 of the bill a constituent council will be required to perform the duties only "so far as possible". Forgive me, but it makes me, as a committee member, begin to wonder whether the words "so far as possible" should stay in the bill if some councils are saying that the regional transport strategies are fine, provided that they do not include certain elements.

Councillor Burns: With the greatest respect, I think that there is no contradiction whatsoever in what I have said. The Transport (Scotland) Act 2001, which many committee members passed through the Parliament, makes it plain—I have to say, again with the greatest respect, that this is something of a side-issue—that the revenues from congestion charging have to bear a relation to who pays and who gains. Even under the current proposals for a single-authority scheme, some 45 per cent of revenues will go to partners around Edinburgh and not to Edinburgh. It is incorrect to say that we are not taking a regional approach.

Bruce Crawford: That is not what I was saying. I was saying that it seems that, as far as the regional transport strategies are concerned, the City of Edinburgh Council wants to approach the issue of congestion charging slightly differently from other areas that you will affect by way of delivery and change of services.

Councillor Burns: That is not the case at all. Under the 2001 act, which many members of the committee passed, we are taking forward a scheme in Edinburgh that is entirely separate from what we are discussing this afternoon. If an RTP wants to introduce a congestion charging scheme, it can do that. There is no contradiction in my statement.

Bruce Crawford: But why, in those circumstances, could an RTP not in the future adopt what Edinburgh has been doing and make it its own?

Councillor Burns: In due course that may happen, but my understanding is that RTPs will not be formed until at least the middle of 2006, which is some way beyond when the Edinburgh scheme could be operational.

14:45

David Mundell (South of Scotland) (Con): I have a general question on the subject of the boundaries, functions and finances of the proposed regional transport partnerships. Do you agree that it is unsatisfactory that those matters will be dealt with in secondary legislation, which in effect means that the measures cannot be amended or subjected to the sort of scrutiny that we are carrying out at present? If the issues that Councillor McInnes mentioned about the constitution of the partnership boards arise, MSPs will have to either vote down the whole proposal or accept it. Do you agree that it is unsatisfactory to proceed with a bill when much of the detail will be contained in secondary legislation?

James Fowlie (Convention of Scottish Local Authorities): We acknowledge that the method that is used in the bill has pros and cons. The advantage of using secondary legislation is that if time shows that the legislation is not working, it can be amended relatively easily. If the regional partnerships were specified in the bill and if, further down the line, a local authority realised that it would fit better in a different partnership, it would be difficult to change that. However, we accept that relying on secondary legislation has disadvantages because of what future ministers might do through amending orders. COSLA is discussing how much should be done by secondary legislation and how much should be in the bill and we will come to a view on that before the end of stage 1. If we find that local authorities will not be able to deliver unless certain aspects that are key to the future delivery of transport services are put in the bill, we will seek amendments accordingly.

Councillor Magee: Argyll and Bute Council may want to be split between two partnerships or to be within just one. If the council decided on the first option, but after a year or so found that that was unsatisfactory and failing to work, it would be difficult to change the situation if the details of the partnerships were in the primary legislation,
because further primary legislation would be required. That is a potential disadvantage. However, if everything is done through secondary legislation, there are the issues of scrutiny and clarity that David Mundell raised. We have not reached a final view on the issue.

David Mundell: I turn to the submission from Dumfries and Galloway Council that Councillor Mitchell kindly circulated. Will she clarify whether Dumfries and Galloway seeks to be part of a regional transport partnership? Section 1 states that ministers will “divide Scotland into regions”, but is it your suggestion that Dumfries and Galloway should not be included in any of the regions and should operate as at present, or that the area should, in effect, be a region on its own?

Councillor Mitchell: I am not sure whether I understand the exact distinction that you are making. Dumfries and Galloway Council should be identified as a regional transport authority on its own, on the basis that it makes no transport sense for us to be linked to anywhere else, given our specific circumstances.

David Mundell: I fully understand and support the points that you have made. Other than the Scottish Executive, everyone who has given evidence has made it clear that they do not understand the rationale behind making Dumfries and Galloway part of the west of Scotland partnership. Within the legislative framework, the Minister for Transport will either create a partnership that covers Dumfries and Galloway or he will not. It is important for the committee to know whether the council thinks that the area should not be covered by a partnership, or that it should be covered by one, at least in the legal sense, but with only a single council. That would create extenuating difficulties of the sort to which Councillor McInnes referred in relation to the north-east—you would have to have a board of one and a half.

Councillor Mitchell: We are seeking recognition of the fact that the Dumfries and Galloway area functions well and that the council forms partnerships with private bus operators and other adjacent authorities in perfectly satisfactory ways. If that requires us to be identified as a one-authority partnership, so be it. I do not think that a special arrangement for Dumfries and Galloway would have implications for anywhere else in Scotland. I genuinely believe that the consultation document recognises that our situation is uniquely difficult. We are not setting a nasty precedent that would undermine the bill as a whole.

David Mundell: That is quite clear. You have made the unique position of Dumfries and Galloway clear in the evidence that you have submitted, which has been backed up by others. The Scottish Executive evidence was very much along the lines that you would be required to fit in—almost as a tidying-up exercise—that you had to be put somewhere and that the west of Scotland was as good a place as any. Clearly, that is not an acceptable position to the council.

Councillor Mitchell: I have made clear that it is not acceptable. I have no hesitation in saying that, if the only rationale for including Dumfries and Galloway in the west and south-west regional transport partnership is to end up with something that is bureaucratically neat and tidy but that does not address the transport and service needs or the democratic accountability needs of the public in Dumfries and Galloway, that is not a strong enough reason for forcing us down this line.

David Mundell: It is not clear to me from section 1 whether, if the bill is passed, the minister will be required to divide up the whole of Scotland into partnerships or whether he can say that Dumfries and Galloway will not be included in a partnership. As we approach the end of stage 1 and begin stage 2, we must be clear on that point. We will be able to cross-examine the minister on the issue.

Councillor Mitchell: That is a fair point. I presume that if we were in a partnership, there would be a board that included private sector partners and so on. We would have no problem with that. That is the type of joint, open partnership working that we are doing in the meantime.

The Convener: I want to move on from that point, as a parallel consultation is taking place on the issue.

David Mundell: Yes. However, it is important to make the point that this is not just an issue of boundaries. There is a debate about whether Dumfries and Galloway should be in one partnership, but there is another debate about whether the partnership arrangements should apply to the area at all. That is the point on which I have tried to expand with Councillor Mitchell.

Councillor Mitchell: We have no problem in principle with partnership working, but we have difficulty with the geographical boundaries that are proposed. The regional partnerships will evolve and develop policies in which every local authority will have an equal say, but that is not what is proposed for Dumfries and Galloway. Instead, it is proposed that we will be included in an existing statutory authority that has been in being since local government reorganisation, is the most extreme model and within which we will have little influence. We will certainly have no influence on the direction or speed of travel.

David Mundell: I have a separate question on a general issue. In the Scottish Executive evidence that was given at the start of stage 1, one of the reasons for regional transport partnerships that was most strongly presented was that local
authorities could not work together and therefore a statutory basis was required to force them to work together, but little evidence has been presented on that front. What are your views on that as a rationale for introducing RTPs?

Councillor Magee: If the Executive really said that, it is interesting because, as you said, there is little evidence to support it. The evidence that we would cite to show that it is not the case is the progress that the voluntary partnerships have made in a fairly short time. Our original position was that we wished the voluntary partnerships to evolve naturally and not become statutory partnerships at this stage, and that is why we have had concerns about flexibility on voting rights, flexibility on boundaries and transitional and lead-in funding.

To say that local authorities cannot work together on transport is, to be frank, incorrect. The examples that I know best are, of course, from the Highlands and Islands, where there is an extremely good track record of local authorities working together, not only on the work on air travel that I have cited, but also to prioritise projects for European funding. It requires a deal of confidence in my partner authorities for me to vote for a spinal route in the Western Isles to get European funding over and above my project in the Highland Council area. We have done that successfully in HITRANS from an ability to appreciate the case that is being made elsewhere in the partnership area.

It is incorrect to say that local authorities cannot work together, because they work together on a raft of things that are nothing to do with transport. The sheer existence of COSLA proves that they work together. I do not know whether the Scottish Executive was winding the committee up, but it is not our experience that local authorities cannot work together, and I hope that my colleagues will endorse what I said.

Councillor McInnes: I am the vice-chair of the north-east Scotland transport partnership—NESTRANS—and we have demonstrated clearly that the two local authorities involved in that partnership can work together. All the voluntary transport partnerships work well together but within certain limits, and when we responded to the initial consultation on the setting up of statutory regional partnerships, there was recognition that the voluntary partnerships were operating at their limits.

There are particular constraints on the voluntary partnerships at the moment—budgetary pressures, issues of duplication, with numerous strategy teams trying to come together to build regional transport strategies, and councils working at different paces—so there would be clear benefits from moving from voluntary to statutory partnerships. Those would include the greater efficiency and better delivery of projects, about which Andrew Burns has spoken, the longer-term vision and, in particular, constituent authorities and Government paying due and equal regard to the regional transport strategies once they are in existence—NESTRANS has a regional transport strategy, but it would have more clout if it was statutory. There would also be more consistency for public transport operators in dealing with local authorities if there were statutory partnerships.

Iain Smith (North East Fife) (LD): I want to pursue a little bit longer the wording in the bill that means that every local authority will have to be in a partnership. Is that the right approach or would you prefer more flexibility? Would it be better if the partnerships could be set up, but not necessarily in certain areas where that might not be appropriate? It is not entirely clear from the boundary maps why Dumfries and Galloway Council—for which Councillor Mitchell has made a strong case that we will almost certainly put to the minister—is in the same RTP as Glasgow City Council or why Stirling Council is in the same RTP as Dundee City Council, other than that it has to be in an RTP somewhere. Is COSLA’s view that it is better to have more flexibility so that only those authorities for which it makes sense to be in a partnership are required to be in one, rather than require everyone to be in a partnership regardless of whether it makes sense?

15:00

Councillor Magee: COSLA’s view is that it is extremely important that all local authorities that are concerned about that issue have the opportunity to identify and quantify those concerns and to express them in a forum such as this. COSLA does not exist to take the view of one council against that of another. We try to reach a consensus, but if we cannot, we will say that we have been unable to.

Dumfries and Galloway Council has an issue with regard to the removal of powers and Councillor Mitchell eloquently expressed her authority’s point of view in that respect. The issue is not the same for councils such as Shetland Islands Council, which is reluctant to be in any sort of partnership, Stirling Council, or Argyll and Bute Council, which is uncertain as to which way it should go.

Leaving aside Dumfries and Galloway Council, I think that the risk for a council that says that it does not want to be in a partnership at all is that if every other council in Scotland were to become a member of a partnership, that council would become marginalised. The local authorities that are in that situation will have to reflect carefully before deciding whether to lobby on the issue. The situation that Councillor Mitchell told the
committee about today is the unique case of a local authority losing existing powers and staff. Dumfries and Galloway Council rightly feels that its situation is different from that of any other council.

There will always be grey areas. Some councils will always feel that they belong more strongly in one or another partnership. However, it is important for councils to have the opportunity to make their case. It is not COSLA's role to take one side against another or one view against another. The only thing we can do is to suggest to a council that does not want to have anything to do with a regional partnership in any shape or form that it runs the risk of becoming marginalised. That said, the council might not get what it wants in any event.

Iain Smith: I appreciate what you are saying, but is there not a danger of COSLA establishing its policy objective for every council to be in a partnership whose base function is to produce a regional transport strategy, only to end up creating something that is not a regional strategy at all because no links will be formed between bits of an area. We could end up with two local transport strategies that are stuck into the same document for the sake of having a regional transport strategy.

Councillor Magee: I am sorry—could you repeat that?

Iain Smith: Two areas will have been put together because the law says that they have to be in a regional transport partnership despite the fact that, they do not have any regional transport links between them. Will you not end up simply amalgamating two local transport strategies and calling it a regional one just to meet the legal requirement under the bill? Is there not a danger of doing things unnecessarily because the bill says that authorities have to be in a partnership?

Councillor Magee: Apart from the situation of Dumfries and Galloway Council, local authorities are unlikely to be combined in such a way that they have no link whatsoever with a neighbouring local authority. Customs posts and boundaries are not going to be set up between regional transport partnership areas. I happen to know that HITRANS and NESTRANS are working closely on the case for the upgrading of the A96 and on other projects. It is wrong to suggest that if an authority is in one partnership rather than the next, its relationship with the neighbouring partnership will be a case of never the twain shall meet. Clearly, there will always be cross-boundary issues. I hope that we are mature enough to recognise that and deal with it.

Councillor Mclnnes: Transport needs do not recognise local government boundaries, which means that cross-boundary issues will nearly always have to be addressed. The member raised concerns over whether councils would be forced to operate in a certain way. The converse danger applies of councils being allowed to opt out of a regional transport strategy. If that were to be allowed to happen, it could compromise the national transport strategy. The process should be a two-way process with the national strategy needs being informed by local and regional information. If one or two authorities are allowed to say, “We don’t feel any need to be part of that,” the delivery of integrated transport in Scotland could be compromised.

Dr Sylvia Jackson (Stirling) (Lab): I am indebted to Councillor Mitchell. I had not appreciated Stirling Council’s position until I saw the map that she held up. As particular issues seem to pertain to Stirling, I hope that Councillor Mitchell does not mind my asking a question about the map, given that I am the member for Stirling.

Although the map shows Stirling as sitting in two partnerships, it is not in the partnership area to which most people travel from Stirling, which is the Glasgow area. It would have been interesting if the COSLA panel had included a representative from the central area, as they could have talked around the issue. Perhaps you can tell me about the issues that pertain to Stirling as you see them.

Councillor Magee: We have a bill team, of which Councillor Burns and Councillor Mclnnes, who are here, are members. Councillor Gillie Thomson of Stirling Council is also a member of that team, so Stirling Council’s views certainly inform COSLA’s deliberations. If we were giving evidence again, Councillor Thomson might be one of us. I assure you that we make the biggest effort that we can to get cross-party and good geographic spread when we form teams. The Executive group is made of a transport spokesperson from every COSLA member, but we have a smaller working group—of which Councillor Thomson is a member—to deal with the bill, as we had with the previous Transport (Scotland) Bill. Stirling Council is certainly represented on that group. Councillor Thomson has strong views on funding and community planning, and they are being taken on board as we proceed.

Dr Jackson: What are the issues for a council that sits on two regional transport partnerships and has a particular interest in a third partnership, in which it does not have a part?

Councillor Magee: I used the example of Argyll and Bute, with which I am more familiar, but there should be flexibility for a council to do that, if it thinks that that is in its own best interests. That is included in the proposals.
I also think—and this returns to a previous question—that if what we end up with does not work in the best interests of a particular area, there must be a mechanism for change. If regional transport partnerships are seen to deliver fragmentation, for example, there must be a mechanism for change that does not necessarily have to resort to primary legislation. We must think about that carefully as we proceed. To be honest, I am not familiar at first hand with what Stirling Council feels, but it is, as I said, represented on our group and its views are taken into account in our response.

Bruce Crawford: I have a general question about functions. From what you say, you accept in principle that a council area may well be differently represented in different regional transport strategies. I am not sure whose the map is, but I see from it that Kinross-shire, for example, is part of the bigger area that would take in Dundee, Tayside, Clackmannan and so on. However, although it is part of the Perth and Kinross Council area, it might be more appropriately located in the Lothian and Fife area. A principle is involved. Do you accept that a council area can be split in two, or that bits of it can be taken into other transport areas?

Councillor Magee: We accept that principle, but I am not clear as to how many councils it would affect. At the moment, we have a feeling for the Helensburgh area in the Argyll and Bute Council area. I do not know whether a final conclusion has been reached on that.

Bruce Crawford: As long as the principle is accepted, that is fine.

Councillor Magee: It is up to the individual council and perhaps its neighbours to think carefully about how things best serve them.

The Convener: For the sake of clarity, I am aware that it has been proposed to split two areas. It has been proposed to split the Helensburgh area from the Argyll and Bute Council area, and that Arran could be part of the HITRANS area, whereas it is part of—

Councillor Magee: The North Ayrshire Council area.

Bruce Crawford: I want to talk about a slightly different aspect of functions, which you have also mentioned. Your written evidence states:

“The Scottish Executive’s acknowledgement that partnerships will evolve at different speeds has been welcomed and COSLA has accepted that, in the longer term, in some areas, functions may well transfer to the new regional partnership.”

It is interesting that your evidence proceeds to say:

“There must not be an opportunity for a future Minister to move powers around without reference to Local Government.”

Flexibility in voting and boundaries have been mentioned, but the actual functions of the regional transport partnerships are interesting, particularly in the light of section 10(1) of the bill, which states:

“The Scottish Ministers may, by order, provide for any function relating to transport … to be carried out by that Transport Partnership”.

The ministers give themselves even more powers through section 10(6), which states:

“An order under subsection (1) above may modify any enactment.”

There is a requirement to consult local authorities and the transport partnerships, but are you concerned about how wide ranging the minister’s powers might be? Those powers would be exercised through secondary legislation rather than—under the functions issue—being on the face of the bill.

Councillor Magee: We have concerns about that. The COSLA view on the transfer of functions is that it might take place in some cases, but only with the agreement of the partnership concerned. I took your remarks to refer to the transfer of functions from local authorities to new partnerships, and that need not be one-way traffic. There is no reason why some functions of other bodies, such as the Executive, could not be transferred to partnerships in the long run. We see the transfer of functions as a two-way process, but it must be done with the agreement of the partnership concerned. James Fowlie can confirm that we have concerns about that and that we might consider an amendment to that part of the bill.

Bruce Crawford: That is fine. You say that you want any transfer of functions to happen by agreement, but that is not currently proposed in the bill and an amendment would be necessary to achieve that. I will look with interest to see if that happens.

Another area related to functions is regional transport strategies and their impact on the Scottish Executive. We might have a national transport plan, to which the Executive signs up and on which everyone else has a chance to be consulted, but if an area decides to have its own transport strategy and the Executive, as one of the main funders, does not agree with one part of it, that strategy could be invalidated, because the Executive ain’t playing. That could be the current Executive or any future one. How do you feel about including in the bill a requirement that, once regional transport strategies have been set in stone and agreed, ministers are required to abide by them?
Councillor Magee: We would certainly expect the Executive to recognise regional transport strategies. They will inform the national transport strategy. One cannot have a load of regional strategies that say one thing and a national strategy that says something completely different, because that will not work. There has to be sign-up to regional transport strategies and if there is not, there have to be clear reasons why not.

Bruce Crawford: I do not disagree with what you say, but the problem is that the bill does not make a requirement on ministers; it would only be an understanding. I am trying to tease out whether that requirement should be included in the bill.

Councillor Magee: That is certainly something that we would want to explore.

Michael McMahon (Hamilton North and Bellshill) (Lab): Let us go on to another aspect of the bill. I notice from your written submission that you welcome the establishment of a Scottish road works commissioner, but you go on to say that you want to discuss further some aspects of the relevant financial arrangements. I will leave it to Tommy Sheridan to pursue that and I will focus on another part of your submission in which you say that there are some technical aspects that you wish to pursue. Will you indicate what those technical aspects are?

James Fowlie: We will come back to the committee with more detail about that.

Michael McMahon: Okay. In the initial discussion about road works the focus has been on the perception that the utilities contribute most to the problems of congestion and reinstatement, although some people believe that local authorities are just as culpable as the utilities. Is that statement fair? Would you like to defend the local authorities’ position?

Councillor Magee: That is an assertion. The perception of utility road works is that—whoever is digging up the road—there is a lack of co-ordination, and there are concerns about the quality of reinstatement and the timescale of the works. Whoever undertakes the work, those matters need to be addressed. As we say in our submission, the aim must be faster reinstatement to a higher standard. There cannot simply be a system of fines—there must be improvement. The question of who is responsible for what is important, but one hopes that a better result will be achieved for those who use the roads.

Michael McMahon: I accept that that is the important thing, regardless of who does the work. However, in the consultation on the bill, it was suggested that the statistics that were used to identify the utilities as the main culprits were misleading and that local authorities contribute just as much as the utilities in the way of road works. If the aims of the bill are based on a misconception, surely that will have to be addressed. Does COSLA accept the Executive’s position that the utilities are the main culprits, or do you believe that local authorities are just as responsible and that the bill should be changed to make its focus different?

Councillor Magee: I do not have an answer to that.

James Fowlie: We believe that the utilities are more to blame than local government for the problems. The answer to your question is, therefore, no.

Michael McMahon: Okay. Thanks. That is fair enough. I will take the matter up with the utilities.

Tommy Sheridan: You seem to suggest that, regardless of who is involved in road disruption, there should be a system to provide for the earliest and highest-quality reinstatement. Would it be fair to suggest that, if a fine system or a penalty system was introduced, it should be even handed and applied to local authorities as well as to private operators?

Councillor Magee: Yes, of course.

Tommy Sheridan: You have no problem with that.

Councillor Magee: We want to see a better end product across the piece.

Tommy Sheridan: It is just that we may hear evidence later to suggest that local authorities may be looking for some form of exemption from that type of system. COSLA’s evidence to our committee is that local authorities should not be exempt from the duty to provide the most rapid and highest-quality reinstatement of road works if they are involved in disruption.

Councillor Magee: The legislation should apply across the piece. I cannot see any reason why it should not.

James Fowlie: As is obvious, we have not had detailed discussions around the whole road works issue. We have had some initial discussions; however, from the local government politicians’ point of view, which is what COSLA represents, the main issues are around the setting up of the regional partnerships, and that is what we have concentrated on so far. We need to come to a more detailed view on the issues surrounding road works. In simple terms, we want roads to be opened up and closed in a much more joined-up fashion in the future. We accept that there have been problems in the past, which we need to resolve.
I gave a blunt answer earlier on the technical detail. As I understand it, some very technical documents or orders are required to back up what is in the bill. We need to take advice from experts in the field on whether there are any political or resource implications for us, as an organisation for local government. That is what they will look at, and they will feed that information back to us by the end of January. We will discuss it in more detail in the bill task group that Alison Magee mentioned earlier.

Tommy Sheridan: I ask that you try to prioritise issues in that task group. You make the point that you are here representing the political views of COSLA. However, as politicians, you will be aware how high in the order of complaints road traffic problems are, especially when roads have to be dug up several times. That is why I am pressing you on this. As a high priority, we must try to ensure proper reinstatement so that we do not have to go back over such things again. It has been suggested that the introduction of a strong penalty system may encourage local authorities and others who are involved in road disruption to reinstate to the highest quality, so that they do not have to be asked to revisit something. I hope that COSLA will prioritise that issue.

Councillor Magee: As James Fowlie has said, that is something that we will consider. There is a great deal in the bill, and our focus has been on the regional transport partnerships. However, I would not want anyone to think that we do not think that proper reinstatement is an important issue, too, for all the reasons that you have given.

Dr Jackson: I want to raise two points in relation to that. I echo what Tommy Sheridan says about substandard reinstatements being one of the big issues. That is especially the case in my constituency. First, why is the legislation that we have at the moment not working? Why can we not pursue the penalties, and so on? I thought that we could. I would like you to consider that and come back to us with material on that. Secondly, previous witnesses have told us that there are not enough inspections, although the inspection of reinstatements is critical if penalties are to be imposed. Can you canvass local authorities to see what the general picture is and whether the information that we have received about there not being sufficient people on the ground to carry out those inspections is accurate?

Councillor Magee: An issue for Highland Council is the capacity to undertake the inspections, which have to be carried out within a specific timescale.

Councillor Burns: Under the current legislative framework—which is the root of the problem—local authorities are allowed to carry out only a certain number of inspections. The issue is not just about capacity; many local authorities have the capacity to conduct more inspections or to divert resources to inspection, but the current legislative framework does not allow us to do that. I would not deny the fact that the utilities and local authorities play a part in it, but the root of the problem is the current legislative framework. That is why the broad thrust of the road works section in the bill is to be welcomed, although there is a lot of devil in the detail. Any increase in the capacity of local authorities to inspect must be welcomed. There is obviously a resource implication, but COSLA would broadly welcome the new provision. Without inspection, we cannot deliver the level of replacement road work that, as members have mentioned, is badly needed.

Councillor Mitchell: That is an issue in Dumfries and Galloway as well. The problem lies possibly with the centralisation of the public utilities. Very little work is overseen by public utilities such as Scottish Water, even on their local contracts. Local authority staff are basically overseeing the work that is being done by contractors for the public utilities.

Councillor Magee: It is not only an urban problem; it is a problem in rural areas as well. It is especially marked in areas that experience severe winters, where the road surface cracks up very quickly. The damage is not due simply to a high volume of traffic on the roads; other factors can lead to problems. It is a national issue.

Fergus Ewing: Your written submission says that COSLA welcomes the creation of a road works commissioner. However, the submission from the roads authorities and utilities committee (Scotland), from which we will hear shortly, states that the creation of a Scottish road works commissioner appears to be completely unnecessary. That is a persuasive and attractive argument. Is COSLA’s official position that the road works commissioner should replace the functions that are carried out by RAUCS?

James Fowlie: Yes.

Fergus Ewing: From the public’s point of view, it makes not a jot of difference whether road works are instructed by Scottish Water, British Telecom, a utility company, a local authority or BEAR Scotland. The situation is exactly the same: they are a problem and a hassle. For clarification, does COSLA agree that there should be in the legislative framework—whatever is set up—an equal playing field, so that local authorities, utilities and anyone else who digs up the road are subject to exactly the same laws, duties and penalty regime?

Councillor Magee: I think that we have already answered that question.
**Fergus Ewing:** I just want you to make your position on it clear. It is a simple question. If I did not hear the answer, I am sorry. Do you want me to ask it again?

**Councillor Magee:** No.

**Michael McMahon:** The answer was yes.

**Councillor Burns:** The answer is yes.

**Fergus Ewing:** So COSLA’s position is that local authorities should also be liable to the regime of penalties that the commissioner can impose on utility companies.

**Councillor Magee:** We have not taken a different position from that.

**James Fowlie:** As has been said, that is our position at the moment. We need further discussion of the detail of the issues. Elected members who attend our organisation’s meetings have not had an opportunity to discuss the road works details in the bill. We want to open up, close and reinstate roads to the best quality and as soon as possible; it is as simple as that. We need a bill and orders that deliver that.

We accept all the points that MSPs have made. When we examine the detail, we will take the matter on board as a priority. However, it has not been a priority yet. We have had some initial discussions and our view is stated in our submission.

**Fergus Ewing:** At present, local authorities are subject not to penalties, but to scrutiny by the Accounts Commission for Scotland. Civil servants clarified that when they gave evidence many weary weeks ago. Is COSLA’s position that if fines and penalties are to be imposed, utility companies and local authorities should in principle be treated in the same way?

**Councillor Magee:** That is the position in so far as we have discussed it. I know of nothing that says that that is not the position. As James Fowlie said, much further work has to be done on that.

We accept all the points that MSPs have made. When we examine the detail, we will take the matter on board as a priority. However, it has not been a priority yet. We have had some initial discussions and our view is stated in our submission.

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**Councillor Magee:** That is the position in so far as we have discussed it. I know of nothing that says that that is not the position. As James Fowlie said, much further work has to be done on that.

**The Convener:** Is that okay?

**Fergus Ewing:** I do not understand how further discussion is possible about a position in principle. It sounds as if COSLA wants to go away and think about it, then return with an answer that represents a U-turn. Will COSLA assure me that my fears are—

**Tommy Sheridan:** COSLA’s written evidence is not very expansive on concessionary fares. I know that part 3 contains miscellaneous provisions, but COSLA represents local government’s political will and part 3 is probably the most important part for punters, citizens and constituents. What national concessionary fares scheme would COSLA like to be introduced? Would it be similar to or mimic the Welsh scheme? Do you have a different scheme in mind?

**Councillor Magee:** We have made it clear that we have not reached final positions on the issue. We have not had the in-depth discussion, and further technical information is required. At the moment, our position is that we should have a level playing field. I am not prejudging the outcome, but when we go into the technical detail, we may find something, so the position might change. I will not give categoric answers about subjects on which we have not concluded our discussions.

**Tommy Sheridan:** COSLA’s written evidence is not very expansive on concessionary fares. I know that part 3 contains miscellaneous provisions, but COSLA represents local government’s political will and part 3 is probably the most important part for punters, citizens and constituents. What national concessionary fares scheme would COSLA like to be introduced? Would it be similar to or mimic the Welsh scheme? Do you have a different scheme in mind?

**Councillor Magee:** We have always supported the creation of a national concessionary fares scheme. We are concerned that it must be fully funded. We think that it is particularly important that the local variations and enhancements are not lost in a one-size-fits-all approach. We would support the adoption of a smart card. Our position is that, under a national scheme, we do not want people to end up getting a service that is less good than the service that they are getting under their local scheme.

**Tommy Sheridan:** Do you agree with having time limitations?

**Councillor Magee:** Are you referring to the rush-hour limitations?
Councillor Magee: We would like those limitations to be removed—there is no question about that. We will be interested to hear what the Executive’s proposals for young people are, because no detail has yet been provided on that.

Councillor McInnes: A number of local authorities already have local enhancements. For example, my authority does not have a peak-hours restriction. Councillor Magee’s point was that she hoped that those local enhancements would roll out nationally.

Tommy Sheridan: We are aware that, like the Welsh scheme, some local authorities’ schemes have no time restrictions. From a personal point of view, I would like us to have a national scheme that has no time restrictions. That is why I am asking what COSLA’s view is. It has been suggested that such a scheme might not be workable and that it might lead to a requirement for extra vehicles, but that is a red herring. It is important that COSLA states that it is in favour of a national scheme that is not time restricted and that does not undermine locally enhanced schemes that may involve trains and ferries. Is that broadly what you are saying?

Councillor Magee: Yes. That states the position very well. The issues of capacity that you have mentioned are matters for the Executive and the bus companies to deal with.

Councillor McInnes: But they are legitimate issues.

Councillor Magee: That is right; there is no doubt about that.

The Convener: I want to tease that out a bit more. It is clear that you are saying that you would prefer to have a scheme that was not time restricted. As part of the implementation of the previous scheme or in preparation for the introduction of the proposed scheme, has COSLA calculated the likely difference between the cost of having a non-time-restricted scheme and that of having a time-restricted scheme?

Councillor Magee: No, we have not.

Councillor Mitchell: I want to raise an issue that we spoke about in Stranraer. I remind members of the concerns that we in Dumfries and Galloway have about the proposed concessionary scheme. Some of the funding that was used to establish an earlier, generous scheme in that area supports uneconomic rural services. We would be concerned if we lost that funding and ended up with free transport but no buses.

Councillor Magee: If we cannot fund locally enhanced services, which include inter-island ferries, the dial-a-bus scheme and subsidised taxis, we will be able to have all the concessionary fares that we want, but there will be no transport on which to use them.

The Convener: That brings us to the end of our questions for the COSLA panel. I thank Councillor Magee, Councillor McInnes, Councillor Burns, Councillor Mitchell and James Fowlie for their evidence.

While we are waiting for the members of the next panel to take their seats, we welcome Bill Butler, who is here as an official substitute for Paul Martin. Can I ask you to confirm that and to indicate whether you have any interests to declare that are relevant to the committee’s work?

Bill Butler (Glasgow Anniesland) (Lab): I am delighted to be here as the substitute for Paul Martin and I have no interests to declare, other than those that are in my entry in the register of members’ interests.

Tommy Sheridan: In light of Bill Butler’s statement, can he confirm that the Local Government and Transport Committee is the only committee of which he has ever wanted to be a member?

Bill Butler: I would like to take more part in the committee’s proceedings and it is probable that I will do so in the new year, along with Tommy Sheridan and others.

The Convener: I am tempted to ask Tommy Sheridan whether he is sure that he is in the only political party of which he has ever wanted to be a member.

We move on to our second panel. I welcome Findlay Taylor, who represents the roads authorities and utilities committee (Scotland). I am sorry that we are starting this part of the meeting later than indicated, but I am sure that you heard our interesting session with COSLA.

Findlay Taylor (Roads Authorities and Utilities Committee (Scotland)): It was very interesting.

The Convener: Without further ado, I invite Findlay Taylor to make introductory remarks before we move on to questions.

Findlay Taylor: I thank the committee for allowing me to attend the meeting and present our paper on the Transport (Scotland) Bill. RAUCS is a national committee, which is made up of the major utilities and the 32 councils. Our purpose is to ensure that the utilities comply with the New Roads and Street Works Act 1991. We work on an area basis and our local co-ord meetings co-ordinate works as much as they can.

The bill would strengthen the Scottish road works register. RAUCS is proud of the current register, which started on paper and is now on an
electronic system that covers not just noticing but plant protection matters. We are concerned that the establishment of a Scottish road works commissioner could cause problems for us, because through our committee authorities and utilities work closely together on many matters. RAUCS already has an arbitration process that can deal with issues that arise—although they rarely do.

We are concerned about regional transport partnerships because we work closely with roads authorities and we do not want a situation in which a roads authority tells the utilities to work—or decides to carry out its own work—on one day of the week but the regional transport partnership says they must work on a different day.

The establishment of a Scottish road works commissioner is unnecessary, because the RAUCS remit seems to work. We might have differences of opinion, but the fact that I am here to represent both sides—the authorities and the utilities—demonstrates that we work closely together.

Bruce Crawford: Given the evidence that we just heard from the previous witnesses, it is interesting to hear your comments on the Scottish road works register and the proposed Scottish road works commissioner. We will park what COSLA said for the time being. Are you saying that RAUCS already has the powers and carries out the functions that would be conferred on the commissioner under section 15? If so, how would RAUCS feel about being the statutory authority in relation to such issues?

Findlay Taylor: We do that work already; we run the 1991 act. We would be happy to take on the additional role that the commissioner would have, because the right way forward is to have a single body, rather than a single person who tells everyone else what is required of them. RAUCS is the best body for the utilities and we would like the roads authorities’ work to come under the same umbrella.

Bruce Crawford: The Executive has set aside money in the budget to support the Scottish road works commissioner. Have you made any judgment about what additional funding—if any—would be required for RAUCS to become the new statutory body for Scotland?

Findlay Taylor: We do not foresee any additional finance being required for that, but we seek additional finance further to enhance our Scottish road works register. At the moment, the system is based on the issuing of electronic notices between utilities and roads authorities, but we are trying to move to a system whereby a screen will tell people who is working in particular places. We seek investment from the Scottish Executive to upgrade our system.

Bruce Crawford: Have you made an estimate of how much investment you need for that?

Findlay Taylor: Our estimate is about £600,000.

Bruce Crawford: That is useful.

You have confirmed that the RAUCS could undertake the tasks that are envisaged for the road works commissioner and could start doing that work for £600,000, which is considerably less than the amount that the Executive set aside in its budget to support the road works commissioner. I think that that is pretty powerful evidence.

The Convener: I do not doubt that much of the work that Findlay Taylor describes is being undertaken by RAUCS, but if RAUCS were to take on the role of the commissioner would there not be a potential conflict of interest? RAUCS represents the local authorities and the utilities, both of which might be subject to criticism by the proposed commissioner. How could that function be managed within RAUCS?

Findlay Taylor: Whenever we go to arbitration there is always a split, with 50 per cent of the committee members from the utilities and 50 per cent from the roads authorities. We have always found that that works well. Committees that we set up are always split; we find that that is the best way in which to move forward and improve the system because it gives us a wider view.

The Convener: Do you appreciate that if RAUCS were to perform the role of the proposed commissioner there would be a potential conflict of interest? Do you think that it is a good general principle for the person who acts as the referee to be separate from the players?

Findlay Taylor: The bill sets out the commissioner’s role, but it does not indicate that he will have much power. He can ask for information and will be in charge of the Scottish road works register, but he does not seem to have real powers.

The Convener: Would you see more relevance in the role of the commissioner if the powers were greater?

Findlay Taylor: We would like more powers for RAUCS so that it could fine utilities and take away qualifications from people who are not able to do the work correctly.

Fergus Ewing: At our meeting on 16 November, when we had the civil servants before us, there was some discussion about what proportion of congestion is caused by road works carried out by the utilities and what proportion is caused by other road works, notably those carried
out by local authorities. The position seems to be that nobody knows, partly because road works by local authorities are not entered in the road works register. Do you have a position on that? Will you tell us, if you can, what proportion of road works, and therefore congestion, is carried out by utilities and what proportion by local authorities?

**Findlay Taylor:** A report by the Transport Research Laboratory, which was quoted in the "Highways Agency Business Plan 2002-03", states that 65 per cent of congestion is caused by traffic volumes, 25 per cent is caused by incidents and 10 per cent is caused by work by roads authorities and utilities, with 5 per cent caused by utilities and 5 per cent caused by roads authorities.

**Fergus Ewing:** That is extremely helpful. Utilities are the guilty party in only one in 20 cases of road works, but about causes of congestion.

**Fergus Ewing:** You will agree that the bill as drafted does not provide a level playing field because undertakers—utilities and others—will have to pay fines if they transgress the provisions, but local authorities will not be subject to the same regime.

**Findlay Taylor:** That is correct. Under the bill, all roads authority works will go on to the Scottish road works register, but there will be a separate system of fines for the utilities.

**Fergus Ewing:** Do you have as clear a view as COSLA has on whether local authorities should be subject to the same regime of fines and penalties to which utilities will be subject?

**Findlay Taylor:** RAUCS has not discussed that issue.

**Fergus Ewing:** In principle, do you agree that it is an obvious requirement of the dictates of fairness that everybody should be treated in the same way and that any system of fines and penalties should be the same for everybody who is involved in carrying out road works? If not, why not?

**Findlay Taylor:** I represent councils and utilities. My submission contains the results of our discussions on the bill. We did not come to an agreement on whether both utilities and roads authorities should be subject to penalties.

**Michael McMahon:** Your submission states:

“disruption is inherently short-term, however, the benefits from laying apparatus are normally long-term and in the case of all utilities but particularly telecommunication equipment can have significant economic benefits.”

Will you expand on that? Are you comparing the overall cost of reinstatements or work with the overall benefits or is there some hidden meaning that I do not get?

**Findlay Taylor:** Under the bill, if a utility wishes to go down a specific street, the highways authority could say that it cannot do so, but that it could go down a different road. Our submission argues that the people in that street still require services, whether they have existing ones or wish new ones. We need a clear code of practice for such situations. If trunk road operators and councils decided not to let utilities go down any of their roads, the utility would not be able to go anywhere. The bill must be clear. Our submission points out that utilities cause disruption for only a short period and that they need to get in to do the associated work.

**Michael McMahon:** Should that issue be covered in the bill or should your group’s role, or the commissioner’s, be enhanced to adjudicate in such situations?

**Findlay Taylor:** If the bill is passed as it stands, a robust code of practice must be introduced to cover cases in which utilities are directed down a different street.

**Michael McMahon:** Who would adjudicate on the implementation of the code of practice?

**Findlay Taylor:** RAUCS would probably end up arbitrating on such issues.

**Michael McMahon:** You do not envisage a role for the commissioner in that.

**Findlay Taylor:** Going by the bill as it stands, the commissioner would probably do that, but given that the commissioner’s workload could be substantial, it would probably be left to RAUCS to arbitrate.

**Tommy Sheridan:** I suppose that I am looking for similar guidance from Findlay Taylor as Fergus Ewing was looking for. Most ordinary people want to know that if there is going to be disruption to the roads and highways, it will be kept to a minimum and the reinstatement will be of the highest quality. We are looking for a regime to be put in place that encourages that to happen more often than it does currently. Is your evidence that you think that the current system of penalties is sufficient and that we do not need a stronger regime?
Findlay Taylor: RAUCS feels that penalties should be introduced. In recent years we have gone through four coring exercises to improve the quality of reinstatement. Each time, the quality was improved on the previous exercise but we still accept that introducing penalties is the way forward. They would provide a financial inducement to get the job done. We are also asking for the facility to withdraw someone’s qualification for working on the roads. So yes, we would agree to the introduction of penalties.

Tommy Sheridan: That is why I am still confused. You are saying that your organisation wants a penalty-based scheme that will provide a financial incentive for work to be done quickly and to a high quality, and then for the road to be reinstated. However, you have told us that you are not sure whether the local authorities should be liable for those penalties. That seems inconsistent: we hear from you that half the congestion that is caused by road works is the responsibility of local authorities. Is it not inconsistent to argue for a set of penalties but to apply them only to the utilities?

Findlay Taylor: I accept what you are saying. The purpose of the legislation is for the roads authorities’ work to go on to the Scottish road works register. The local authorities work to the Roads (Scotland) Act 1984, and the utilities will still be working to the New Roads and Street Works Act 1991. In our document, we are discussing the penalties within the latter act; therefore, it is the utilities that will be penalised.

Tommy Sheridan: Can you understand where I am coming from?

Findlay Taylor: Absolutely.

Tommy Sheridan: Ordinary people across Scotland do not really care whether the person disrupting the road is working to one act or the other. What they want is the work done as quickly as possible and the road reinstated to the highest quality possible, and I think that the committee would like that to happen. We think that a system of penalties could help but it would have to be consistent. We could not have a system of penalties for one group of road disruptors—for want of a better description—but no system for another, as surely there would be no incentive for that other group to adhere to the same required quality of reinstatement.

Findlay Taylor: I totally agree with you, but I can only say what has come from the RAUCS meeting. The local authorities work to a different act from that to which the utilities work so they would not expect penalties against them.

Dr Jackson: I have a question on reinstatement. Obviously some of it is poor quality and has to be redone. You talked about withdrawing qualifications and I would like to know what that means. We have heard from one of the councillors—and we have been told this previously—about subcontractors being used by utility companies for reinstatements. The situation does not seem to have improved during the five years of the Parliament’s existence. Why have you not been working on a proposal for withdrawing qualifications? Have you made representations to the Scottish Executive? What work is in hand to try to improve the situation?

Findlay Taylor: I will try to remember all those questions. The first was about qualifications. Under the New Roads and Street Works Act 1991, anyone who works on the street must hold a certain qualification, no matter whether they are signing and guarding, digging or laying fancy slabs. Given that the Scottish road works register will record who performed the work, we suggest that the Executive should introduce legislation so that, where bad workmanship has been shown to have continued even after training, the qualification can be taken off the person. At the moment, there are moves to retrain people before their qualification is renewed, which must happen every five years, but there are no powers to take a qualification off someone. Most utilities’ contractors and subcontractors try to train any worker who is found not to be up to standard, but if that does not work they ask him to leave the company. However, as he still retains his qualification, he can just move to another company, so the same bad workmanship still comes through. That is why we are asking that legislation be introduced to take the qualification away from such people.

The problem with reinstatements was identified by RAUCS many years ago. We got together and decided to initiate a national coring programme—coring involves drilling 200mm holes in the road and taking the core out to check it—and we have now had four such programmes. That is quite a major achievement, as it involved getting all the roads authorities and utilities to agree both on a specification and on where cores should be checked. That work has now moved forward. I am glad to say that the programme that is currently nearing completion has shown that there has been an improvement. Results have been returned for only three out of four areas so far, but they show that there has been an improvement in workmanship. RAUCS is very aware of the quality of workmanship and is trying its best to improve that.

Dr Jackson: I have two further questions. First, can you guarantee that all those who are employed by subcontractors have qualifications? Secondly, is there any supervision or inspection once a subcontractor has carried out a reinstatement? How have you looked at that supervision programme?
Findlay Taylor: We can never absolutely guarantee that all workers have the qualification. However, most utilities have supervisors who carry out quality and safety checks on gangs. Supervisors will usually ask to see people’s qualification when they carry out those checks. In addition, each utility holds a record that they receive from their contractors or subcontractors of who has received the qualification. The system is not foolproof, but I am confident that the folk out there have the correct qualification. However, whether people need to be retrained is a different question.

Sorry. I have forgotten your second question.

Dr Jackson: My other question was about supervision. Do you have details about how many jobs the utilities supervise? Do they supervise every job or just some jobs? What is the procedure?

Findlay Taylor: It depends on the size of the job, but utilities tend to employ quality inspectors. They also employ contractors to provide supervision and quality checking who usually have a contract with a subcontractor to do that work. Therefore, a supervision regime is in place.

The Scottish road works register provides some interesting stats. Under the inspection regime under the New Roads and Street Works Act 1991, the utilities are running at a pass rate of 89 per cent. I feel that that shows that the workmanship out there is not quite as bad as people tend to make out.

Iain Smith: I reckon that to be a one in 10 failure rate, which is not that good.

On the enforcement of the 1991 act, your submission states:

“in the past two financial years, 22 charges were reported and only four have been prosecuted.”

Have you discussed with the procurators fiscal the reasons why they do not prosecute more of the charges that have been reported?

16:00

Findlay Taylor: Yes. We discussed the issue in depth and it was felt that procurators fiscal would not proceed with prosecutions because of the low fine rates. Because of their workload, procurators fiscal were not willing to take on charges under the New Roads and Street Works Act 1991.

Iain Smith: I hope that the new regime, which sets fixed-penalty fines for minor offences and higher fines for more serious offences, will obviate the need for prosecution. Where prosecution is necessary, is it more likely to be successful?

Findlay Taylor: Yes.

David Mundell: My question follows on from what has just been said. In your submission, you refer to the answer that I received from the Solicitor General for Scotland on prosecutions. I am still awaiting the detail of those prosecutions, because she did not tell us whether they were successful. She has also agreed to investigate why fiscals have not been prosecuting these cases.

Section 25 relates to the duty of authorities and undertakers to ensure competence of employees on site. In your submission, you state:

“This section is felt to be weak and thus difficult to enforce.”

Findlay Taylor: It goes back to the issue of qualifications. If folk have a qualification, it cannot be taken away from them. It is difficult to ensure that employees are always competent to do the work that is required, and we believe that more should be done in that area. That is why we are seeking the power to withdraw qualifications. There is nothing that forces people to continue to do a good job.

David Mundell: How would an assessment of someone’s competence be made as part of a criminal prosecution? What happens if someone is doing their best but is not very good?

Findlay Taylor: It would be difficult to prove that in the context of a prosecution. It would be easier under fixed penalties to show that someone had not done a job correctly, but it would be quite difficult to take such a case to court.

The Convener: That brings us to the end of our questions. I thank Findlay Taylor for his evidence this afternoon.

I welcome representatives of the Civil Engineering Contractors Association (Scotland). David Morrison is the managing director of Turriff Contractors Ltd; Stuart Ross is the operations manager of Alfred McAlpine Infrastructure Services Ltd; Jim Shields is the business development director of Alfred McAlpine Infrastructure Services Ltd; and Alan Watt is the chief executive of CECA. I invite Alan Watt to make some introductory remarks on behalf of the panel.

Alan Watt (Civil Engineering Contractors Association (Scotland)): I do not intend to reiterate what is said in our written submission, which you have seen. A number of points have been raised, both today and in the committee’s previous meetings, and the evidence is heading roughly in the direction in which we hoped that it would head.

We make it clear that part 2 of the bill could affect our businesses. The sanctions that it suggests could have an effect on full-time jobs and
the businesses that are represented here; hence, I have asked two of the leading contractors in Scotland to come along. Between them, they employ more than 1,000 people in full-time paid jobs, and the bill will potentially impact on them.

We acknowledge from the outset that there is a congestion problem in Scotland. There is absolutely no question about that. As well as being contractors, we are major users of the roads—they are the arteries whereby we get to our business, and vehicles are the tools of that business. Nevertheless—and we are glad that others have raised the issue—we question the impact of utility road works in comparison with other causes of congestion. A figure of between 5 per cent and 7 per cent has been mentioned thus far, showing that such works make up only a small proportion of the cause. We therefore ask the committee, in its further deliberations, to consider whether utilities are a major root cause of congestion.

Utility road works in Scotland serve a purpose. I am sure that the committee does not need to be reminded that the infrastructure that has been inherited is in a poor state of repair. We are trying to upgrade that, so that there is potable water, safe gas, safe electricity and state-of-the-art telecoms. I echo what previous witnesses have said about the road works being, in many cases, short-term pain for long-term gain, regarding what follows from them.

We noted that, at your meeting of 16 November, there was a general feeling that all those who carry out road works in Scotland should be judged by the same rules. We certainly support that and we were heartened—if a little surprised—by COSLA agreeing to that in principle today. We look forward to seeing its detailed follow-on from that.

We have no fear of regulation. The industry would welcome a widening of the Scottish road works register. We would have no difficulty with having a properly empowered, resourced and impartial body—whether it was an enhanced existing body or a new one—that would ensure that there was equity across all road work contractors. We would like there to be equality of sanctions. If two crews are digging up a road, it would seem to be perverse for them to be subject to differing sanctions regimes. We would also like there to be equality in relation to quality testing. Mention has been made of inspections and, in that regard, I am glad that I am accompanied by experts who can answer any questions that the committee might have about inspections and quality testing. We would also like there to be equality in relation to the qualifications that are held by those working on the roads, including a compulsory health and safety element, for both the workers and the general public who travel on the roads. The basis of what I am saying is that we cannot see the logic in having separate arrangements.

If there are to be sanctions and fines, we would like there to be clarity around where the money goes. We would be concerned if the money were hypothecated and kept locally as that might create a conflict of interest for councils. That aspect might be a bit downstream, of course.

In summary, the contractors wish to be clear that utilities are considered to be a major cause of congestion; if they are not, the premise of part 2 requires some reconsideration. We would be looking for clarity in any legislation and equity and consistency in its implementation, so that we and our employees can get on with the job of upgrading Scotland’s infrastructure.

Michael McMahon: In your submission, you voice concern, which you have almost reiterated, about the local authorities’ role in adjudicating on or inspecting the work that is done on the roads in their areas. You also express concern that local authority officers might interpret the bill so as to apply to you a different standard to the one that they would apply to themselves. Will you expand on that and clarify your concerns?

Alan Watt: Consistency is a problem throughout Scotland at the moment, because there are local interpretations. Perhaps Stuart Ross would like to say a few words on that, as it is his field.

Stuart Ross (Alfred McAlpine Infrastructure Services Ltd): One of the problems is that every local authority has different inspectors within its boundary and, because the interpretation of what is acceptable differs from inspector to inspector, there is a lack of consistency. We are trying to safeguard against the bill giving exacerbated power to what is, in essence, a subjective interpretation and application of the legislation.

Michael McMahon: Would the proposed Scottish road works commissioner help in that kind of arbitration and adjudication?

Stuart Ross: I would support the creation of any vehicle, whether it was a commissioner or a committee—call it what you like—that was truly independent and which was given powers to fine or otherwise bring to book those who were not practising properly, provided that that vehicle applied the law even-handedly to every organisation that works on Scotland’s roads.

Michael McMahon: So you support COSLA’s principle that a level playing field is required.

Stuart Ross: Yes, a level playing field is required. To echo what Tommy Sheridan said, the people of Scotland do not care who digs up their roads; they just want somebody to dig them up, put them back together to the appropriate
standard and be gone to minimise the congestion. We are in favour of minimising congestion, because, as Alan Watt stated, for us to discharge our duties, we have to use the roads and we in turn get caught up in congestion, so it affects our business.

Michael McMahon: CECA has stated that it is concerned about the statistics on which the consultation was based, which it believes were skewed. The statistics showed that utilities were more culpable than local authorities. Has the bill that has come out of the consultation addressed that concern or is there still a focus on utilities rather than on local authorities?

Stuart Ross: You have heard from various witnesses that the bill seems to be more applicable to utility companies than to roads authorities, primarily because utilities and their contractors are working to the New Roads and Street Works Act 1991, whereas the roads authorities are working to a different legislative framework. That just muddies the water. The bill should provide a vehicle for a level playing field and bring to the fore consistency of approach, workmanship, quality and speed of response.

Michael McMahon: Is your bottom line that the bill does not do that?

Stuart Ross: If the cumulative congestion that is caused by road works is 10 per cent of congestion and the split is 5 per cent road works and 5 per cent utility companies and their contractors, the bill’s focus seems to be on 5 per cent of the problem.

Bruce Crawford: You talk about a level playing field, being judged by the same rules, having no fear of regulation and seeking equity across the board; that is the common theme. Local authorities are subject to the Accounts Commission looking over their books and examining the way that they do the road works. Are contractors prepared to be subject to the same?

Jim Shields (Alfred McAlpine Infrastructure Services Ltd): As Alan Watt said in his introduction, and as was amplified by Stuart Ross, we are working hard to ensure that we deliver a good service to the people of Scotland. There is no incentive whatever for us to be out there on the roads for any longer than is necessary—and, it would cost us money. There is also absolutely no incentive for us to become involved in poor-quality workmanship. Under existing legislation—and, I am sure, under future legislation—we must rectify any poor-quality work. We would have to wait for a long time, therefore, before we saw a return for our business or any return at all. There is no incentive for us to become involved in delays or poor-quality workmanship.

We welcome the opportunity to work in a fair and balanced environment, in which we can all provide a good service to the right standard. Indeed, we welcome the opportunity of being able to go forward and secure the employment of nearly 1,300 people in Scotland. We have our own training centre, which David Morrison will look to in the future. We are working hard to fill a void in the workplace. The average age of our workforce is 49, and our industry is not thought of as a glamorous one to come into. Nevertheless, we want to make it more attractive and the way in which to do that is to secure a future that is based on good-quality work and a balanced environment.

Bruce Crawford: I think that none of us would have any objection to anything that you have just said. We share your vision of where you want things to go. However, you made a big play about a level playing field and equity. We have heard a fair bit of evidence today in support of the idea that, if local authorities create a problem, they should be subjected to the same fines, constrictions and difficulties that are placed on contractors. However, there is another side to the coin. The Accounts Commission is responsible for looking into what the local authorities do and whether value for money is being achieved. If there is to be a level playing field, should contractors not be subject to the same process?

Alan Watt: In truth, we have never thought about the situation that way round. It is a very good question. If we are espousing fairness, we can only answer the question in the affirmative. Yes, we would be prepared to do so. Obviously, the devil would be in the detail, but how can we say that there must be a level playing field but that it must be a level playing field of our own making? If equity is to prevail, we would be prepared to look at the standards that are applied elsewhere.

Bruce Crawford: That is very useful.

Tommy Sheridan: Alan Watt’s last answer is important. Jim Shields made the point that there is no incentive for contractors to be on the road for longer than is necessary. However, if there is not a level playing field in terms of evaluation when a contractor tenders for a job, someone could say that a job would take 12 weeks when they knew that it could be done in only nine weeks. There will always be the nagging suspicion that, although someone is being paid for those extra weeks, they are not out there on the job. It is important that Alan Watt, who represents CECA, is talking about a level playing field in all those areas.

I think you will find that the committee is trying to be even handed on the question whether a penalty scheme should be in place. We think that there
should not be a scheme for the private sector that is not also in place for the public sector. Would you be willing to work with others to ensure that such transparency was in place in relation to job evaluations and timescales?

Alan Watt: Yes, is the quick answer. The industry is used to a culture of sharing pain and gain, as is that the modern way in many construction contracts. I gave that answer without turning to the colleague on my right, but having now done so, I am pleased to say that I can see him nodding his head. The construction industry is developing into that culture—we share the pain if we overrun and we share the gain if we get the job done more quickly. I think that that is the idea behind the concept of lane rental.

Jim Shields: Nevertheless, we operate in a competitive environment. The harsh truth is that the contractor who builds in a longer timescale has built in costs and will therefore not win the job.

Tommy Sheridan: I have a question on a linked issue, although you have more or less covered the point. You said that you support some sort of incentivisation mechanism to ensure that there are no overruns and that poor-quality reinstatements are not made. In addition, Alan Watt said that you support a penalty scheme, but one that is evenly applied. Is CECA willing to suggest appropriate amendments to the bill to ensure that there is a level playing field? We, as committee members, are listening to you and to other experts, and it would be helpful if CECA were willing to produce amendments that were an appropriate means of delivering what we have been discussing.

Alan Watt: We would have to answer yes to that. We have said that we wish a certain thing, so we must be able to play our part in achieving it.

Fergus Ewing: I wish to ask about the lack of consistency in different council areas with regard to the required level of quality. I think that Mr Ross referred to that matter. Since you are here, Mr Watt, as well as Mr Morrison and Mr Shields, and given that, unlike the rest of us, who talk about road works, you actually do road works, could you give us some practical examples of that lack of consistency and of the different standards among local authority areas? It seems that we have not fully investigated that problem yet, and that you are the people who could perhaps put us right and help us to tackle the problem as we consider the bill.

David Morrison (Turriff Contractors Ltd): The committee has been discussing inspections. As was mentioned earlier, there is formal inspection, which is revenue generating, depending on the number of openings for local authorities. There is also a vast array of informal inspections. I would say that our work gets inspected every day—certainly by members of the public. In more rural areas, those inspections are done by the local inspector, who probably knows more about what is going on with the job than other people do. Despite some misinterpretation, there is continual inspection at the works. The regime has changed recently and there are vast differences in how it is applied. Inspection units are allocated to our clients but, when it comes down the line to us—at the sharp end—our work is being inspected every single day. If we get it wrong, there is an impact on safety at the sites and on our performance. That is not good for business.

The application of more stringent fines could ultimately have an effect on jobs. It is very hard to attract people to our industry as it is. The over-zealous application of statute, which is sometimes perceived, is difficult for the guys I employ to understand. One day, things are okay; the next day, there is a formal inspection and some guy gets picked up on it.

Fergus Ewing: Do you have any suggestions about how those inconsistencies could be addressed in practice?

David Morrison: That could be done by more open dialogue in some respects. There also needs to be a more consistent approach to how things are applied. That means ensuring that quality is applied through the whole programme, all the way through to how coring is done. It is about bringing the contractor to the fore when programmes are being decided. We work for utilities, but we are at the sharp end.

Fergus Ewing: Inspections are carried out by local authorities at the moment.

Jim Shields: Yes. David Morrison has just mentioned coring. I should clarify that coring is where we—or local authority inspectors or people working on their behalf—remove a circular section of a reinstated road, which is then inspected. That is a difficult job. We examine our own quality of reinstatement very closely. Sometimes, ours can be a wee bit skewed. If we identify a problem area, whether it concerns the materials or their application, we examine that area closely and we concentrate on it. We take the matter seriously. Taking a view on a piece of reinstatement is a difficult job. There is no doubt that laboratories can help, but even the expert eyes in the laboratory can take conflicting views.

To put all this in perspective, making the judgment on reinstatement is a difficult job for whoever does it, and that is the starting point that might lead to inconsistency. As David Morrison and the representative from RAUCS said, collaborative working will be the key. There needs to be discussion, agreement and a willingness to advance things for the wider benefit, with a view to
making genuine improvements rather than just penalising someone.

**Fergus Ewing:** Or just raising cash.

**Jim Shields:** That view could be held.

**Fergus Ewing:** I am aware of that.

The bill provides for there to be a code of practice—there is provision for just about everything else in section 29—which might address that point. I had a meeting with representatives of the national joint utilities group, during which the point was made that at present the inspectors are from local authorities, but that the new system will introduce the independent element of the road works commissioner. Given that there will be such an independent element and that local authorities and utilities are to be treated equally, is there a case for having a system of joint inspection? Instead of local authorities being legally responsible for having the say on whether someone has passed or failed the inspection and whether they need to redo work or to do more work, the commissioner could have a system of inspection practice that involved somebody from the utilities and somebody from the local authorities as joint assessors of whether the work had been completed satisfactorily. I hope that I am not misrepresenting the NJUG’s suggestion. Would you be interested in that, if I have described it correctly?

**Jim Shields:** Like CECA, we would consider that and suggest that it is taken a stage further. Given that our friends in the utility companies trust us to carry out the work and the reinstatement for them, we would like some sort of representation at the forum.

**Fergus Ewing:** I was not thinking so much of a forum.

**Jim Shields:** We would like representation, whatever form the suggestion takes. I am sure that the utility companies, which are, in essence, our employers, would put forward a fair and reasonable argument. If the organisation itself is carrying out the reinstatement, the debate would be much more purposeful.

**Fergus Ewing:** I support that in principle. If we have road works in Main Street, Anytown, it seems odd and unacceptable that local authorities should be the sole arbiter in deciding whether the works have been done properly. Under the new regime, with an independent third-party commissioner, there should be a different system whereby you would have an equal say with the local authorities as to whether you have done your job correctly and properly. The commissioner would then come in as the ultimate arbiter.

**Alan Watt:** That has a resource implication, which, I am sure, has not escaped you. Bruce Crawford, who has just left, was concerned about the resource implication in relation to the commissioner. What you suggest would not be the cheap option, but, given the equity and consistency argument, perhaps it would be a better system. Where would the resources come from? In the end, given the chain of payment in utilities, it would appear on utility bills.

**Fergus Ewing:** Right. I do not want to suggest anything that would add to expense—that is not my habit. I feel that we are getting close to the nitty-gritty and any suggestions and recommendations that you can provide would be of great help in the next stage of our consideration of the bill.

**Jim Shields:** Mr Ewing mentioned Main Street, Anytown. We talk about congestion in Scotland and utility works and we come back to the 5 per cent figure for congestion that is caused by utility road works, which has been mentioned often. We do not often find ourselves working on main streets, thoroughfares or trunk roads. We tend to work where people live and work—on industrial estates or housing estates—because we take facilities and services to people. Our impact on congestion is low. The 5 per cent figure provides perspective on where we sit in the wider congestion debate. When I saw the title of the original consultation document, I could not balance congestion with utility work.

16:30

**The Convener:** I suppose that the Executive would respond by saying that it has embarked on a range of measures to tackle congestion, including investing in public transport and implementing measures to deal with road traffic safety. It would say that this is not the only area in which it is trying to tackle congestion.

**Jim Shields:** Indeed, but that was how the paper was entitled. You can understand our confusion when we first saw the title.

**Iain Smith:** I am a little confused about what your organisation is concerned about in terms of the bill. If, as Jim Shields said, your aim is to do the job as quickly as you can and to get it right first time, your companies will have nothing to fear. Only those who try to cut corners and fail to do the job correctly the first time have anything to fear from the bill. As Mr Shields said, it is much more sensible, economically, for a contractor to get it right first time than it would be to cut corners and perhaps incur additional costs. What is the concern?

**Alan Watt:** You are absolutely correct, in that the firm wants to be in and out as quickly as possible and does not want to go back. The difficulty can arise in relation to the judgment
criteria for completion and the inconsistency with which those criteria are applied. We are beginning to distil the debate to a point at which that emerges as one of the crucial areas.

Iain Smith: Is the solution to do with improving the codes of conduct and the guidance so that everyone knows exactly what standards they are working to?

Alan Watt: That could be part of a suite of measures.

Iain Smith: I am sure that every elected member, whether MSP or councillor, has a number of horror stories about contractors who have taken significantly longer than they should have done to complete a job or who have failed to do the reinstatements properly and have had to come back and do them again.

An aspect that arises again and again is the level of supervision of contracts by the client. I could give you a good example of a situation in which the client’s supervision of the utility company’s operation was not adequate, but I do not want to name names. What is your position on the suggestion that there should be a requirement for supervision to ensure that contracts are completed properly?

Alan Watt: One of the criteria for membership of our organisation is that a prospective member should have ISO 9001:2000 and a rising proportion of construction skills certification scheme cards, which are both a qualification card and a demonstration that the holder is up to date in relation to health and safety requirements. Member firms have quality assurance systems, and both of the companies that are here today will have those as well as other qualifications.

Stuart Ross: We actively pursue reinstatement quality. We conduct in-house coring and tabulate the results, note trends, find out who the offenders are, impose retraining programmes and, if that proves to be ineffective, dismiss people. We take the quality of reinstatements seriously and invest heavily in terms of training, supervision and ISO 9001 accreditation.

That we should get the job right first time is implicit in everything that we do, not only for the commercial reasons that Jim Shields mentioned but because we do not want to draw attention to ourselves in a negative way by being the source of congestion or other road traffic annoyance. While I will be the first to admit that there is always room for improvement, our internal coring mechanism shows that our failure rate is between 4 per cent and 6 per cent, which means that our pass rate is up around 96 per cent. I do not have the facts and figures relating to how many road openings we undertake or how many square metres of reinstatement we can undertake to do in a day, a week or a month, but I suggest that that pass rate reflects the importance that we place on training, the calibre of our workforce and the quality of the product that we leave behind.

Jim Shields: I would like to respond to the question about supervision. With the certificates that we are delighted to have achieved goes some responsibility. We view ourselves as self-supervising. With a number of large clients, some of which are national, we have fully integrated management. If you walked into one of the offices, you would not be able to determine easily which member of the team was a client and which was from the contracting side in the traditional sense. We are working in an integrated, collaborative fashion.

As I said, there are limited resources in our business, so we must work closely with our clients. The clients with whom we work and are proud to work are forward thinking in their approach. Together, we are raising the standard. In many cases, we no longer play a subservient role. In the majority of cases, we play a partnering role, aimed at improving quality and taking infrastructure in Scotland to a higher standard.

Dr Jackson: Iain Smith has raised the issues that I intended to raise. I refer to an instance of reinstatement where work was obviously substandard, because there was sinking. What goes wrong when there is sinking after reinstatement? What has not happened that should have happened?

David Morrison: Two things could have happened. First, there may have been faulty workmanship. As the material was inserted, it may have been compacted with the wrong number of passes or with incorrect apparatus. Secondly, there may have been failure of the material. Because excavation was taking place on an existing road, there may have been water ingress or, for some unexplained reason, there may have been a wash-out around the apparatus that has been laid, which caused a dip in the reinstatement. The issue may be to do with the material or the workmanship.

Dr Jackson: Why are such problems not picked up by the supervision that you have described?

Jim Shields: We cannot answer for the organisation that was involved in the case to which you refer.

Dr Jackson: If sinking has taken place, as in my constituency, why is it not picked up at supervision time?

David Morrison: There are instruments that one can use to check the compaction at the top before laying the black surface—the wearing course of the road. When those instruments are dropped on
to the compacted surface, they can give a reading that is satisfactory and that allows laying of the blacktop to proceed. The defect may be around the apparatus that has been laid further down in the excavation.

**Dr Jackson:** You are saying that supervision is needed throughout the period of the reinstatement, not just at the end point.

**David Morrison:** There must be supervision at various angles and at different times during the job. We would not expect a supervisor to be present 100 per cent of the time, but we would expect them to see the compaction around the apparatus, at the backfill level and at the point where the new black surface is laid.

**David Mundell:** I want to explore your concerns about sections 27 to 30 of the bill, which enable local authorities to instruct the undertaker to reinstate an area of either half the width or the full width of the carriageway. Would you like to elaborate on your concerns and the difficulties that the provisions might cause for you?

**David Morrison:** That goes back to the issue of consistency—who applies the rules and says that a road must be reinstated. We are going back to the situation that existed under the Public Utilities Street Works Act 1950, the legislation that preceded the New Roads and Street Works Act 1991. At that time, utilities made what we might call donations to local authorities and temporary reinstatement was done. The local authorities used that money in their budgets to relay footpaths and to resurface roads. The issue is the possibility of a resurfacing order being placed before works are started. It would be very difficult if that could be done before a job was started.

**David Mundell:** In effect, there is a danger that local authorities might use the provisions to get a street resurfaced without that being in their budget.

**David Morrison:** It could be the last one in who pays.

**The Convener:** That concludes questions for the panel and I thank the representatives of CECA for coming.

We move on to our final witness. Iain Duff represents the Scottish Council for Development and Industry. Thank you for your written submission, which sets out the SCDI’s comments on the bill. I invite you to make introductory remarks before we move on to questions.

**Iain Duff (Scottish Council for Development and Industry):** I thank the committee for inviting the SCDI to provide evidence on the bill. I will repeat a little of what is in our written submission by way of introduction. The SCDI supports regional transport partnerships and has done so since the mid-1990s, when our transport policy was revamped and such partnerships were recommended as the mainstay of the policy. We are a member of an existing transport partnership, HITRANS, in which our role is to allow a broader view of transport issues to be presented, because we are a broad-based, independent economic development organisation. Our members are drawn from throughout Scottish society and represent not just businesses, but the public and voluntary sectors and trade unions. We act as a source of advice and as a sounding board for the partnership’s proposals. Obviously, we support the existing regional partnerships and we welcome the proposal in the bill to create statutory RTPs with increased powers.

Our written submission also mentions the road works provisions in the bill, which the committee discussed today. We support the proposals to establish a Scottish road works commissioner and to improve the scope and accuracy of the road works register for all undertakers of road works.

**The Convener:** It has been suggested that the proposed statutory RTPs would not necessarily provide more benefits in relation to public transport or roads than the existing voluntary partnerships provide. What is the SCDI’s view on the matter?

**Iain Duff:** As I said, back in the 1990s we thought that the way forward was to establish statutory partnerships that have the proper powers to deliver on strategies that they develop, instead of having to rely on their constituent members, particularly the local authorities. That must happen in partnership and through discussions round the table, but we thought that it would be better to give RTPs powers to deliver their own strategies.

Other powers—for example, powers on congestion charging or some roads powers—could move down or up to RTP level as the partnerships progress. Statutory bodies would have the teeth to deliver on such matters and would be better prepared to do so than voluntary regional partnerships.

**The Convener:** Paragraph 7 of your submission suggests that congestion charging schemes could be provided at regional level. Should the responsibility for introducing such schemes lie at regional partnership level? If so, why?

16:45

**Iain Duff:** In our submission, we said that one appropriate function could be congestion charging. That would allow the revenue that is raised in areas of congestion, such as Edinburgh, to be used to improve transport throughout a larger area. It is not just car users in a small area who will be subject to congestion charging and will benefit from the transport projects that will be
funded by it. We have always thought that the best way forward is for RTPs to use the extra revenue source on their wider view of what needs to be done in an area to improve transport.

The Convener: I have a final question before I bring in my colleagues. Some members have suggested that it will be difficult to get broad representation on some of the smaller partnerships—particularly the proposed north-east partnership—because of the proposed balance between council members and non-council members. Do you have any views on how the structure of the partnerships should work if we are to ensure that there is broad representation, at the appropriate level, both of local authorities and of other interests in the community?

Iain Duff: We have always envisaged that the regional transport partnerships would be local authority led, because democratic accountability is important—our experience with HITRANS shows that. The opportunity for the SCDI and other appropriate bodies to be represented—such as the chambers of commerce on NESTRANS—brings an added dimension. We think that decisions about which organisations should be represented are for the partnerships. The partnerships must define what role they want those external bodies to have—perhaps a business role, as in NESTRANS, or the wider economic development role that the SCDI has in HITRANS. In the parallel consultation on the issue, we are considering how other bodies are involved.

The smaller partnerships obviously have a problem with getting broad representation. The way forward is probably to have stakeholder groups below board level. That is certainly how HITRANS interacts with the multitude of users and operators in the Highlands and Islands. The RTPs must be consultative bodies and must look outwith the narrow board that they could have. The role that the SCDI plays in HITRANS seems to be welcomed and we are happy to provide that role in the Highlands and Islands.

Bruce Crawford: In paragraph 12 of your submission, you say:

"In its response to Transport Scotland, SCDI recommended that funding to RTPs is sourced in the main directly ... from the Scottish Executive."

You go on to qualify that because of opposition from the local authorities. Why have you backed down just because the local authorities do not think that that is a good idea?

Iain Duff: We have always thought that the regional transport partnerships should have central funding. It is not the case that we have changed our mind. We think that direct funding from the Executive via section 70 grants, which was one of the options in the previous consultation, is the way forward. Our experience in HITRANS—and conversations that we have had since the consultation and the bill were published—show that the requisition route of funding is a source of controversy. It seems to cause problems with the functioning and principle of the partnerships right from the start, so we think that the Executive should rethink the way in which the partnerships should be funded. Funding should come direct from the Executive so that the partnerships have adequate resources and so that there are not, under the statutory regime, conflicts right from the start about pressures on local authorities to find the money.

Bruce Crawford: Obviously, there is a certain pot of money to be spent. If the SCDI believes that central Government should support most of the funding, that inevitably leads to the conclusion that you think that local authority funding should be top-sliced so that money can be made available.

Iain Duff: No, not at all. We do not want to put any extra pressure on the local authorities. We feel that the Executive should find the money in its pot to fund the transport partnerships directly. There is already pressure on local authority funding and, if the money is top-sliced, that will inevitably put pressure on the partnerships and on local authorities from the start.

The Convener: Let us develop that point further. The local authorities could agree to carry out some of their functions through the new partnerships. Do I take it that, where local authorities decide to do that, you would expect them to provide the appropriate finance?

Iain Duff: That all depends on what is contained in the regional transport strategies that are drawn up. However, if there is agreement within the partnership that certain sources of finance will come from the local authorities, that decision must be reached in partnership with the local authorities. There must be discussion round the table. We would have no problem if local authorities and the other partners agreed that different sources should fund aspects of a strategy. However, that would have to be done with the agreement of all partners so that the partnership could progress as efficiently as possible.

David Mundell: You said that the new partnerships should be statutory, rather than a development of the current arrangements, because that would give them teeth. However, there are no teeth in the bill as currently drafted. The only requirement in the bill is for the partnerships to produce a regional transport strategy. That is not teeth.
Iain Duff: You are right. The only real teeth that the bill provides for is the duty on the local authorities in the partnership to co-operate, or at least to agree, to carry out the functions that are drawn up in the strategy. A lot hangs on that duty to enable the statutory partnerships to deliver the strategy. Being optimistic, we think that the duty will allow the partnerships to deliver their strategies appropriately. Other than that, you are right that there does not appear to be much more in the bill to enforce delivery of the strategy.

David Mundell: Do you or your members know of instances in which the fact that local authorities have not worked together has impeded major strategic transport development? That has been cited as a reason for establishing the partnerships on a statutory basis. You might have heard COSLA’s evidence today, which is the general evidence of local authorities, that that has not been the case. Can you point to a specific defect of the current voluntary arrangements?

Iain Duff: Not in the case of HITRANS, which is the body of which we have most experience. In HITRANS, all decisions are made consensually. There has been good discussion about the proposals, but there have been no major disputes that the voluntary system has been unable to iron out. The voluntary system has allowed the strategies to be delivered as they are at the moment. The strategies for some areas are better defined than those for others, but in HITRANS everything has been done on a voluntary basis and has worked well.

David Mundell: I do not want to single out organisations, but every group that we have asked, including the AA Motoring Trust and the Freight Transport Association, from which we heard evidence last week, has said that they should be members of the statutory partnerships. To ask for the interests of the haulage industry and of the ordinary motorist to be taken into account is not an unreasonable request. However, if we include the interests of cyclists and walkers, for example, I wonder where the process will end. Who is to be on the RTPs? We cannot have everybody on them, because that would mean that they were unable to achieve one of the other objectives, which is to take strategic decisions. What would the bodies’ legitimate membership be?

Iain Duff: All the groups that you mentioned have a case for being on the RTPs, as they are transport experts and they know the industries and the sectors that they represent. I would not like to say that they do not have the right at least to apply to be members of the partnerships. It will be up to the partnerships to decide, based on the strategies that they put together—or the vision for those strategies—the types of organisations that they wish to have as external members.

The SCDI has a role on HITRANS that the other partners seem to feel is appropriate, in that our broad membership can allow us to interact with many of the organisations that you are talking about as well. I would not necessarily say that the SCDI is appropriate for all the partnerships—that depends on resources—but the partnerships will have to consider what they want the external members to do. Guidance from the Executive is expected, which may give a bit more information to the partnerships about the role of the external members.

As an external member on an existing partnership, we have a role to bring as wide a view as possible to the transport discussions that are at the table. However, there is a case for many other bodies at least to be considered for membership. I would not like to preclude any bodies, but it is up to the partnerships to decide what they want from their external members. I think that that is provided for in the bill. The decision will be for the partnerships, based on, in the first instance, the go-ahead from the minister. We would not like to preclude anybody from at least being considered for the partnerships and from putting forward their own reasons why they should be at the table. We must remember that there is the chance for wider stakeholder groups. We would be very supportive of the partnerships and the boards being inclusive in the views that they take when the strategies are being prepared, so that the views of all potential operators, users and pressure groups are considered.

Fergus Ewing: What is the point in having regional transport partnerships when we already have—you would say—successful existing voluntary partnerships, such as HITRANS, in which I know the SCDI has performed an invaluable role, with many thoughtful contributions to the transport debate? In your paper, you are critical of the funding mechanism. You have acknowledged, in response to questions from Mr Mundell, that we do not know what the partnerships will be empowered to do; that we do not know how much they will cost to run; that we do not know what budgets they will have or what those budgets will be spent on; that we do not know what the boundaries will be; and that we do not know who will sit on them, apart from one councillor per council area. Is there merit in the argument that we cannot make a judgment about the partnerships, any more than a jury could if it were deprived of hearing nine tenths of the evidence in a case?

Iain Duff: Many of the issues that you spoke about are subject to our internal discussions. As you would expect, we are putting a submission
into the parallel consultation. Issues such as boundaries, voting rights and funding are still subject to consultation and the SCDI is still working up its own views on those.

Although HITRANS has operated successfully, there are ambitions to do more and to deliver more of a strategy for the area. There is a view that, to do that, extra powers will be needed. The duty in the bill to force a little more pace in pushing through on what the strategies are intended to deliver is felt to be the way forward. It is an ambition for the proposed Highlands and Islands regional transport partnership to have powers to develop and deliver more areas through the strategy.

In our submission, we envisage quite powerful organisations that will have control of some roads and, as I say, other issues, such as congestion, although that is perhaps not such a problem for the Highlands. Over time, the RTPs should seek to gain more powers, which a statutory basis would allow them to do more easily.

17:00

Fergus Ewing: I understand that. You are advocating a case for stronger bodies, but you must accept that the bill gives no clear indication whether extra powers would be conferred.

Iain Duff: No, not at all. We envisage that, over time and through discussions and preparation of the strategy, it would be become clear what the Highlands and Islands partnership wanted and needed to deliver. We do not want any major argument about who does what—that should be discussed over time around the table. Decisions would be taken about what powers would be appropriate for the partnership to have and which body is best placed to carry out which role, whether local authorities or the proposed national agency—the fact that there is not an awful lot of detail about the national agency’s role is also an issue. Over time and through the support of the partnership’s members, the understanding of what powers would be appropriate for the partnership to hold would develop.

Fergus Ewing: The partnerships can discuss and decide what they want but, unless the Executive agrees, they are just talking, are they not?

Iain Duff: At the minute, yes. There is nothing to impel the passing over of more powers. There would be a process of discussion and agreement round the table.

Michael McMahon: This afternoon, we have discussed quite fully the proposed Scottish road works register and Scottish road works commissioner. With commendable foresight, you state in your written submission:

“The goal is to reach a balance between the right of undertakers to carry out their works and the right of road users to avoid disruption and alleviate congestion.”

I expect that you heard the discussion about the balance between the obligations of the utilities and those of the local authorities. Will the bill bring about the right balance?

Iain Duff: We would like the proposed road works commissioner to be responsible for all road works. In previous submissions on the matter, we have made no distinction between who carries out what road works. From the SCDI’s point of view, the problem is the disruption to business and domestic users that road works cause, whoever is undertaking them, so we would support a new body that was designed to arbitrate independently only if it supervised and monitored all road works. From what I have heard, the bill seems to target the utilities more than local authorities. I must say that I did not pick that up on first reading the bill, because I am not an expert on the ins and outs of the transport legislation, but we would be looking for a level playing field and proper monitoring of all road works.

Michael McMahon: In our discussions with witnesses with three different sets of opinions, RAUCS—a body that seeks by its nature to find consensus and compromise—told us that it believed that it would be usurped by the establishment of the commissioner. Do you believe that external, independent scrutiny of road works and reinstatement of the roads is needed, rather than for the balance of interests to be represented in one organisation?

Iain Duff: The SCDI is not in the business of wanting new systems or organisations to be established for no apparent reason, so if an existing body could be adapted or given the powers to do the job and to adjudicate fairly in a way that would be acceptable to all players and undertakers, we would have no problem with that. However, the attraction of the proposal in the bill is that the Scottish road works commissioner would be independent and acceptable to all utilities, contractors and local authorities, which is the situation that we seek. However, if an existing body could take on that role and have the support of all the players, there would be no reason to set up another body—but I heard that suggestion for the first time today.

The Convener: That concludes the evidence session. Thank you for giving evidence.
7 December (28th Meeting, Session 2) (2004)) – Written Evidence

SUBMISSION FROM COSLA

Introduction

The Convention of Scottish Local Authorities (COSLA) welcomes the opportunity to contribute to the Local Government and Transport Committee’s evidence gathering on the general principles of the Transport (Scotland) Bill.

This written response will be complemented by evidence that will be presented to the Committee by COSLA’s Roads and Transportation Spokesperson, Councillor Alison Magee, Councillor Andrew Burns (Edinburgh), Councillor Alison McInnes (Aberdeenshire), Councillor Joan Mitchell (Dumfries and Galloway) and a COSLA officer, on Tuesday 7 December 2004.

Background

When the proposals for the new transport agency were first mooted last year COSLA had serious concerns over what might lie in store for Local Government. However, following representations by COSLA and individual local authorities to the Scottish Executive about the detail of what was being proposed, many of these concerns have now eased.

COSLA welcomed the publication of the white paper, “Scotland’s Transport Future”. The white paper, and the more recently published Transport Bill, are seen potentially as valuable steps forward in the debate on the future planning and delivery of transport services. The white paper brought together all aspects of transport; making explicit the links to economic activity, tourism, land use planning, the environment, health improvement and community planning, and confirming the key role that Local Government has to play at the centre of these. We also welcomed the acknowledgement that the principle of subsidiarity should apply – ie decisions must be taken at the most appropriate level. COSLA is seeking to ensure that these links are not lost as the Bill and accompanying Orders develop over the coming months.

Partnership

COSLA has long argued for a national, integrated, properly resourced, long-term transport strategy for all Scotland. Therefore we are delighted to see the commitment to these aspirations by the Minister.

COSLA believes the national strategy must be developed by the Scottish Executive in partnership with Local Government, business and other key stakeholders. The development of a proper national strategy should take place alongside that of consistent regional transport strategies. This will mean clear priorities being identified and agreed at national, regional and local levels, allowing a truly integrated and balanced approach from top to bottom in terms of transport strategy and delivery. Part of this is good, consistent, related guidance at all levels and Local Government has a key part to play in the development of this.

The four existing voluntary partnerships have already:

- focused national attention on regional issues;
- helped make the case for increased transport funding;
- secured Scottish Executive and European funding;
- been a catalyst to development and appraisal of strategic projects;
- linked transport, planning and economic development; and
- enabled private sector involvement.

The proposals for creating new statutory Regional Transport Partnerships, which build on this good work, are extremely important and will be the subject of detailed comments from COSLA to the relevant consultation paper in early January 2005. At the time of writing, we have not had the opportunity for a detailed debate within COSLA to begin formulating a response to the consultation
paper. However, the following sets out some initial thoughts based on feedback received at the time of writing from local authorities.

**Timetable**

COSLA agrees that regional partnerships should begin to work together prior to their formal constitution, currently timed for early 2006, and has welcomed the commitment by the Minister to make funding available specifically to support preparatory and preliminary work, although we have expressed concerns to the Scottish Parliament’s Finance Committee regarding whether it will be enough.

While Local Government accepts that the new partnership arrangements should bring benefits in terms of joining up planning between local and national levels, COSLA did not support the immediate move to statutory partnerships. We wished them to evolve naturally. With that in mind, we believe that the Scottish Executive must fund this added burden on a longer term basis, at least until they are fully established. This will probably require advance funding to ensure the new partnerships are fully ready to take on their responsibilities on day one.

The impact of the new partnerships will be considerably lessened if there is a perception, and in this case reality, that they are being funded at the expense of existing council services. We would also stress that this must be new money, not recycled from elsewhere within the Transport Budget. The existing voluntary partnerships and SPT have provided more detailed analysis of the likely shortfall in funding.

There also have to be questions regarding the timescales involved. Presumably shadow bodies will have to be appointed prior to 1 April 2006 and, to name but three further issues: staff will have to be transferred or appointed, widespread consultation will be required on the proposed strategy and much negotiation over priorities should be expected.

**Boundaries and Constitution**

COSLA welcomed the acknowledgement in the white paper of the need for different arrangements across the country and particularly the flexibility that will allow individual councils, should they choose to do so, to “split” between two regional partnerships. Such choice is very important and we believe that change to the proposed partnership boundaries must be possible, should local authorities agree that they are an improvement.

Dumfries and Galloway Council has raised issues specific to its circumstances and the Committee has invited them to provide evidence following COSLA’s session.

The constitution of the new partnerships is an area where there remains some debate. The Executive has proposed partnerships should be formed from one elected member per council with weighted voting. How this might work in practice is still being debated by councils. COSLA believes that the membership arrangements must provide the best possible structure for local accountability. We believe that there must be flexibility in terms of the arrangements for each partnership area, particularly given their likely different size and make-up. The partnerships themselves must be allowed to negotiate the arrangements that best suit their needs while ensuring the preparation and delivery of a regional strategy remains focused.

COSLA has welcomed the Bill’s proposal to give the regional partnership the power to involve external members and for the partnership itself to have the responsibility for identifying such members. It is worth pointing out however that, depending on the individual, there may be circumstances where there is the potential for a conflict of interest. Importantly, COSLA cannot support external members taking decisions on the requisitioning and spending of public money. We believe, however, that such issues can best be resolved and local democratic accountability protected by voting arrangements at the local level and the Scottish Executive must allow this flexibility.
Functions

The Scottish Executive’s acknowledgement that partnerships will evolve at different speeds has been welcomed and COSLA has accepted that, in the longer term, in some areas, functions may well transfer to the new regional partnership. However, this must only happen if agreed by the partnership itself. There must not be the opportunity for a future Minister to move powers around without reference to Local Government.

The new partnerships will allow local authorities to work together, pooling skills and expertise in transport, but when considering the transfer of functions, there may be problems for councils where staff are multi-disciplined. Should members of staff transfer to the regional partnership, then that potentially leaves a gap that has to be filled.

Where staff transfer with a function they must be protected by TUPE.

The situation in the west of Scotland is somewhat different to the rest of the country. COSLA has argued that power over the railways must return to Scotland and therefore welcomed the announcement in the Queen’s Speech that the government will legislate to do this. Assuming this happens, Strathclyde Passenger Transport, or its successor body, should have day-to-day operational responsibility for rail functions in the west of Scotland. Also, any move of rail responsibilities to Scotland must be accompanied by adequate investment funding.

Funding

Funding will always be a contentious issue for Local Government. We hope that a long term integrated approach to transport in future, can begin to tackle seriously the underfunding problem. We have already referred to core funding and our belief that, as this is a new burden, the Scottish Executive must provide advance and sustained new funding to ensure that the running of the new partnership is not at the expense of other council services.

In terms of the delivering on regional transport strategies, COSLA broadly welcomes the £34m grant to be made available by the Scottish Executive annually to deliver public transport and road improvements. However, this will not go far. Partnerships will have to explore innovative ways to access the further funds required to deliver real, planned change at the local level. Visionary strategies from regional partnerships will require significant amounts of money, not all of which can be found from existing budgets.

Prudential borrowing is put forward as a solution. Sharing the costs of this between local authorities by recquisitioning is suggested and there are differing views across the country on the acceptability of this and how it might work in practice. Given these differing views, COSLA will respond in more detail on this issue once we have had the opportunity to discuss it further with member councils. Meantime, it is worth pointing out that the top-slicing of council funds by the Minister to be redirected to the new partnerships is not supported.

In terms of prudential borrowing, it should be pointed out that there are other forms of capital financing and these should also be available. There is also the point that this focus on borrowing seems to run counter to other messages from the Scottish Executive about limiting local authority spending under the Prudential Regime, as borrowing is already too high.

While large capital sums are undoubtedly required, we must not forget that there is also the need for ongoing revenue support. There is little acknowledgement of this in the Bill or accompanying documents.

Again, we must stress that we believe that external members should not be voting on the spending of council funds.

A further issue is the prioritisation of projects at the regional level. Regional planning will only be effective if it is just that and not a means for the Scottish Executive to deliver its national priorities. This could be the case if the Scottish Executive is only willing to fund its own priorities. Work requires to be done to distinguish what is a local, regional and national responsibility. Of course,
there will be some crossover, which is why the development of complementary national, regional
and local transport strategy guidance is so important. Planning must be truly integrated if the new
arrangements are to be effective and make the best use of limited funds.

COSLA will seek to support evolving partnerships in ensuring that the necessary funds are
available to deliver on regional strategies.

Other aspects to the Bill

The proposals to tackle poor road works, with a new Scottish Road Works Commissioner and
stiffer penalties for delays and low quality resurfacing, are welcomed. More important than
collecting fines is the ability to ensure that roads are closed for the least possible time and
reinstated to the best standard. COSLA will work with SCOTS and the Minister over the coming
months to ensure that the Bill and supporting Orders, which contain much technical detail and
require analysis, definitely allow this to happen.

There are a number of other miscellaneous parts to the Bill – the most high profile of which is the
power to deliver a national free bus fare scheme for the elderly and the disabled and cheaper travel
for young people. Again, COSLA has long argued for such a scheme and will work with the
Executive over the coming months to allow them best to benefit from councils’ experience of
operating concessionary schemes.

We must ensure there are concessionary links in remote areas where the sustainability of rural
communities is increasingly becoming a serious problem. It is not just about support for bus travel.
For some areas, it is about ferries, trains and/or aeroplanes too. The new national scheme must
accommodate such modes of transport where essentially they act as buses.

Also, financial support must continue to allow councils to subsidise bus services on non-
commercial routes. Without this assistance, there will simply be no buses for all the new
concessionary travellers to use. Proposals to streamline the harbour orders process will help to speed up the consents procedure. This is important for the timely delivery of ferry infrastructure projects and sea freight terminals
within harbour areas and is welcomed by COSLA.

Conclusion

The Bill itself is largely enabling which means that much of it will be implemented by Order. Much
work is required to develop these Orders and COSLA has established a cross-party Task Group to
protect its members’ interests. We will lobby hard over the coming months. For several years, we have argued for subsidiarity of decision making and clear priorities being
identified and agreed at national, regional and local levels, allowing a truly integrated approach
from top to bottom in terms of transport strategy, resourcing and delivery. The new structure
provides that opportunity. But, to be effective, it must be accountable, fully funded and fit for
purpose. We seek the Committee’s support to secure that commitment.

James Fowlie
Team Leader – Environment and Regeneration

SUBMISSION FROM THE ROAD AUTHORITIES AND UTILITIES COMMITTEE (SCOTLAND)

Introduction

The Roads Authorities & Utilities Committee Scotland (RAUC(S)) welcomes the opportunity to give
evidence on the Transport (Scotland) Bill.

RAUC(S) is a national committee made up of members representing all major Utilities and all 32
roads authorities and the Scottish Joint Utilities Group. The remit of RAUC(S) to help all parties co-
ordinate roadworks in the most effective manner and deal with matters of common interest. Local
Roads Authorities & Utilities Committee (LRAUC) operate below the national committee on an area
basis to co-ordinate roadwork activities.
General Comments

RAUC(S) welcomes the Transport (Scotland) Bill as it strengthens the Scottish Road Work Register (SRWR). However, we are concerned that the creation of a Scottish Road Work Commissioner duplicates the current role of RAUC(S) without any added benefit certainly in terms of dispute resolution. The current successful structure created by RAUC(S) is outlined in the chart below:

The Transport Scotland Bill – Part 1 Regional Transport Partnership

RAUC(S) welcomes the general principles behind the creation of Regional Transport Partnerships (RTP). However, we believe that the strategic role envisaged for the Transport Partnerships means that it would not be appropriate for Scottish Minister to use their powers under the Bill to transfer Road Authorities' powers/functions to RTPs. It is our view that splitting responsibility for overseeing road works between a number of different bodies would not be a sensible course of action.

Concern was also expressed by RAUC(S) members that RTP access to the Scottish Road Works Register may have a detrimental effect on the performance of the system.

The Transport Scotland Bill – Part 2 Roadworks

The Scottish Road Works Commissioner

Section 14: Creation, etc of the Scottish Road Works Commissioner

The creation of a Scottish Road Works Commissioner (SRWC) would appear to be completely unnecessary as it replicates the current remit of RAUC(S). In addition, it is not clear from the Bill as drafted that the SRWC is the final arbitrator in the case of disputes.

Furthermore, it is not clear that the SRWC would have significant additional powers to those currently given to Roads Authorities as a result it is difficult to envisage a significant increase in prosecutions from the current low level.
Section 15: Functions of Commissioner

The functions outlined in the Bill as being those of the Commissioner are those carried out by RAUC(S). The White Paper spoke of an intention to improve training, there is currently no mention of the SRWC having any powers or duties relating to training. If the office of a SRWC is to be established and be an improvement on current arrangements then the monitoring of training standards and qualifications should be included as one of its core functions.

Section 16: Duty of road works authority and undertakers to provide Commissioner with information.

If a duty is placed upon undertakers and road works authorities to provide the SRWC with information this will place a significant additional workload on both road works authorities and undertakers – for which the Scottish Executive is unlikely to make additional resources available. It is possible that Section 16 will have a disproportionate effect on smaller local authorities.

The Scottish Road Works Register

Section 17: The Scottish Road Works Register

The SRWR is one of the real successes of RAUC(S) as outlined above, the SRWC appears to take over the functions of RAUC(S) and the creation of the SRWC calls into question the future of Susiephone Ltd who currently deliver the SRWR. However, it is clear from the Bill as currently drafted that the SRWC will not run and finance the SRWR. The decision not to include responsibility for the day to day maintenance of the SRWR is an oversight on the part of the Scottish Executive.

Section 17: 112B of the New Roads and Street Works Act 1991 (NRSWA91)

This new section is flawed as it includes some minor provisions of the Roads (Scotland) Act 1984, but omits two major sections (S56 – Control of Works and Excavations and S61 – Granting of Permission to place and maintain etc apparatus under a road). This section will place a significant additional duty upon road works authorities with associated resource implications.

Miscellaneous

Section 18: Directions as to timing of road works.

RAUC(S) believes that Sub-sections (1) and (2) usefully clarify the wording in NRSWA91 and fins Sub-section (3) useful. However, Sub-section (4) requires clarification require the various regulators (OFGEM/OFCOM, etc) to comment. In certain circumstances the regulators also specify timescales for the resumption of service following a service disruption. However, RAUC(S) understands that this clause may also assist undertakers and prevent potential difficulties with regulators. Nevertheless, further consideration of this section is required particularly in relation to Universal Service Obligations.

Section 19: Directions as to placing of apparatus in roads.

Section 19 as currently drafted does not take into consideration the fact that disruption is inherently short-term, however, the benefits from laying apparatus are normally long-term and in the case of all utilities but particularly telecommunication equipment can have significant economic benefits. In addition, Section 19 has no exemptions and clashes with other legislation and with the requirements of regulators.

The intention behind Section 19 may be to focus undertakers on alternative approaches to carrying out the work. To manage this effectively a Code of Practice would be required – the writing of which has resource implications. The Regulations that will be issued under Section 19 as drafted should be subject to mandatory consultation to ensure that they are workable.

Furthermore, it is possible that the use of this section by two adjacent road works authorities (e.g. Scottish Executive and Council) could prevent apparatus being laid at all. In addition, the Scottish
Executive has responsibility for trunk roads therefore an undertaker might be required to appeal to the Scottish Executive against a decision that the Executive originally made.

Section 20: Restriction on works following substantial road works.

RAUC(S) is broadly content with this section, e extension to 3 years, as there are sufficient exemptions for undertakers, however, it is vitally important that these are maintained as the Bill continues its progress through Parliament.

Section 21: Duty of road works authority to co-ordinate road works etc.

Anything which strengthens co-ordination is welcomed by RAUC(S).

Section 22: Duty of undertakers to co-operate with authorities and other undertakers.

As outlined above anything that strengthens co-ordination is to be welcomed, however, there is some concern about the potential impact of this Section on undertakers. It is also likely to be extremely difficult to implement effectively until new (GIS) developments are introduced to the SWR. There is a need to clarify/reinforce that co-ordination must remain a road works authority function.

Section 24: Qualifications of supervisors and operatives.

RAUC(S) believe that this section should include a requirement for mandatory re-training. If a SRWC is to be created then he should be given real powers in this section to monitor and also to issue sanctions (including the removal of qualification in severe cases).

To ensure that this Bill achieves its aim of increasing the quality of road works this section should be extended to ensure that all those working on public roads are qualified including, Council DLO, contractors and private contractors.

RAUC(S) recognise that the intention of Section 24 is to ensure that operatives are trained and able to show evidence of the training. However, the requirement for notification introduced by Section 24 will be extremely complicated to comply with. For example, will there be a requirement to register the names of individuals on site for a short period, such as those who lay out the signage, or those involved in guarding the site where many people might be involved for very short periods.

Section 25: Duty of authorities, undertakers etc. to ensure competence of employees etc.

This section is felt to be weak and thus difficult to enforce.

Resurfacing

Section 28: Power of road works authority to require undertaker to resurface road/Section 29: Resurfacing: regulations and guidance/ Section 30: Contributions to costs of resurfacing by undertaker.

In principle, RAUC(S) welcomes the above sections but there is concern about how these sections, particularly 30 might work in practice. The central concern is around whom pays for resurfacing of the section of road that is not directly affected by utility road works, and how the payment formula will be calculated.

The above sections will require a complex Regulations and Code of Practice to ensure a national approach across. A requirement on the Scottish Executive to consult on the Regulations and accompanying Code of Practice must be included in the Bill.

In addition, if utility companies are required to contribute to the wider resurfacing of the road than at present the associated costs will eventually be passed on to the consumer through higher bills.
Enforcement of the 1991 Act


Surprise was expressed by RAUC(S) members at the proposed use of summary offences rather than fixed penalties. Increase in penalties is meaningless as most (if not all) Procurators Fiscal decline to prosecute NRSWA91 offences - in the past two financial years, 22 charges were reported and only four have been prosecuted.

Section 32: Fixed Penalty Offences.

RAUC(S) agree with the principle of fixed penalty offences for the reasons outlined above.

Section 34: Method of settlement of certain disputes under 1991 Act.

RAUC(S) do not believe that there would there be a need for this section if SRWC was not created. RAUC(S) currently has a successful arbitration scheme that has worked well for many years.


RAUC(S) believes that these sections are useful.


RAUC(S) believe that it is important that this schedule should include fixed penalties for more than just noticing offences. Whilst it would be easy to replicate Schedule 3, some offences are potentially too vague to enable fixed penalties to be used.


Concern was expressed by RAUC(S) members that Paragraph 7 could be used in a vexatious manner to stall the prosecution of offences and that fixed penalties for road works should perhaps follow the parking ticket model where a review can be asked for.

Financial implications of the Transport (Scotland) Bill

RAUC(S) has provisionally costed the financial implications of Part 2 of the Transport (Scotland) Bill if it was introduced as currently drafted. A conservative estimate suggests that 42 FTE administrative staff will be required. The total cost including office accommodation will be in the region of £2m. The Bill will also have financial implications for utility companies and consumers as additional costs such as the requirement to resurface additional sections of roads will eventually be passed on to consumers.

SUBMISSION FROM THE CIVIL ENGINEERING CONTRACTORS ASSOCIATION

CIVIL ENGINEERING IN SCOTLAND

CECA (Scotland) represents over 80% of Scotland’s civil engineering contractors in an industry that sustains an annual outturn of £1.4bn and a permanent workforce of over 20,000 with many more in its supply chain. Our membership includes the majority of the contractors carrying out infrastructure work on behalf of the utility companies. CECA therefore feels qualified to comment on behalf of the industry. The Committee should note that utilities provision and maintenance is a highly competitive market with profit margins normally ranging between 2 – 4%.

Alfred McAlpine Infrastructure Services is Scotland’s largest utilities contractor. Based in Hamilton, South Lanarkshire it employs over 1,000 full time personnel across Scotland.
Turriff Contractors is a specialist utilities contractor. Based in Turriff, Aberdeenshire it employs over 250 full time personnel and is a major local employer.

ARE UTILITY ROADWORKS A MAJOR CAUSE OF CONGESTION?

In principle, CECA supports the aims of reducing congestion and increasing the quality of reinstatement on Scotland’s roads.

However, we have genuine concerns that these problems cannot be solved until there is a broader focus on where the real issues lie. In CECA’s view the title of the consultation document, The Regulation of Utility Company Roadworks - A Consultation, illustrates the limited scope of the consultation process. If the Bill is trying to address the problem of congestion caused by road works then all sources of congestion should be considered, including work carried out by Local Authorities and the Scottish Executive. The view that the proposed legislation should be applied to both Local Authorities and utility works is supported by data from a report in 1999 by the Transport Research Laboratory which was used in the Highways Agency Business Plan 2002 – 2003, and advised that congestion is caused by 65% traffic volume, 25% incidents/accidents and 10% road works, of which 5% relates to utility works and 5% from Local Authority works. Therefore, it is of note that legislation aimed solely at utility works is in essence only addressing 5% of the congestion problem.

WHY ARE THERE UTILITY ROADWORKS?

The Committee will recognise that the principal cause of increased roadworks in Scotland is the huge increase in investment in Scotland’s infrastructure by the Scottish Executive, its agencies, its utilities and Scotland’s Local Authorities. Basically, there have to be roadworks in order to carry out long overdue investment in Scotland’s transport, water, sewerage, gas, electricity and telecommunications infrastructure. Roadworks are not an inconvenience per se, they are a means of improving our infrastructure and thereby our quality of life.

THE ROLE OF THE LOCAL AUTHORITY

In the consultation document, The Scottish Roadworks Register was used to produce statistics relating to the number of road works carried out in certain periods. CECA would suggest that this data only provides part of the story because the Scottish Roadworks Register does not record Local Authority works and therefore any comparisons between utility and Local Authority works are not possible. In the proposed legislation, the Local Authorities do not seem to be obliged to use the Scottish Roadworks Register to record their own works. However, the Local Authorities will be responsible for maintaining the accuracy of the records. CECA believes that consideration should be given to, among many other things, the balance that may or may not prevail given the role of Local Authority officers within the legislation and any potential for a conflict of interest. CECA believes that in order to achieve an “accessible Scotland…” the Bill should be applicable to all organisations that are engaged in road works but we are concerned that where Local Authorities enforce the various aspects of this Bill, there is the potential for the Local Authority officers to interpret the Bill differently for works carried out by utility contractors when compared to their own appointed contractors and their own Direct Labour Organisation.

On page 5 of consultation document reference was made to statistics from the 3rd national coring exercise. This involved a random sample of utilities road works reinstatements, completed between September 2001 and March 2002, and with reinstatement defects resulting in inspection fees being levied by the Local Authorities. No reference was made in the consultation document or in the Bill to Local Authority works being subject to similar quality standards. It is CECA’s understanding that Local Authority works are not cored and it is therefore unclear what quality checks are carried out. We can understand that through the use of fixed penalties, as stated in Schedules 3, 4, 5, 6 & 7 of the proposed legislation, there is a mechanism for the Local Authorities to penalise roadworks that do not comply with the process but we would question what incentive shall exist for the Local Authorities to comply with the process themselves?

CECA welcomed Parliamentary Questions submitted by Bruce Crawford and Michael McMahon that focused on this key point - will Local Authorities road works and reinstatements be subject to
the same level of independent scrutiny and enforcement measures as other roadworks? If so, then clear guidelines and very prescriptive instructions will be required to ensure consistency.

More specifically the Bill proposes to introduce, through sections 27 to 30, the facility to for a Local Authority to instruct an undertaker to reinstate an area to either half or the full width of the carriageway, if the road has deteriorated as a result of utility works and reinstatements. CECA has serious concerns about the potential for wide ranging interpretation of this type of facility unless, again, clear guidelines and very prescriptive instructions are introduced to ensure consistency.

QUALITY ASSURANCE AND SKILLS QUALIFICATIONS

All reputable utility contractors have their own externally audited Quality Assurance systems, which include rigorous drivers for client satisfaction and delivery improvement. The Committee will appreciate that there is absolutely no benefit to contractors in being forced into over-runs or additional remedial works. Quite the reverse, remedial works cost contractors money, jeopardise their prospects of further work from the client and make no commercial sense.

As part of their quality assurance contractors engaged in utility works train and certify their supervisory and operational personnel to a level that affords recognition with the Street Works Qualification Register. This training and the renewal of registration are carried out at a cost to the contractor. CECA therefore welcomes the proposed legislation whereby the Local Authority can issue a notice requiring evidence of such qualifications which will help to ensure that only qualified personnel will work on Scotland’s roads, provided this is applied in a uniform fashion across all personnel engaged in road works.

CECA AS A STAKEHOLDER

Finally, CECA Members feel that they are major stakeholders in this subject and would welcome the opportunity to discuss it further with other stakeholders. The proposals in the Bill could have a dramatic effect on contractors’ businesses and we hope that the industry will be given the opportunity to engage at the highest level to ensure a balanced, workable outcome.

SUBMISSION FROM THE SCOTTISH COUNCIL FOR DEVELOPMENT AND INDUSTRY

Introduction

The Scottish Council for Development and Industry (SCDI) is an independent economic development organisation that strengthens Scotland’s economy through the formulation and promotion of innovative public policies to encourage sustainable economic prosperity. Its members are drawn from businesses, local authorities, trades unions, educational institutions and the voluntary sector. SCDI submitted detailed responses to the transport White Paper, “Scotland’s Transport Future” earlier this year and the consultation, “Scotland’s Transport: Proposals for a new approach to transport in Scotland” in December 2003.

SCDI notes that the Committee is seeking written evidence on the general principles of the Bill, including –

- the reasoning behind the introduction of the Bill
- key issues that are raised by the proposed legislation
- consequences of the Bill’s enactment
- the consultative processes undertaken prior to its introduction.

SCDI’s main interest in the Transport (Scotland) Bill 2004 relates to the establishment of statutory Regional Transport Partnerships. SCDI has been a supporter of statutory Regional Transport Partnerships since the mid-1990s when they were recommended as a mainstay of SCDI’s Transport Policy and is a member of the Highlands and Islands Strategic Transport Partnership (HITRANS). SCDI, therefore, supports the existing Regional Transport Partnerships and welcomes the decision to increase the power of these bodies by creating statutory Regional Transport Partnerships through this legislation. SCDI is submitting a response to the current Scottish
Regional Transport Partnerships (RTPs)

In its evidence to the previous Transport (Scotland) Bill in 2001, SCDI was concerned that the Bill was being introduced without the benefit of an overall vision or strategy that would define the goal of the specific measures proposed in the Bill. It is welcome that, in parallel to the establishment of statutory RTPs, the proposed National Transport Agency will be charged with preparing a national transport strategy for Scotland. However, without such a strategy already in existence there continues to be a lack of an overall vision that would define what the initiatives in the Bill are intended to achieve.

Nonetheless, SCDI agrees that the minimum statutory duty of the RTPs should be to create a regional transport strategy for their respective areas compatible with and complementary to the national strategy developed by the National Transport Agency.

Currently the existing RTPs can and do produce transport strategies for their areas. However, under the current informal nature of the RTPs, delivery of initiatives contained in the strategies has, in the main, to be carried out by other bodies, including the member Local Authorities. SCDI sees merit in enabling RTPs to be provided with the powers to, as paragraphs 18 and 19 of the Policy Memorandum that accompanies the Bill states, “guide and co-ordinate the activities of the individual councils in the delivery of that strategy” and that “Councils and other specified public bodies will have in return a duty to perform, so far as possible, their transport functions in a way that is consistent with the regional transport strategies.”

SCDI also supports the proposal that RTPs will be able to take on other transport functions. This need not happen immediately and will depend on the types of initiative contained in the regional transport strategies and national transport strategy. When SCDI first proposed RTPs it was envisaged that they would be responsible for all aspects of the transport network within their areas. However, as the idea has developed, it has become clear that certain transport functions are best carried out at a national level, some at a regional level and some at a local level. Examples of functions carried out at a regional level could be congestion charging schemes, where appropriate, in their designated areas.

A further function that could be considered in the future concerns the road network. SCDI has previously suggested there should be a hierarchy of roads. To retain coherence, the management, operation and maintenance of major, inter-regional trunk roads should remain at a national level. However, there are regional trunk roads that could become the responsibility of the RTPs. Below that level, the RTPs would also be directly responsible for strategic non-trunk roads. However, it must be ensured that the existing coherence in policy and funding towards Scotland’s trunk road network is not compromised by such a hierarchy. Local roads should remain the responsibility of Local Authorities.

As far as the Highlands and Islands is concerned, SCDI feels it may be beneficial to have an increased amount of local involvement in the operations of the two Scottish Executive owned companies, Caledonian MacBrayne (CalMac) and Highlands and Islands Airports Limited (HIAL), that serve the Highlands & Islands community. SCDI recommends that the strategic policies of HIAL and CalMac should be agreed in consultation with HITRANS thereby corresponding to and being integrated with any regional transport strategy established by the HITRANS. This role should also extend to NorthLink Orkney and Shetland Ferries Ltd. However, NorthLink’s connections with the North-East of Scotland would also have to be taken into consideration and the involvement of the North-East Regional Partnership, NESTRANS, would be necessary.

SCDI welcomes the proposal that external members will be eligible for membership of the statutory RTPs. This will allow SCDI’s continual involvement in HITRANS and provide an opportunity for other interested parties to offer a different perspective on transport issues to the RTPs.

SCDI agrees that all members of the RTP, including external members, should have a vote in order to ensure full and participative membership for all. However, SCDI has previously expressed
concerns about the democratic accountability issues that allow external members to vote on how public money is spent, particularly when those external members make no financial contribution to the RTP. Furthermore, the fact that external members would have the same number of votes as a small Local Authority, that would be making a financial contribution, is also a source of concern. It may be appropriate to revisit the weighting of votes system that is proposed.

In its response to Transport Scotland, SCDI recommended that funding to RTPs is sourced in the main directly via Section 70 grant from the Scottish Executive. Despite arguments that such direct funding from the Scottish Executive would centralise decision making and compromise local democratic accountability, the strength of opposition from local authorities to the requisitioning of funding proposal leads SCDI to conclude that this is not the best way forward. SCDI remains of the opinion that a direct grant from the Scottish Executive should be the major source of funding for the RTPs.

**Road Works**

SCDI responded to the consultation, The Regulation of Utility Company Roadworks in January 2004, recognising that roadworks, whether by utilities or other organisations such as the Scottish Executive and Local Authorities, can cause business and domestic road users disruption and inconvenience. Any initiatives to ensure that roadworks are carried out as swiftly and efficiently as possible are supported by SCDI. The goal is to reach a balance between the right of undertakers to carry out their works and the right of road users to avoid disruption and alleviate congestion.

SCDI is pleased to note that the Bill intends to improve the Scottish Road Works Register (SRWR), which is known to be an inaccurate source of roadworks information, and ensure that undertakers and road works authorities maintain and use the SRWR as the central tool for daily and longer term planning. SCDI has previously suggested that better planning prior to commencement may provide an effective solution to the alleviation of disruption caused by roadworks.

SCDI welcomes the proposal to introduce an independent body, in the form of the Scottish Roadworks Commissioner, to both monitor the quality of roadworks of both roads authorities and other statutory undertakers and to co-ordinate road works. Again, the ability of the Commissioner to monitor all roadworks, no matter the undertaker, is important.

**Parts 3 and 4**

SCDI has no comments on Parts 3 and 4 of the Transport (Scotland) Bill 2004.

Iain D Duff
Chief Economist
The Scottish Council for Development and Industry
Scottish Parliament

Local Government and Transport Committee

Tuesday 14 December 2004

[THE CONVENER opened the meeting at 14:10]

Transport (Scotland) Bill: Stage 1

The Convener (Bristow Muldoon): We have a heavy agenda today: five panels will give us evidence on the Transport (Scotland) Bill, which will be followed by consideration of the Gambling Bill and of how we will deal with a Sewel motion on the Railways Bill. I encourage all members to focus their questions and contributions so that we can make progress through the agenda.

With respect to our first two panels of witnesses in particular, I pass on apologies from three committee members, who must leave for other parliamentary business for part of the meeting, which is unfortunate but unavoidable: three of us must give evidence to the Parliamentary Bureau on matters that Parliament will consider in due course. To the witnesses who will be giving evidence then, I apologise on behalf of myself, Tommy Sheridan and Sylvia Jackson.

I welcome our first panel, comprising Roderick McLeod and Ewan Jones, who are members of the Mobility and Access Committee for Scotland. We look forward to your evidence on the Transport (Scotland) Bill. Before giving you the opportunity to make your introductory remarks, I hand over to my colleague, Bruce Crawford, who is deputy convener of the committee, so that we do not interrupt proceedings later, when I have to leave.

The Deputy Convener (Bruce Crawford): Good afternoon. Do you wish to say anything on the Transport (Scotland) Bill to begin with, or would you prefer to go straight to questions? It is up to you.

Ewan Jones (Mobility and Access Committee for Scotland): We will take a minute or two to make comments first.

The Deputy Convener: On you go.

Ewan Jones: We will make a few scene-setting points then hand over to the committee and try to answer any questions.

The Mobility and Access Committee for Scotland welcomes the opportunity to give evidence to the Local Government and Transport Committee on the proposals in the Transport (Scotland) Bill to introduce a national concessionary fares scheme and to establish statutory regional transport partnerships.

Margaret Hickish and Trevor Meadows, who are members of MACS, gave evidence to the committee previously, during its inquiry into the effectiveness of the Transport (Scotland) Act 2001. Our position statement, which was submitted then, questioned the focus of concessionary fares. Our statement highlighted the range of issues that must be addressed if transport is to be accessible to all disabled people.

There is no point in providing a concession, either through a national scheme or a local scheme, if people cannot access the services. We believe that a national concessionary fares scheme should bring about a consistent approach, which would be welcomed by all passengers and would avoid the problems that are currently experienced by people who travel from one local authority area to another. Experience also shows that such schemes are likely to draw the wrong people on to public transport, in so far as they draw relatively affluent older people out of cars and on to public transport outside the rush hour, which does not lead to improvement in social inclusion. As the current group of mobile concessionary pass holders becomes less mobile—it is recognised that disability increases with age—they will find their concession to be less of a bonus if they are not able to use public transport.

We believe that the Executive’s policy goal should be to achieve inclusive transport, and that the key issues that must be addressed if that goal is to be realised are access, information, customer service and affordability. All those factors must be addressed to provide inclusive transport for all the people of Scotland.

On the proposals for statutory regional partnerships, our view is that a founding principle of each partnership should be to embrace inclusive transport. We recommended that the regional transport partnerships take account of the forthcoming MACS publication on guidance on developing transport strategies, “Transport Strategies: Planning for inclusion”. It is due for publication very soon, and has already been copied to staff in the Scottish Executive. It will be circulated to local authorities by the Executive, along with guidance on development of local transport strategies.

The structure of the regional transport partnerships could have a significant impact on their ability to deliver improvements in benefits to disabled people. We are concerned that each partnership should take proper account of the needs of disabled people in its area. For that reason, we consider that disabled people should...
be represented among the external members of each regional transport partnership.

We are considering the specific questions in the Executive’s consultation and will be pleased to give more information on our likely responses.

The Deputy Convener: Thank you very much.

Michael McMahon (Hamilton North and Bellshill) (Lab): There have, during our scrutiny of the bill, been a lot of discussions so far about the shape that regional transport partnerships will take. We have discussed the balance between democratically elected representatives and other people. How could an organisation such as MACS participate in an RTP? Do you have concerns about your ability to do so?

14:15

Ewan Jones: We looked at the potential make-up of regional transport partnerships and considered the number of council representatives and external representatives. We feel that it might be useful for certain organisations to be represented on RTPs, but we also believe that that might become difficult because of the number of people who are likely to be involved. That would impact on the size of the partnerships because a great number of competing organisations would want to be represented. We believe that it is more important to ensure that nominations for external members of partnerships are not made only by local authorities, but that certain organisations such as MACS, Inclusion Scotland and the Community Transport Association are able to nominate people. Although members of the partnerships would be there as individuals because of their personal expertise, they would come from a broad range of sectors to ensure the widest possible breadth of expertise.

Michael McMahon: Your written evidence states:

“The structure of the RTP could have a significant impact on its ability to deliver improvements, which would benefit disabled people.”

What benefits do you think RTPs could bring to disabled people? Could they deliver those benefits if there is no representation from the disabled community on those bodies?

Ewan Jones: The RTPs would have more of a struggle to do that if there was no such representation on them. We realise that a lot of different groups and organisations will want to bring their influence and expertise to bear.

On the structure of the partnerships, the board itself—the formal partnership—will have to be relatively small in order to contain an appropriate number of people to take business forward. We feel that a mechanism is needed—perhaps a stakeholders forum or something similar—so that other organisations and people who have different views can feed into the process. Accessibility and inclusion must be at the heart of the partnerships right from the off.

Michael McMahon: Has the bill enough scope to allow RTPs to connect in some way with the type of forum that you suggest? If the RTPs do not have a duty in statute or in regulation to consider representations from groups such as MACS, is there scope in the bill that gives you confidence that they will engage with you and deliver transport in a way that will benefit the people whom you represent?

Ewan Jones: There is scope to ensure that the level of representation of disabled people can be addressed properly, although we would be more comfortable that that would definitely happen if there were a statutory duty. There is, however, also potential for some of the arrangements and structures that would benefit disabled people and provide accessible transport in Scotland to be missed.

Michael McMahon: So there is room for hope but not for real confidence.

Ewan Jones: There is room for more than hope. I would not say that there is no room for confidence, but transport is an issue that a number of people on MACS and the organisations that are involved in MACS have worked on for many years at local and national level. There are still big gaps in accessibility in public transport, in planning and strategies for public transport and in how concessionary fares schemes are set up. We are pushing for as much accessibility as possible to be built in at the start.

Roderick McLeod (Mobility and Access Committee for Scotland): I will add a little more. Our view of the arrangement is that there will be three tiers: transport Scotland, the strategic regional partnerships and the local authorities. We hope that the role of the first two will be to establish overall principles in provision of transport rather than to decide where a bus stop will go, which is the role of the local authority.

When local authorities get together with outsiders in an RTP, they will have the opportunity to consider the bigger picture. RTPs will obviously have a role in relation to joined-upness, which we are concerned about for all passengers. In the present system, the fact that journeys do not always take place within a local authority boundary poses a difficulty. We hope that the creation of RTPs will have a positive impact, but I echo my colleague’s point that one of the key roles of the RTPs should be to improve opportunities for people to travel in their region. If the RTPs do that, social inclusion will be built in on the ground.
Existing council transport divisions are already loaded down under the great burden of all the practical and down-to-earth things that they have to do. It would be great to have a body that could sit back and examine a whole area to identify whether any group of passengers has a serious problem.

The Deputy Convener: Given that that is your view, would MACS support having a statutory right to be consulted on drawing up of RTPs, as a way of guaranteeing that people from the disabled community have a chance to influence how the strategies turn out?

Roderick McLeod: That would be essential. At the moment, we have the opportunity to look at the strategies that the existing voluntary bodies produce. We write to them to ask whether we can look at their strategies, but we have no statutory right to do so. They have all been willing to share their strategies with us and a number have offered to talk to us about them so that we can learn from each other about difficulties in developing such documents. There might be a need for statutory provision, although I hope that we would be consulted without having to resort to statute.

Paul Martin (Glasgow Springburn) (Lab): In your opening statement, you mentioned that although implementation of a concessionary fares scheme was all very well, accessibility should be a crucial element of such a scheme. Should the Executive legislate to ensure that public transport is accessible?

Ewan Jones: Yes, the Executive will have to legislate in certain areas. There are two elements to access. There is the physical accessibility of bus and train services and so on, but other questions of accessibility that need to be considered include whether services are close enough to allow people to access them and whether people can access the information that they require to be confident about organising and booking transport.

In work in which I have been involved in the past, much consideration has been given to the mechanics of concessionary fares schemes and to whether they work. In my view, that has concentrated on assessing whether such schemes work for the people who use them rather than on asking how we get to the people who do not use them. That theme has come through in the work that I have been doing in Scotland for the past 10 to 20 years. I still come into regular contact with community transport groups that organise services for people who are entitled to concessionary fares, but have no services to access. They end up paying to use community transport, for example, when they could use a free scheme if there were services on which they could use their concessionary passes.

Certain types of service automatically attract access to concessionary fares schemes, whereas others do not. One way of making progress on that would be for the Scottish Parliament to legislate to extend the types of service that can automatically access concessionary fares. Different types of community transport, such as dial-a-ride and car schemes, which provide transport for many people who cannot access existing schemes for geographical or financial reasons, could be included.

Paul Martin: So you think that there is a strong case for some form of legislation—if not catch-all legislation, legislation that is specific to special services.

Ewan Jones: The legislation should be broader than that. Rather than be specific to individual services, it should be about how different service providers could access concessionary fares schemes and be reimbursed for carrying passengers who have concessionary passes.

Roderick McLeod: Further to that, the idea that we can legislate to say that everything should be accessible is fine, but we have to be realistic. We work in a world in which many transport services are provided by commercial operators. We have great difficulty convincing coach operators that they should ensure that every coach has a space on it for a wheelchair user. Wheelchair users are an important part of the disabled community; their needs are quite difficult to meet because of the nature of the vehicles that we have had in the past. There is not a huge number of wheelchair users—although everyone assumes that there is because every disabled sign shows a picture of a person in a wheelchair—but they are important. The coach operators say, “There’s no way we’re doing that. We’ll have to take out four seats, put in expensive equipment and park beside a 3m-wide kerb to enable that equipment to work properly. This isn’t going to work.”

Legislation is fine, but we must consider the commercial realities and the amount of money that the Scottish Executive has at its disposal to spend. We must decide on the best ways to spend the money. In that regard, a national concessionary fares scheme is definitely not at the top of our list, because what really prevents social inclusion are practical things such as people’s inability to get to the shops, the bingo, the kirk and the places where their friends are. Those places might be only three or four streets away but, if you cannot walk more than 50m—which is not uncommon for people over the age of 80—going that far is difficult if there is no bus service or if the nearest bus stop is half a mile away.

However cheap fares are, if the nearest bus stop is half a mile away, you will need a taxi to get to...
that bus stop, which changes hugely the expense involved in the process.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** I want to raise the issue of the national concessionary fares scheme as it may apply to ferry transport. As we know, the plan is that the scheme will be for senior citizens and people who have disabilities and that it will apply to off-peak bus travel. However, the view has been put by some witnesses and committee members that senior citizens and people who have disabilities who live on islands will have to catch ferries in order to benefit from the scheme. Some of us hope that, when the announcement is made about the details of the scheme—which is expected to be this week or next week—we will be told that the scheme will be extended to ferries, whether the concession is that the journey will have no charge, be half price or whatever. Does MACS share that view?

**Roderick McLeod:** I should declare an interest, in that I am an Orkney Islands councillor and therefore have a particular view on this matter.

Orkney has taken the opportunity to add to the statutory bus concession scheme a limited number of free trips to the Orkney mainland for our elderly and disabled people who live on the other islands. However, there is no such scheme for getting from the mainland of Orkney to Scotland by NorthLink Orkney and Shetland Ferries Ltd, for example. I agree entirely that the concessionary scheme should be available on the means of transport to which people have access—we do not yet have buses that go across the Pentland firth. Although none of my fellow MACS members lives on an island, I think that they would support me in this regard.

**The Deputy Convener: Your submission says: "There will always be a place for concessionary fares".**

Obviously, the bill allows for different management schemes to be employed for national concessionary fares schemes. What shape of management scheme would you prefer and why?

**Ewan Jones:** That is not an issue that MACS is desperately worried about. The key points for us are accessibility of the schemes in terms of how they are managed, how reimbursements are applied and the relationships between transport providers and local authorities, regional transport partnerships or whoever will administer a national scheme. From our point of view, the most important thing is that services become more accessible and that a wider range of services—I mentioned community transport and Roddy McLeod mentioned ferries—are available for people to use as part of a national concessionary fares scheme.

**The Deputy Convener: Would you like to make any further points? Perhaps you expected to be asked about areas that you have not had a chance to talk about.**

14:30

**Roderick McLeod:** One of the issues that concerns MACS is the quality of information and research on which the committee, your colleagues in Parliament and ministers make decisions. We are concerned about some of the research that was done early in the introduction of the concessionary fares scheme. For example, the Scottish Executive surveyed people who were using buses and people who were waiting at bus stops. I am sure that that research is valuable and that it told us something, but it does not tell us about people who are not using public transport concessionary fares.

The Scottish Executive is just about to embark on a new research exercise, supported by MACS. We have been involved with the Executive in specifying the details of the research, which will examine barriers to travel. We know a bit about that, but we do not know it all. We know that affordability is one of the barriers, but for local travel affordability is not the big issue—the big issues are practical matters.

If I may make a practical suggestion, members should all rent a granny or a granddad. Maybe not—some of you may already be grannies or granddads, but I will not delve too deeply into that. However, you need to rent one, preferably one over the age of 75 or 80, and take them on a trip by public transport. Try it a few times and see how you get on. If every member of Parliament, every councillor and every senior member of the Scottish Executive did that, we would have a huge improvement fairly rapidly.

**The Deputy Convener:** We are about to hear from witnesses from Age Concern Scotland, who I am sure will support that view. Thank you for your useful evidence.

I wish a good afternoon to Jess Barrow and Jim Ferguson. I hope that you are well; I have not seen you for a long time. Thank you for coming to give evidence on the Transport (Scotland) Bill. Do you have any opening comments or would you like to go straight to questions?

**Jess Barrow (Age Concern Scotland):** I have a few comments to make. First, we would echo much of what MACS said. Many of the issues that it raised are pertinent to older people as well, so please forgive me if I cover the same ground, but some of the points are worth repeating.

I have with me Jim Ferguson, who is secretary of Perth and Kinross pensioners forum, which
receives an awful lot of inquiries on transport and transport issues. He will be able to bring in some valuable practical experience.

Age Concern Scotland is a national voluntary organisation that works throughout Scotland. We are an umbrella body, but we have local staff and local member groups, of which Perth and Kinross pensioners forum is one. We also have a growing individual membership and we run the Scottish helpline for older people, which is funded by the Scottish Executive. Those are all sources from which we get information on the issues that we raise.

Transport is among the key issues. As far as the helpline is concerned, the problem is often transport to access health services or to visit people in care homes. Calls tend not to be about public transport or concessionary travel, although they are issues. Inquiries often come from people who can no longer use public transport for various reasons. Transport is consistently a key issue for older people, along with income, housing, health and care. However, it is important to remember that transport is integral to all those other issues, and that it relates closely to all social issues that affect older people.

Free local bus travel has revolutionised life for older people in Scotland—it is enormously popular. We differ slightly from MACS in that we whole-heartedly endorse it. For those who can use it, it has been fantastic and everybody who uses it really appreciates it. The scheme’s introduction has sent out a powerful and positive message to older people in Scotland and has led to more active involvement in society and less isolation. The committee will have seen the research that shows that there has been a massive increase in the number of journeys made for hospital visits, which is quite important.

However, we need a national scheme. We need to tackle the issues, the confusion and the difficulties that have arisen. Those have been caused by various different things, but much of the confusion has been around cross-scheme travel. People have had really awkward experiences of having to make two separate journeys to go from one place to another, with one journey being part of the free scheme, after which the passenger must get off the bus and wait for the next bus, on which they must pay for the journey. There has been much confusion about that and we are now beginning to see bus operators act more pragmatically, although they are bending the rules slightly in that the rules say that someone who makes a cross-boundary journey must pay for the full journey. People did not understand why they could not just pay for the bit that was in the area where they were not entitled to free travel.

Among the other issues that came up and which should be addressed is that of people needing to book ahead to travel and having to pay for that. That affects mainly Scottish Citylink Coaches Ltd journeys because they tend to be long-distance journeys for which booking ahead is often necessary. If someone makes a day trip and there is only one bus back from where they go, they want to be certain that they will get a seat on that bus, so they want to be able to book. Initially people could not book such journeys, but after consultation of organisations including Age Concern Scotland, Citylink imposed a booking fee of £2.50 to cover the costs of booking—although I believe that it has reduced that fee to £1. Even so, people quite rightly felt that that was not free bus travel. We must address that and enable people to be sure that they can get a seat on return bus journeys.

One of the other difficulties with operation of the scheme is very much down to drivers’ attitudes. Older people are frequently asked to wait until so-called fare-paying passengers are on the bus first, which is utterly unacceptable. It does not appear to be the policy of the bus companies, but it is happening in practice. Jim Ferguson’s experience will back that up.

Jim Ferguson (Age Concern Scotland): We find that, in some ways, the devil is in the detail. Bus drivers seem to look on older people who get concessionary travel as a lesser breed. Once the paying passengers are on the bus, the drivers let on the people who are getting concessionary travel. That is unacceptable and we hope that the bus companies will try to stamp it out. We are not saying that it is the policy of the bus companies; it is not, but it certainly happens.

Jess Barrow: The other thing that we have to consider—in this I agree completely with what MACS said—is that all aspects of transport are important whether it is public, private or community transport. Older people rely on a variety of different methods of transport, as we all do.

To echo what MACS said, the three key issues are availability, accessibility and affordability. Availability of services is critical—free bus travel is of no use whatever if there are no services. That is true whether people are isolated in rural areas or in urban areas. Out of the window we can see Dumbiedykes, which is poorly served by public transport and has one of the highest proportions of older people compared with similar estates in Edinburgh. We have to acknowledge that there is isolation in urban areas as well as in rural areas. In some suburban and semi-urban areas there might be very poor access to bus services. We have to make sure that the services exist for people to use.
Another issue that has come to Age Concern Scotland over the years is the difficulty that occurs when services are changed. Suddenly, out of the blue, a bus company will drop a lifeline route. It is entirely understandable that a bus company will drop a route that is not profitable, but that can have a devastating effect on the people who depend on that bus to enable them to go shopping, to visit friends, to go to the doctor or to engage in any way with the outside world. Those issues are critical.

We also need to remember that sustainability of communities and of independent living for older people can depend greatly on public transport services, yet those services can be easily withdrawn and changed.

Often, when older car users cannot use their cars any more, they find that they have to move house because they need to live close to public transport services. If a service comes under threat or change—I am talking about even a slight deviation to a route—the result can be devastating to those who depend on it. Car travel is important, particularly in rural areas, where older people are very dependent on it. Rural areas have a higher proportion of older people who are likely to use cars to get around.

I am aware that the next issue that I want to raise is probably outwith the scope of the bill. However, as it is of critical importance, I will mention it to the committee. I refer to the price of petrol in rural areas, which is an issue that significant numbers of our members have raised. They are concerned about the cost of petrol, as any slight increase in the cost of transport—whether public or private—can have a significant impact on a pensioner who is struggling to get by on a pension.

I have mentioned transport that is needed to access health services and to visit hospitals, care homes and so forth. That issue is particularly difficult for older people. We must remember that the need to access health services increases at a stage in life when ability to access public and private transport decreases and when transport becomes increasingly difficult to use. It is the time of life when someone is more likely to need to visit a loved one—a family member or whoever—in a care home or hospital, or when they themselves might have health appointments. The issue is another of the important issues that significant numbers of our members have raised.

A lot of older people are involved in community activities throughout Scotland, whether in visiting day centres, attending lunch clubs and participating in bingo, tea dances or whatever. Transport is key to those services: it is of no use at all if it does not get people to their day centre, bingo hall or wherever. Many such services are dependent on a local community transport scheme or on having a centre minibus that gets people to and from the places where they want to go. It is critical that the Local Government and Transport Committee consider the need for and the importance of such transport schemes.

I move on to address issues of accessibility. It is good to see the advance that has been made over recent years in low-floor buses. However, the improvement is not always welcomed by older people, as some find the buses more difficult to negotiate. The design can mean that it is not always easy for an older person to make their way to a seat. Not only is design an issue, poor driver training can mean that drivers move away from bus stops more quickly than they should. They do not realise that that can make things difficult for older people—indeed, people can be put off using buses; they can become frightened of using them. Driver training is critical.

Among the other issues that the MACS witnesses raised was information. Information, too, is vital to older people so that they can access accurate, up-to-date timetable information in a format that they can read. It staggers me that bus timetables and other such information are usually produced in such a small type-face that people cannot read it. For example, I noticed that the display screens at Waverley station have changed. The type-face has shrunk and the screen has become terribly difficult to read. I cannot understand why transport providers do not address such critical issues.

The Deputy Convener: Thank you. We will move to questions from members. If, at the end of the session, Jim Ferguson has a point that he wants to raise, I will let him in at that point.

Michael McMahon: Does Age Concern feel that it will be able to make an input to the regional transport partnerships? Do you envisage any difficulties with the establishment of the RTPs that could impact adversely on Age Concern’s ability to get the accessibility to and accountability of public transport that it seeks? I put a similar question to the first panel, whose members represented the disabled community.

Jess Barrow: That will depend very much on the RTPs’ priorities and on the voices to which they listen. It is critical that the RTPs listen properly to passengers and potential passengers and that they take the wider view. Some kind of community involvement will be important. It is difficult to say which of the diverse representative organisations for older people the RTPs should listen to, but it is important that they listen to the voices of public transport users.

Michael McMahon: Will the bill create the regulatory environment in which that will happen?
Can I just pick up on The principle of free bus travel across Scotland. Had one standard bus pass that was the same mind? Communication exists at present? Ensure that it improves on whatever level of in your mouth, but does the bill perhaps need to understand and to use. Through Scotland. It must be simple for people welcome one national scheme that was the same exist between one scheme and another. We would variety of schemes because of the differences that deal of confusion has been caused by the current development of a concessionary scheme for all concessionary fares scheme. Would you welcome to have a simple single national scheme that applies to all types of public transport? Would such a scheme be better than one that applies purely to bus travel? If so, would that justify the development of a concessionary scheme for all forms of public transport that is not entirely free, rather than an entirely free concessionary scheme that applies only to buses? Jess Barrow: That is a difficult question to answer. It would be wonderful if older people received free travel on all forms of public transport in Scotland, but I recognise that that might not necessarily be feasible. In certain areas, it is critical that people have access to the scheme. Where there are no bus services and the ferry is the only method of transport available, people should have access to the scheme.

The issue comes back to the question of the policy intention behind the concessionary travel scheme and whether that is to enable people to get out and about and to play a fuller part in society. That is the critical question that needs to be answered. Once we are clear about the policy intention, it will be easier to come up with solutions.

Jim Ferguson: There are some very rural areas within the boundaries of Perth and Kinross Council area. Many older people tell us that, unless they get reasonable travel facilities, they will need to move house. Once the car is taken away from them—and nowadays it is taken away; it is not given up lightly—they are even more isolated than they were before. We really need the rail or road transport facilities to be there.

Fergus Ewing: But you favour the scheme being extended to ferries in any event.

Jess Barrow: Yes.

The Deputy Convener: Can I just pick up on that last bit? I think I know what Fergus Ewing was trying to get at. If the scheme was extended so that there was one pass for ferries, trains and buses, and if there needed to be a compromise because of cost-envelope issues, would you prefer a concessionary scheme that meant that travel on the buses was not free but was—I am using an arbitrary figure—a quarter of the fare, which allowed everybody to travel by train for a quarter of the fare also? Would that be preferable to a scheme that provided free transport on the buses but no concession on the trains?

Jess Barrow: The principle of free bus travel has been adopted and has been widely welcomed by older people throughout Scotland. I do not think that it would be acceptable for the Executive to backtrack on that. Where there is no alternative, there ought to be free access to public transport—for example, free access to ferries. There are alternative bus routes to most of the train routes.

The Deputy Convener: Okay. That is quite clear. I think that, in conclusion, Jim Ferguson has a specific point to raise with us.
Jim Ferguson: Yes. It is a plea to the people who look after the bus and rail terminuses to provide older people with the facilities that they require at the terminuses. Some of the facilities are absolutely abysmal at present.

The Deputy Convener: How do you see that being addressed through the Transport (Scotland) Bill?

Jim Ferguson: Local authorities look after some of those areas. We need them to update the facilities that are provided.

The Deputy Convener: I do not think that we have any more questions. Thank you very much for your evidence. I hand the convenership back to Bristow Muldoon.

The Convener: Thanks very much for handling those two sessions, Bruce.

We move on to our third group of witnesses. I welcome three representatives from the Scottish Youth Parliament and one from Argyll and Bute youth forum. Ross Watson is the chair of the transport, environment and rural affairs committee of the Scottish Youth Parliament; Morven Neil is a member of the Scottish Youth Parliament; Stephanie Veitch is a member of the Scottish Youth Parliament; and Kevin Smith is a member of the Argyll and Bute youth forum. I invite Ross Watson to make some introductory remarks about the views of the Scottish Youth Parliament on the Transport (Scotland) Bill. After that, we will move on to questions.

Ross Watson (Scottish Youth Parliament): Thank you for giving us the opportunity to come here and speak to you guys. The transport, environment and rural affairs committee of the Scottish Youth Parliament has raised three main issues regarding transport, which we would like to discuss. The first is uniformity of reductions on ferry fares and, in some cases, the introduction of a concessionary fare for all young people aged between 16 and 25. The discount would be set at 30 per cent on production of a Young Scot card.

I ask Stephanie Veitch to say a few words about ferry travel.

Stephanie Veitch (Scottish Youth Parliament): A few months ago, we asked First Minister Jack McConnell how it can be that a Government-subsidised company such as Caledonian MacBrayne will not allow Young Scot or dialogue youth discounts for travel, even though those are Government-subsidised schemes. Before that, we had been confronting CalMac about getting an under-25s discount for years.

The aim of spending in the transport portfolio is:

“To promote economic growth, social inclusion and health and protection of our environment through a safe, integrated, effective and efficient transport system.”

If CalMac were to offer young people discounts, all those criteria could be met, so what does it have to lose?

The Convener: I thank Stephanie Veitch and Ross Watson for those introductory remarks.

Michael McMahon: I am not uninterested in the points that Stephanie Veitch and Ross Watson have made—other committee members will ask questions about those—but I am more interested in what they did not talk about: the regional transport partnerships. We have taken a lot of evidence on accessibility, which has led us to believe that concession schemes and similar issues must be addressed. One of the ways of doing that is through the regional transport partnerships. Will RTPs offer a way for young people to have their voices heard, so that the issues of concessions and availability that the witnesses are raising will be addressed?

Ross Watson: I have to confess that I do not know how regional transport partnerships operate.

Michael McMahon: They do not exist yet, and we are talking about how we can set them up. If you, as young people, are not being listened to, would a statutory body such as a regional transport partnership—something that brings local authorities and other agencies together to consider transport issues—be the type of forum in which you would have a voice?

Ross Watson: We would if we were given a voice. Young people are invited on to many such committees, but it is often a case of bringing in a token young person. If a young person were involved and making valid points that were taken on board, that would be a positive step forwards.
Michael McMahon: From your experience of talking to the bodies that currently run transport in Scotland, is your voice listened to?

Ross Watson: Not significantly.

Michael McMahon: I imagine, then, that your primary concern would be that whatever bodies are set up, whether regional transport partnerships or not, give you a voice. Are you confident that any such agency could give you the voice that you are looking for?

Ross Watson: If regional transport partnerships are a new scheme and start off with young people being part of them, that would have to be a good thing. If a young person is invited on to the board of an existing system because of comments that a young person is needed on it, the invitation is often regarded as a token gesture, but if they were part of the system from the start, it would work.

Paul Martin: Your CalMac ferry proposal is interesting. You said in your opening statement that it would promote economic growth, social inclusion, health and environmental protection. Will you go into the specifics of how it would promote economic growth, for example? That might speak for itself, but what do you envisage would be the specific economic boon of under-25s receiving discounted access to ferry journeys?

Stephanie Veitch: As I have written in our submission, it would make it cheaper for under-25s to come home from and return to university, thus maintaining and promoting the economic growth of the island communities.

Paul Martin: Would there be health benefits to the change? At the moment, some people will not use the ferry service as a result of there being no concessionary allowances. Is that your concern?

Ross Watson: The point about economic growth is that young people do not have a lot of disposable income to do things. Many young people would like to go to the islands, but the cost of taking ferries makes that difficult. The islands almost exclude themselves from sources of income from young people who want to visit the islands or who live on the islands and are trying to get back to them, because people will stay on the mainland.

Paul Martin: I would like to confirm what you are saying. Is the issue more about young people making their way to the islands than about those who live on the islands being able to go back and forward to the mainland?

Stephanie Veitch: Not necessarily, because the major health and education services for island communities are on the mainland.

Paul Martin: So the main issue is to do with health. You want to promote health, well-being and social inclusion and you mainly want island communities to benefit. Ross Watson digressed a wee bit in talking about people on the mainland benefiting too.

Ross Watson: Yes.

Paul Martin: I have a final question. Is the issue not simply about the Government being involved in the subsidy, but about operators being more creative in assisting young people? Should companies that are involved in delivering transport be more creative in assisting young people and accepting that there is a market out there among young people?

15:00

Ross Watson: NorthLink gives 10 per cent discounts to young people in full-time education who are travelling to Orkney and 25 per cent discounts to students travelling to Shetland. On the point about the Government subsidising a feasibility study involving CalMac and NorthLink, CalMac's argument is that there is nothing to prove that a reduction in fares for young people will bring any business benefit to it. It has no interest in considering the matter. It would help if the Executive funded a study to examine the matter.

Paul Martin: Are you saying that big business should sit up and take notice of young people out there and the need to deliver a service to them?

Ross Watson: Yes.

The Convener: I understand that the Scottish Executive is proposing a concessionary scheme to young people in full-time education and not a concessionary scheme for all young people under 25, which you are arguing for in relation to CalMac. What would be the justification of giving a concessionary fare to a young person in their early 20s who is in a well-paid job, but requiring a person who is over 25 and in a less well-paid job to pay the full fare?

Ross Watson: That is a valid point. However, young people who have poorly paid jobs vastly outnumber those who have well-paid jobs, especially in the Highlands and Islands. The majority of young people with well-paid jobs are probably in the central belt and the cities.

The Convener: Would it be fairer to propose a concessionary fare for those who are in full-time education and for those whose income is below a certain level, as opposed to a blanket concession, irrespective of income level?

Ross Watson: But how would that proposal be enforced?
The Convener: The system could be applied in the same way as other means-tested systems are applied.

Ross Watson: We mentioned anyone under the age of 25. An easy way of applying the proposals to those people, regardless of whether they are rich or poor, would be through their having the Young Scot card.

The Convener: I have one more question about the proposals in your submission. It is suggested that there should be free bus travel to and from school for all young people in full-time education. Could not that militate against efforts to encourage people to get to and from school by healthier means? In respect of overall health benefits, it might be a better option for young people who live a mile or a mile and a bit away from school to walk to and from school rather than get a free bus service.

Ross Watson: That is an excellent point, but I lived 11 miles away from my school, as did the majority of people who went to that school. We are not discussing young people’s health, which would be a separate discussion.

The Convener: Someone who lived 11 miles from their catchment school would be entitled to free travel to and from school, because the law stipulates that free travel should be provided for pupils who live further than a certain distance from their school. However, for perhaps thousands of young people who live relatively close to their school, walking to and from school might be a better option. The committee has heard in the past that a very small proportion of young people walk or cycle to school and a high proportion travel on a bus or other form of motorised transport. It might be better for society if we could rebalance that—there would be an impact on congestion as well as on health.

Ross Watson: That is an excellent point.

Iain Smith (North East Fife) (LD): In your opening statement you said that young people do not use the bus as much as perhaps they should. What are the main reasons for that? Affordability might be one reason, but are there other factors that impact on bus use?

Ross Watson: The frequency of buses is a problem. In my village, one bus per day goes north and one bus per day goes south, so it is just not practical to use the bus.

Iain Smith: I recognise the problem. I am from a rural community too and I think that there used to be a bus every two hours until 8 pm, when the service stopped running, so if we wanted to go out, we had to go early.

If the Executive were to put money into improving travel opportunities for young people, should it invest in concessionary fares or in trying to increase the frequency of bus services in communities that do not have a regular bus service?

Ross Watson: That is an interesting question. I am not sure. Concessionary fares would benefit more young people throughout Scotland than would increasing the frequency of buses in rural areas, so that would be the way to go if the Executive wanted to help all young people in Scotland.

Tommy Sheridan (Glasgow) (SSP): I have a couple of short questions. Does the Scottish Youth Parliament have the capacity to ascertain whether the problems with bus use throughout the country are based on geography or on other matters, such as coolness? I suppose that some young people think that public transport is not cool. Are the Youth Parliament’s resources too limited to carry out such a study?

Ross Watson: It would be possible for the Youth Parliament’s transport, environment and rural affairs committee to run a survey of members of the Youth Parliament, which asked how they use public transport. We could do that quite easily; it would not be outwith our capabilities at all.

Tommy Sheridan: If you are able to do that, will you send the results to the Local Government and Transport Committee? When it asked young people in Dumfries about their use of buses, they gave a mixed response. They said that they used buses when they had to use them for school, but if they were going out at night to a nightclub or another facility, the bus was regarded as the very last option. The committee is concerned to make the bus the first rather than the last option.

Has your committee been involved with Glasgow City Council? A couple of years ago, the council conducted quite a widespread survey of young people, the results of which suggested that a lack of transport was one of the biggest problems in relation to the use of facilities in Glasgow. Could you liaise with the council to try to develop a strategy that ensures that facilities can be used? Glasgow is different from rural areas, but even in Glasgow people are sometimes isolated on housing schemes if there are no facilities on their doorstep.

Ross Watson: We can certainly consider that. Our committee covers transport, the environment and rural affairs and some 95 per cent of its members are from rural areas, but recently two or three members from Glasgow have joined the committee.

Fergus Ewing: I will ask about a slightly different matter. I know that you are in favour of the extension of the concessionary fares scheme to include ferry travel and broadly support a
concessionary scheme for young people, in particular for under-16s and for students, who already receive discounts. We all hope that students will have, and will take up, the opportunity to travel widely, particularly to Scotland’s islands. If there is a clear, simple concessionary scheme that is extended to ferries and which applies to students—at 50 per cent of the cost, for example, or even for free—to what extent would that stimulate people of around your age to travel more and to travel where they would not previously have thought of travelling? Would a concessionary scheme of itself be a stimulus to younger people that would give them a chance to get out and about and see more of Scotland, particularly of our islands?

Stephanie Veitch: Of course it would. As a student myself, I know that times are hard with money. If you want to go and visit the islands, the cost of going to some of the further afield islands by ferry is outrageous. If you wanted to go and see different places in Scotland as part of your studies or even outwith your studies, a discount would certainly be an incentive to go. You would have more money to spend on the island if you did not have to pay so much getting there, and you would probably go to visit different places and see more of the island.

Fergus Ewing: I think that it was you who mentioned that members of the Scottish Youth Parliament have been lobbying CalMac for years to try to persuade it to adopt a more youth-friendly policy. Is that correct? If you are able to—if you have been involved or if you know what other people have been doing—can you describe what efforts have been made by members of the Scottish Youth Parliament to persuade CalMac to adopt a more friendly approach to concessionary youth travel?

Stephanie Veitch: The Scottish Youth Parliament and Argyll and Bute youth forum, of which I, like Kevin Smith, am a member, have both been involved in that. The youth forum and our development workers have been pushing CalMac to do that.

Ross Watson: The Scottish Youth Parliament has really stepped in at the last moment, has it not?

Stephanie Veitch: Yes.

Fergus Ewing: Well, you are ahead of the seniors’ Parliament, because I do not think that we have stepped in at all. More power to your elbow.

The Convener: Those are all the questions that we have. I thank Kevin Smith, Ross Watson, Morven Neil and Stephanie Veitch for their evidence this afternoon.

Our next group of witnesses represents the national joint utilities group and will present further evidence on the Transport (Scotland) Bill. I understand that they will concentrate mainly on the road works aspects of the bill. I welcome Frank Stewart, who is the engineering build services manager for Thus plc and chairman of NJUG; John Taylor, who is the Government relations manager for National Grid Transco plc; and Rodney Grubb, who is representing Scottish and Southern Energy plc. I believe that Frank Stewart will make an opening statement on behalf of NJUG.

15:15

Frank Stewart (National Joint Utilities Group): Good afternoon and thank you for giving us the opportunity to address the committee.

The national joint utilities group represents gas, water, electricity and the telecommunications industry on matters relating to street and road works. We welcome the Scottish Parliament’s resolve to reduce congestion on Scotland’s roads. In fact, we would go further than that: we are happy to work with the Scottish Parliament, the Executive and local authorities to that end. Scotland’s and the United Kingdom’s roads do not only carry vehicles; they are the conduits that allow us to provide essential services to our customers throughout Scotland and the UK.

There are only three reasons why we excavate roads. The first is safety, the second is to maintain the security of supply and the third is to provide services to our customers. As I said, we welcome the Scottish Parliament’s resolve to reduce congestion, but our main concern about the bill as written is that the cost to utility companies to provide essential services will increase considerably if all the proposals become law. The entire problem of congestion must be considered, not just one small aspect of it. A few years ago, the then Department for Transport, Local Government and the Regions commissioned a report—it may not have been published—which said that 65 per cent of congestion is caused by the sheer volume of traffic; 25 per cent is caused by road accidents and incidents; and 10 per cent is down to road and street works, half of which are attributable to utility companies and half to local authorities or roads authorities. We must consider the problem in its entirety, but the bill addresses the cause of only 5 per cent of congestion and that is a great concern for us. The main thrust of our argument is that we want a level playing field to be established.

Michael McMahon: In the evidence that we have taken so far, we have established that utility companies and the construction engineering sector are not responsible for the majority of
congestion problems. However, how could the bill be used to address those problems? The evidence has revealed concern that the bill appears to be skewed towards dealing with a small part of the problem. How can we remove that bias?

Frank Stewart: The bill provides an excellent opportunity to deal with a problem that affects us all—we all have to travel on the roads. The main step would be to establish a level playing field. The codes of practice that will be produced under the bill and those that have been produced under the New Roads and Street Works Act 1991 should apply to all organisations that excavate in Scotland’s public roads. That would be one step.

I have no suggestions about how to deal with the major concern, which is the sheer volume of traffic. I am sure that most people who are present would agree that, as a motorist, if there is an opportunity to use a vehicle to go somewhere, one does so.

Michael McMahon: This will be a difficult question to answer, but if the problem is largely down to the volume of traffic, why does the perception exist that the utility companies are responsible for the majority of the problems?

Frank Stewart: I can answer that fairly simply. An Executive press release in January of this year stated that utility companies were responsible for 93 per cent of road works in Scotland. That is totally erroneous—they are probably responsible for 93 per cent of recorded road works, but utility companies have to record all their works on the Scottish road works register, whereas other bodies do not have to do so, which throws the situation out of kilter.

Michael McMahon: Do you believe that the debate was led down that road by “Scotland’s Transport—The Regulation of Utility Company Roadworks: A Consultation”?

Frank Stewart: The press release was a forerunner to the consultation document.

Rodney Grubb (National Joint Utilities Group): I want to add to what Frank Stewart said. Figures on how much work is happening on the street are available from Susiephone Ltd, but the problem is that, on the whole, only the utilities give information to Susiephone. Perhaps the perception has built up because, although facts and figures can be recovered from a system, they cannot be obtained from local authorities, so there is nothing to back up how much work local authorities are doing. That does not help.

Frank Stewart: The perception is that all works are recorded by Susiephone, but I know of only one local authority—West Lothian Council—that records 100 per cent of its works. Some councils record none at all and the rest are somewhere between the two, so the situation is pretty haphazard. Until the register records every road work in Scotland—every time a spade is put into the ground—we will not get the exact figures.

Michael McMahon: You are not asking for the bill to be amended so that it is not seen as a hammer to crack a nut. You would like whatever measures are introduced to address the utility companies’ role to be extended to everyone who has the capacity to cause congestion through road works.

Frank Stewart: That is exactly what I am saying.

Rodney Grubb: Someone asked earlier how awareness can be increased. If everyone who does road works gets involved, the figure will double. The figures that we are going on state that 5 per cent of congestion is caused by utilities. If we were to include local authorities, we would double the figure to 10 per cent. That might still be a small figure, but we would be capturing a larger amount of the work.

Michael McMahon: Would you like that larger amount of work to be captured?

Rodney Grubb: Given that we are talking about reducing congestion and being more effective, we have to know what all the works are.

The Convener: You mentioned the way in which West Lothian Council works. From previous discussions with West Lothian Council and some of the utilities, I was aware that West Lothian Council recorded its works in the register. I believe that there are other ways in which the council works constructively with utility companies in co-ordinating works. Will you expand on that? Do you think that that way of working could be replicated throughout Scotland?

Frank Stewart: There are four situations in Scotland. Certain local authorities have introduced, or are introducing, what they call a considerate contractors scheme. One of those schemes has been running successfully in Aberdeen for three to four years. West Lothian is next; it is ready to launch its scheme on 1 January. The City of Edinburgh Council and Glasgow City Council schemes will probably start some time in 2005. We think that those are excellent schemes, which provide a great way of co-ordinating works and ensuring a spirit of co-operation between roads authorities and utility companies, which we welcome with open arms.

Bruce Crawford (Mid Scotland and Fife) (SNP): You obviously took a lot of heat at the beginning of this process, during the consultation, which I feel coming at us. If you have found yourselves in that situation, that is regrettable.
A fair chunk of the utilities work that you undertake must come from the Scottish Executive. For example, Scottish Water, which is in effect an arm of the Scottish Executive, undertakes such work. Has any work been done on that, given where the process started?

Frank Stewart: The short answer is no. What you said is quite right. As much as 60 per cent of the work on roads in Scotland, as far as utilities are concerned, is done by Scottish Water. Scottish Water is treated like any other utility—no exceptions are made for it and there are no differentials. It just happens to be the biggest undertaker of work.

Bruce Crawford: So it is a bit rich for whoever made that comment in the press release to criticise utilities when most of the work emanates from Government. Perhaps that says everything about the climate in which we live.

John Taylor (National Joint Utilities Group): I cannot speak for the water utilities, but perhaps I can draw a parallel between the water and gas utilities. We are going through a major replacement programme. After all, some of the plant has to be replaced; it is 100 years old and is deteriorating. Obviously, we are replacing the plant for safety reasons, but the water industry carries out work to stop water leaks and for other environmental reasons. That massive programme has to be undertaken to maintain a secure supply, which generates its own workload. We have a 30-year programme of essential works, and I believe that the water industry's programme is based on a longer period.

Bruce Crawford: I believe that you agree with the Health and Safety Executive on the works that will be carried out. As a result, those works are partly Government driven.

John Taylor: Yes.

Bruce Crawford: That is interesting.

I suppose that the real question is how we manage this situation better in the future. In your written evidence, you say that you support the introduction of a road works commissioner and that you look forward to collaborating with that department. However, the roads authorities and utilities committee (Scotland) has said that such a commissioner might not be needed and that it could undertake the task if it were given such a statutory responsibility. Do you have any preference about which course should be taken, provided that the whole matter is managed properly in future?

Frank Stewart: We do not have any preference per se, but we certainly see both sides of the argument. If nothing else, a commissioner would be an independent arbiter. For example, we would not have to approach a roads department for a decision, which might leave us second best.

We are not diametrically opposed to RAUCS, which is made up of representatives from utilities and roads authorities. I understand the roads authorities' position on this matter. However, we support the introduction of a commissioner post, as long as it is properly filled and resourced.

Bruce Crawford: That was my next question. It has been suggested that, given the resources that will be available, the commissioner's office will have a light touch to say the least and will in any case have to rely heavily on local authority work and information. Could any changes be made to the roads commissioner's resources and proposed powers to strengthen the role?

Frank Stewart: I understand that the department will not have many staff. If that is the case, I cannot see how a commissioner and perhaps two assistants could examine the whole problem in Scotland. Many more people will need to be involved. If the Executive is paying only lip service to the matter, it will be a waste of time and money.

Bruce Crawford: RAUCS has said that it could do this work for about £600,000, which is almost the same amount that the Executive has set aside to fund technical upgrades for the road works register. That does not take into account the additional administrative costs for the commissioner and his couple of staff. I think that other committee members share my view that it is difficult to strike the right balance on this matter. Do we put additional resources into funding a road works commissioner—which, given the amount, ain't going to have a lot of teeth—or do we put our money more smartly into RAUCS and let it do the job? I should say that "more smartly" is my term. You are saying that it is a fine balance, but that you would welcome the introduction of a road works commissioner if the office were properly resourced.

Rodney Grubb: If it were properly resourced and, as Frank Stewart pointed out, independent. No matter whether we are talking about a commissioner or whatever, we need someone independent to examine the work of utilities and local authorities and come up with some real evidence. We need to find out how much and what sort of work is being done and who is doing it. If we are going to reduce congestion, we need to work together. We should be trench sharing. Any new build—industrial or commercial; a factory or a housing estate—requires the basic services.

Bruce Crawford: Does not RAUCS provide a model for roads authorities and utility companies to work together? If that committee were to be
given statutory power and a statutory responsibility for being fair to both parties, would that not work?

Rodney Grubb: I think that that would work, but we must have the figures as well. We lack the evidence to say, for example, “Here’s who is doing the work and here’s how long it is taking to do.” We need somebody to consider the benefits of trench sharing and the one-in, all-in approach. Nobody is doing such work. We need an independent body to do it.

15:30

Paul Martin: Sections 18 and 19 of the bill deal with directions on the timings of road works and the placing of apparatus in roads. Your written submission says that the bill should allow exemptions for emergency work. Can you elaborate on that and give us further details about the kind of emergencies that you mean?

Frank Stewart: One of our greatest concerns is the bill’s directions on timings and the placing of apparatus. The bill does not seem to make any provision for emergency work being done on, for example, gas leaks and large water bursts, for which we could go in and do a repair as quickly as possible. Currently, if there is a serious gas leak or large water burst, we can go in immediately, without notice, to try to rectify the situation, although we must give retrospective notice. The bill seems to take away that right. We are also concerned about the bill’s possible impact on customer connections. Our fear is that the bill’s provisions would mean that we would have to tell customers that we could not give them a service for six months or whatever. That approach just does not work in the modern world.

Paul Martin: You say that the need to reconnect a supply is an issue of public concern. However, you will appreciate that the effect that such work has on road users is also an issue of public concern. Roads authorities feel that utility companies are sometimes inconsiderate in how they do their work and how long they take. For example, it is common to see a work site on a partially closed road around which there is not much activity. When I think about utility companies’ work, I think about utilities taking over half a street and just leaving things there until it suits them to connect a service. Even after that has been done, there is an issue about utilities reinstating a road to its original condition. Do you appreciate that there must be legislation to deal with such situations and to ensure that utility companies do not have the free rein that they have perhaps had in the past? Do you accept that there is an argument for such legislation?

John Taylor: When there are gas escapes, we do not necessarily get informed about the most serious one first. For example, a team can go out to a gas escape and make it safe, but before the team can complete the work on the gas main, news about a more severe gas escape comes in, which must be prioritised. The team must then go and deal with that escape before it can come back and complete its work on the first job. Therefore, because work is prioritised for safety reasons, work on some repairs can be left incomplete. That does not mean that the work has been forgotten about; it just means that it is done according to a list of priorities, but it is usually done to a tight timescale. Occasionally, a specialist bit of kit that is needed to do a repair has to be ordered, which can delay the completion of the repair. However, we are talking about a delay of days rather than months or years—just a short timescale. To sum up, we prioritise work and deal with the most severe problems first.

An additional problem arises because some of our plant is old. For example, after a repair is done on a main, we realise sometimes that we will have to return in the near future to replace the main because it has deteriorated to such an extent. We do not postpone such work for long. If we did so, we would be in and out doing maintenance work all the time. There comes a point when it is sensible to devise a programme for completely replacing such a pipe.

Paul Martin: Are you saying that you want a free rein to do emergency work as you please? If not, are you saying that you want regulation of such work?

Frank Stewart: Absolutely. I would not advocate our having a free rein for anything like that. Of course emergency work must be controlled, but it must also be realised that certain circumstances must be reacted to immediately. That takes us back to the word “perception”. The perception is that some utilities come, open up the road and leave it for ever just for the sake of leaving it. However, there are a lot of reasons for excavations remaining open, including the curing of the materials that are used in a concrete-type situation and the venting of a shaft that has had a gas leak in it.

Paul Martin: Is there a need for public information to be provided about a work site, perhaps on a website? Is there an argument for providing information in that way to deal with some of the problems of perception?

Frank Stewart: I would agree with that, yes.

Rodney Grubb: Our concern with the bill as it is drafted is that, when it comes to the placing of our apparatus, there are no exemptions. We have a concern that exemptions regarding the placing of apparatus have been removed from what is in the 1991 act.
Dr Sylvia Jackson (Stirling) (Lab): Is it the case that, because you are a private sector organisation, you do not include Scottish Water among your members?

Frank Stewart: Scottish Water is included. Its membership is through Water UK.

Dr Jackson: Okay. I was not sure about that.

My next question follows on from what Paul Martin asked about a moment ago. If the provision for emergency work is not included in the bill, what kind of delay could there be on something that has to be done as a matter of emergency? The biggest issue might be what constitutes an emergency. Will you have a go at defining that? In your submission, you talk about “emergency, urgent and customer connections.”

How do you define those in terms of emergency measures?

Frank Stewart: The simple definition of an emergency situation is one in which there is danger to life and limb.

Dr Jackson: So, if there was a delay to the work—

Frank Stewart: Exactly. If something happened after 6 o’clock at night, would we have to wait until 9 o’clock the next day to get permission from the roads authority to open up the road? That would be absolutely abhorrent. That is a horror story, as far as I am concerned.

Dr Jackson: Absolutely. You say of sections 18 and 19 that there “could be serious implications for the cost of services, the timely delivery of services, and the quality of the local environment.”

Can you expand on that a little and talk about some of the implications?

Frank Stewart: The timing issue arises with regard to people asking for our services. Because of the current climate in the commercial world—you are probably more aware of this than I am—if a company is not prepared to provide a service yesterday, or certainly two days in advance, no one will come to that company. As far as the positioning is concerned, it may well be that we have apparatus in a certain street off which we would tap to go to a customer. According to the bill, there could be instances in which that would not be allowed.

John Taylor: We have a licence condition that is laid down by the Office of Gas and Electricity Markets, which dictates the standards of service that we have to meet in giving people gas supplies and so on. We stick fairly rigidly to those standards. There are issues there.

A lot of consideration goes into the planning of the work and the locations where we put plant. We have highly trained engineers who, before we even put a spade in the ground, have done a lot of detailed research to ensure that the most sensible route has been taken from an engineering point of view. They take into account the impact on traffic and other conditions—the environmental impact, the situation regarding neighbours, and so on. That is all taken into account when the work is planned. The standard of service is of key importance.

There can be situations in which people have increased their gas or electricity usage, which means that we have to reinforce the system to ensure the security of the supply. In other words, the system that is in the ground is not sufficiently large for their requirements and, from time to time, has to be upgraded. Occasionally, there can be a request for a supply within 28 days. There is sometimes a delay, but we like to avoid that, especially with regard to businesses, which are trying to invest and generate employment.

Dr Jackson: Bruce Crawford asked you about the road works commissioner. How do you think that that role could help you, given the explanation that you have just given?

Frank Stewart: The issue is the independence of the role. If, for example, there was a dispute with regard to the placing of apparatus or the timing of a job, the road works commissioner would probably be in a position to arbitrate and give a fair ruling. He would not come down on our side all the time, but he would certainly provide an independent ruling.

Rodney Grubb: Much of the work that we do causes inconvenience at the time. We accept that—it is the nature of the work that we do on the public highway. Much of the work that we do is short term. We are putting in assets, and the asset life of the new equipment that we install could be as long as 30 years. We might go in to do a month’s or six weeks’ work. We appreciate that there is disruption at the time. However, the benefit of that short-term work is a long-term gain, because new assets and infrastructure are going into the ground. That must be considered as part of the context.

The Convener: Fergus Ewing has questions on the issue of local authorities and fixed penalties.

Fergus Ewing: Yes. I am sorry that I was not able to be here for the earlier evidence.

Mr Stewart knows about my concern on the following question. I want to ask about the treatment of utility companies as opposed to local authorities, in particular in relation to the system of fines that the bill proposes. The fines or penalties would apply to the utilities, but not to local
authorities. In the course of hearing previous evidence, as the present witnesses may know, I proposed that there be a level playing field and that, if there is to be a system of fines and penalties, that system should apply to all. Does NJUG agree with that?

Frank Stewart: Absolutely. However, we understand the difficulties involved; I do not suppose that we could have a situation in which the local authority was imposing fines upon itself. It is a matter of concern to us that the bill is being seen as a revenue-raising opportunity. I really do not know how it could be worked in another way, other than introducing a points system, under which points could be awarded against utilities and roads authorities.

Fergus Ewing: I could be wrong, but my recollection is that only the AA Motoring Trust representative has come out and said that fines would be a useful source of revenue. As far as I know, the civil servants and the minister have not owned up to that—not that I would suggest that civil servants are ever guilty of anything, you understand. The bill does not set out how the system would operate, but I believe that NJUG and similar bodies have given some thought to how a system of fines might best work. How do you think that a system that uses penalties—sticks, rather than carrots—could best operate so as to achieve the objectives of having road works carried out as swiftly and efficiently as possible, with the least disruption to road users?

Frank Stewart: It is a very difficult question. We have discussed it, but we have not reached a conclusion. That is also a continuing argument in England—in relation to the Traffic Management Act 2004—where the situation is similar. Utilities will be fined, but highways authorities will not. Our suggestion is that, certainly for the first two years of the eventual act's application in Scotland, a points system or assessment system could be implemented in order to ascertain exactly where the problems lie. That takes us back to our first point about a level playing field, and having a register that records all works, not just utility works.

15:45

Rodney Grubb: As the bill stands, the proposed fines are administration fines. They are for not notifying that we are carrying out works or that we have completed works. We recognise that it is not our operators whom we need to train, but our project managers, so that when we start works the notifications go out.

Fergus Ewing: To put the question another way, it would be slightly ludicrous if local authorities were fining themselves. Clearly, that would not work. I was puzzled by the fact that, in your written evidence, you come out in support of the road works commissioner. I thought that you would tend towards the argument that your support would be conditional on the road works commissioner being the independent person in charge of a regime under which there were the two elements of a level playing field and the road works register applying to everybody, local authorities included. If you did not have a level playing field and/or local authorities were not required to submit information to the register in the way that you were, would you still support the road works commissioner?

Frank Stewart: The position would be a waste of time. There is no point in having someone who is looking at one small section that accounts for 5 per cent of congestion.

Fergus Ewing: Because 95 per cent of the causes of congestion would be outwith the power or remit of the road works commissioner.

Frank Stewart: Absolutely. If the bill is genuinely to address congestion, the problem has to be examined in its entirety.

Rodney Grubb: We talked about local authorities not fining themselves, but Scottish Water is a public body and it is on one side of the fence with us.

Tommy Sheridan: Last Friday, I witnessed a council direct labour organisation van being given a parking ticket in Glasgow city centre, so the idea that one arm of a local authority cannot penalise another arm is wrong. We could have a system that is applied to the roads authority by a local authority of which it is part.

Our desire is to address the real problems. One problem is the length of time that road works take to be reinstated—I take on board Rodney Grubb's point about the long-term nature of the issue. Even more important is the problem in the minority of cases when reinstatement work is not up to standard. There has to be a penalty system as a spur to the industry to ensure that it gets things right first time. Do you agree with that general position?

Frank Stewart: I agree 100 per cent. I have always advocated that those who offend should be punished. It is as simple as that. However, there must be a level playing field. I agree with what you said about one side of a local authority being able to fine or impose restrictions on another section, but there must be an independent arbiter, such as another totally divorced part of the authority.

Tommy Sheridan: Other witnesses from the private sector indicated that they would be willing to help to ensure that a robust system was introduced on the back of the bill, because right
now the bill is not good enough, as it does not delineate exactly what we are talking about. On behalf of NJUG, are you willing to say that you will co-operate in developing a robust system, as long as it is applied evenly?

**Frank Stewart:** Absolutely. We have never shied away from that. We are happy to work with anyone—for example, the Scottish Executive, the Scottish Parliament and local authorities—to address the problem.

**John Taylor:** The convener mentioned work in West Lothian. That authority’s considerate contractor scheme is the model that proves that people can work in partnership to deal with issues and plan work. There are examples of when we have delayed work and the authority has delayed work to make sure that all the work is co-ordinated. Where there were failures, people went out and identified who was at fault, whether it was the utilities or the local authority; they sat down and got to the bottom of the problem.

A failure of reinstatement costs us a lot of money, so it is not in our interests to do it wrong. We spend a lot of time training our staff to make sure that it is done correctly, although we accept that there are occasions when we let people down. We are always working to improve our standards and we now ensure that people are not just trained but continually assessed—we ensure that they are up to standard, know all the modern techniques and can apply them, so that there will be fewer reinstatement failures in the future.

**Frank Stewart:** To give another example, NJUG supplies the utilities’ view to all the working parties on codes of practice and working practices that are set up throughout the UK under the New Roads and Street Works Act 1991. Obviously, we agree with the codes of practice when they are issued, because we are part-authors of them. We do not condone bad practice; we encourage best practice at all times. Some of the codes, such as the safety code of practice, which is a small book that can be carried by every operative, identify almost every situation that a worker is likely to come across in an excavation-type scenario. They give examples of how to lay cones, where to put signs and where to place vehicles. As far as we are concerned, those codes must be adhered to.

**The Convener:** That brings us to the end of our questions. I thank the three representatives from NJUG for their attendance.

Our final panel today is made up of representatives from the UK Competitive Telecommunications Association: Domhnall Dods, the head of regulatory affairs at Thus plc and director of UKCTA; and Nancy Saunders, from Kingston Communications Ltd, who is a director of UKCTA. We also have with us Tony Cox, head of policy and public affairs at BT Wholesale. I believe that Domhnall Dods intends to make some opening remarks on behalf of the organisation.

**Domhnall Dods (UK Competitive Telecommunications Association):** Thank you for allowing us the opportunity to give evidence to the committee. I will start by explaining what UKCTA is and why there is a representative of BT with us. UKCTA is the regulatory trade association for the competitive part of the industry other than BT and the mobile operators. It is a significant indication of how seriously the industry takes the Transport (Scotland) Bill that representatives of an organisation such as UKCTA, whose raison d’être is to counter the power of “evil” BT, are sitting here beside someone from BT—that is meant in the nicest possible way. It is helpful for members of the committee to understand that we are taking the bill extremely seriously; it is one of our top concerns at the moment.

The points that we want to make could be summed up briefly, after which we can drill down through the questions that committee members might have. I will try to rattle through our points as quickly as possible.

First, Scotland’s roads are not only conduits for road traffic, whether cars, bicycles or pedestrians. They are also conduits for the many essential services that we all take for granted. As representatives of the telecoms companies, we are naturally concerned about that service. However, none of us could exist in the way that we do these days without the other essential services—gas, water, sewerage and electricity. Our concern is that their needs have not been adequately reflected in the discussion that led up to the introduction of the bill or in some of the thinking that lies behind the bill.

I suggest that committee members ask their constituents whether they would prefer to have five minutes knocked off their journey home in the evening or to have electricity, water and so on. If that choice had to be made, I know how I would vote. Given that I am looking at my constituency MSP, who is the convener, I am able to tell him that directly.

Secondly, the utility companies in general, and telecoms companies in particular, undertake works for two reasons only: security of supply and customer service—either new or upgraded—connections. Clearly, for the gas and electricity companies, the need to undertake works also involves questions of safety. The telecoms industry—indeed, by definition under legislation—cannot have emergency situations, as our optical fibre poses no threat to life or limb.

For us, works are not done for fun—indeed, they are done at great cost. Frankly, we would rather
not be involved in digging up the roads. Sadly, current technology means that we have to do so, but we try to complete the works as quickly as possible. We are under enormous commercial pressure to do that, particularly those of us on the non-BT side of the industry, who are struggling to catch up in terms of profitability—indeed, some of us are still trying to break into profitability.

Thirdly, many of the measures in the bill will increase the costs of what are essential works. As I said, we dig up the roads not for fun, but because our customers—Scottish businesses and Scottish consumers—demand supply. The proposals will serve only to increase our costs. Tony Cox and I were discussing the matter before we came into committee. He represents probably the only telecoms company that has the luxury of considering whether it will pass on such costs to its customers. For those of us who do not as yet make a profit, the costs will have to be passed directly to our customers. However, even for a profitable company such as BT, the extra costs are similar to increases in the cost of diesel or electricity—if costs go up, BT has to pass them on to its customers. Any business that faces an increase in the cost of doing its business has to pass on the costs to its customers.

Our final concern is that, for the bill to be completely effective and for it to tackle comprehensively the congestion problems on Scotland’s roads, we have to look at everyone who conducts road works and at all the causes of congestion. According to the best figures that the Executive or the United Kingdom Government has, road works account for only 10 per cent of all congestion. Sixty-five per cent of the cause of congestion is down to sheer traffic volume—too many of us are driving around on our roads—and 25 per cent is caused by the incidents that result from those of us who bump into each other, break down or whatever. As I said, only 10 per cent of congestion is down to road works and, of that figure, there is a 50:50 split between the utility companies and the public sector—Executive and local authority—works.

If the focus of the bill is on the utility sector, the Parliament will tackle only 5 per cent of the causes of congestion. We question whether that is the most effective way in which to do things. If the Parliament thinks that road works are an issue that needs to be tackled, we suggest that it should include all road works—there should be a level playing field.

The Convener: Thank you for those introductory remarks. I assure the panel that I did my bit to cut congestion today by coming to the Parliament by train.

Dr Jackson: The subject of my question is an issue that is dear to my heart as the convener of the Subordinate Legislation Committee. In your submission, you say:

“Until detailed regulation or regulatory impact assessments are available, it is difficult to provide in depth analysis of the impact on industry of the legislation.”

Are you suggesting that, in addition to the regulatory impact assessments, the Executive should publish draft regulations as soon as possible? Is that what businesses need to become more fully aware of the impact of the bill? How detailed will those draft regulations need to be in order to allay your fears?

16:00

Tony Cox (BT Wholesale): Thank you for the question, although it is difficult to answer, given that we are looking at the impact that the bill will have on our businesses. I return to the point that Domhnall Dods made about the impact of road works on congestion, as that has to be the starting point for any answer to the question.

We are saying that we are a very small contributor to the problem of congestion on the roads. I would go further than that and argue that we are part of the solution rather than only part of the problem. Some of the services that we provide enable people either not to travel at all or to make sensible choices about when they should travel.

On your question about the level of detail that we require to see, our main concern at this stage is that because of the lack of detail it is difficult for us to gauge the impact on our costs—not only our costs but the costs to our customers. I am not talking only about direct costs. Domhnall Dods mentioned the possibility of passing on costs to customers. That is a direct cost, but there are also other costs. If a delay to the service means that companies cannot take a new high-speed connection to a small business, that could have real costs on their on-going business.

Until we know the details of any exemptions to the three-year moratoriums on digging up roads and the exceptions that will be provided for, we cannot comment on the costs. All that we can do is raise a flag now and say that the matter is of real concern to us. There is a real danger that the proposals will affect the way in which businesses operate, but we cannot give you the detail because we do not know what exemptions would apply and how they would work in practice. I know that that is not a full answer to your question.

The Convener: I understand that the Executive’s intention is to publish the regulations before the bill is passed in order to allow the committee and the Parliament to have sight of them. Would it be possible for BT, UKCTA and your colleagues from NJUG, who are watching proceedings from the public gallery, to evaluate
the impact on your businesses once the regulations are produced?

**Tony Cox:** That would certainly be possible. We would welcome the opportunity to do that.

I had some experience of the lobbying activities that we undertook south of the border on the Traffic Management Act 2004. I do not want to come across as being completely negative, because one of the advantages of the system here is that this committee is taking the time and effort to consult industry and other interested parties at this early stage. I welcome that aspect of the process, although it is also important that, as you suggest, we should be consulted on the detail when the regulations are produced. At that point the true costs and, I hope, the benefits of the proposed measures will be evident.

**Dr Jackson:** To what extent have you been consulted so far, apart from appearing before the committee?

**Tony Cox:** I am not sure whether this is the right way to put it, but I feel that in some ways we have taken the initiative because we have contacted a number of members of the Scottish Parliament. We—not only I, but a number of my colleagues and people from the industry—have had useful meetings with MSPs about the bill. There has been some consultation, but I think that I am right in saying that this is the first formal hearing or series of hearings that we have had. Of course, we have also submitted written evidence.

**Bruce Crawford:** I know that you have met a number of MSPs. Have you met Executive officials and ministers? Have you had a chance to discuss the matter with them?

**Domhnall Dods:** We briefly met officials. It is fair to say that Executive officials were reluctant to meet us until the bill was published. We were able, through the good offices of the Confederation of British Industry, to secure a meeting with the minister. That was very helpful to us, because at that stage we were completely in the dark about what was coming. The attitude had very much been the same as that which we had experienced south of the border: "There will be a bill and you will have to wait and see. You will get what you get when you get it." That is not satisfactory, but we are where we are now. We have met the minister and that meeting addressed many of our fears, although we still have concerns about some of the provisions in the bill. You have received our evidence about those concerns.

**Bruce Crawford:** Your evidence focuses on some of the negative impacts, in particular proposals that could impact on your customers by creating additional costs and causing them to experience a delay in receiving new services. I am not sure which one of you made the salient comment that, through the services that you provide, you give people the opportunity to use roads less. I presume that that is where technology such as broadband comes in, as it enables home working. Can you give an example from the broadband sphere—in which there is huge demand from customers—about the delays, if any, that may arise in servicing customers as a result of the bill? Is there anything positive in the bill?

**Domhnall Dods:** Like other witnesses, we welcome the creation of a road works commissioner. We are pushing for such a measure south of the border. It does not make sense to have a system of fixed-penalty notices under which one of the poachers—the local authority—also wears a gamekeeper’s hat. We welcome the creation of an independent office to ensure that the system is applied fairly and equally.

We have a lot to be proud of in Scotland. South of the border, people are crying out for something like the Susiephone system and the Scottish road works register, which are great tools to aid co-ordination. Until now, that register has been on a voluntary basis. Every local authority and the majority of the utilities are now on the system, but not all local authorities record their works on the register. One positive development in the bill is that the register will be put on a statutory footing and all organisations will be required to register their works. In preparing our evidence, we found that West Lothian Council recorded around 7,500 works in the register. Clearly that council makes good use of the system. However, Dundee City Council and Stirling Council recorded no works and Glasgow City Council recorded very few. The uniform use of the system will, for the first time, give us a true picture of who is carrying out road works in Scotland.

**Bruce Crawford:** Might the bill have a negative impact on the broadband services that you provide?

**Domhnall Dods:** Broadband is a misunderstood term. People tend to think of broadband only as the ADSL-type service from AOL, BT or Wanadoo that is done through BT local exchanges. Our concern is not so much about that present generation of services as about the broader-band services, which seems to be the new term that is emerging. That will involve linking high-capacity networks throughout the country with, in the first instance, business customers, who will be able to pay for the service. However, who can tell what will happen in future? Fibre-optic cables may go to people’s homes. If we put in place measures under which a road that has been resurfaced cannot be dug up to connect a customer regardless of whether the customer needs that to
open a new office or provide a service, that business will be hamstrung. It will either relocate or go to BT, which would have an anti-competitive effect. It may not even have that choice. All sorts of problems could arise.

Nancy Saunders (UK Competitive Telecommunications Association): Another issue is the increasing interest, or re-interest, in local loop unbundling. Some large internet service providers have just started major plans for local loop unbundling but, as they do not have backbone networks, they will need to put some sort of network in place to backhaul from the BT local exchanges. If those companies cannot dig up roads, they will not be able to do that.

Bruce Crawford: Forgive me, but I cannot recall seeing many of those comments in your evidence. It might be useful if we could have an expansion of those comments in writing. On the one hand, the Executive states that its main priority is to grow the economy, but you are telling us that the bill might have a dragging effect on the economy. From what I hear, I think that that might be right. We must know about that if we are to understand the bill’s full implications before we start taking decisions.

The Convener: For information, I point out that the Enterprise and Culture Committee is also taking evidence on the bill. I imagine that it will concentrate heavily on the economic issues, but I am happy for the witnesses to respond to the point.

Domhnall Dods: We have just come from today’s Enterprise and Culture Committee meeting, at which a representative of NJUG covered most of the issues—there were few left for us to cover. In our evidence, we may not have said directly that the bill will create a drag on the economy, but the concerns are there for all to see.

For example, we are concerned about the powers to direct the timing and locations of works. If a business orders a service from me—for example, if the Royal Bank of Scotland wants to open a major new data centre—it will want diverse suppliers to come into its building at different points, for security reasons. It might want several suppliers, because it will not want to put all its eggs in the BT basket, or the Thus basket, or the Kingston basket. Such customers want services from umpteen different people. If we say, “We are really sorry, but the local authority has banned us from working on this road for the next three years because it has resurfaced it,” the customer will have a problem, we will have a problem and Scotland’s economy will have a problem.

If there were exemptions to the powers in relation to connecting to a customer, we would not have that problem. I keep using banks as an example because my company works with many banks and they are the bane of our—I mean that they are at the top of our concerns. I nearly used the wrong word.

Bruce Crawford: The holes are the bane of your life.

Domhnall Dods: Yes, the holes are the bane of my life. If an existing supply to a bank is damaged somehow and becomes faulty, the bank will want the problem to be fixed. I am contractually bound to fix the fault within hours, not days, months or years. If the local authority says, “We would love to let you repair the circuits into the Royal Bank’s building, but you are banned from digging there for the next three years,” I will be in breach of my contract and the bank’s customers will be unable to access services. When we look beyond what appears to be a reasonable proposition, a host of problems appears.

The convener and I have spoken about this: the local authority resurfaced the main thoroughfare through Livingston, in the convener’s constituency. The council did a wonderful job, monoblocked the road and made it look fantastic. It asked us all to refrain from digging it up and we agreed to that on a voluntary basis as we had no plans to dig there. During the period of the ban, however, the council ordered a service and wanted a big, fat internet pipe. We said, “We would love to help, but can we come back next year?” The local authority said, “No. We need the pipe now.” When the chickens come home to roost, local authorities understand as much as any other customer does what it means to want service. That illustrates perfectly the need for exemptions to some of the powers in the bill.

Bruce Crawford: That is useful.

Iain Smith: The multiple digging-up of roads causes frustration: one person digs up a road one day, then someone else digs it up the next day and so on. The submission from UKCTA refers to the problems that are caused by trench sharing, which I accept. It also mentions the sharing of ducts, which I would have thought would make it easier to carry out work without digging up the road again. The submission says:

“the sharing of ducts raises further issues of network security, integrity and quality of service”.

Will you expand on that? Lay people such as me thought that sharing ducts would be a good way of reducing, first, your costs and, secondly, difficulties for the public.

Domhnall Dods: Tony Cox and I both have a view, so perhaps we should give an answer in two parts.

We were not suggesting that we are anti-sharing. I can give you a list as long as my arm of
companies with which we have shared—they include the company that Nancy Saunders represents. When we dig trenches to roll out our backbone networks, it makes sense to share the trench, because that cuts our costs. Rather than each company having to pay a contractor separately, we pay a single contractor. That can mean that the trench is slightly bigger and remains open for slightly longer, so a balance must be struck.

We won an award from the City of Westminster Council for sharing an enormous trench with seven other operators. We could have opened and refilled the hole in a day to complete our work, but the trench was open for three weeks and took up two lanes round Hyde Park Corner. The trench completely snarled up the traffic in London, but, perversely, we won a prize because we had complied with a perfectly laudable initiative to make operators share trenches.

**The Convener:** Were you participating in a well-known beer advert at the time?

**Domhnall Dods:** No.

We can and do share ducts. We can and do sell ducts. We install more ducts than we need when we dig a hole because we do not want to dig the hole again. Sharing ducts makes things easier, but of course we must still dig to get access to the duct in the first place, so sharing does not eliminate digging.

Serious business users, such as banks, have high and strict demands about security and integrity of supply. Such businesses would not be happy if we guaranteed them 99.89 per cent availability but then opened our ducts to people over whom we had no control. Other users would not be contractually bound to us, so there are issues in that context. We are not saying that sharing cannot happen and never happens; we are saying that there are sometimes limits to what can be achieved. Those limits are not necessarily imposed by us; they can be imposed by customer expectations.

**Iain Smith:** Is your concern to do with the security of the supply when someone else is working on the duct—the old putting-the-spade-through-the-cable sort of thing?

**Nancy Saunders:** You would be amazed how often that happens.

**Domhnall Dods:** There have been cases in which customer supply has been interrupted because someone has unlawfully decided to share our duct. Some people who are not even telecoms operators dug into our duct in Aberdeen in order to run a supply between two offices. That came to light because they had damaged a customer’s supply. That was an unauthorised use but I am sure that they did not deliberately try to damage the supply. Even if someone had been in there lawfully, they could have caused a problem.

**Tony Cox:** Iain Smith started out by saying that the perceived problem is that one utility company digs up the road, then another one does and then another one does. I always think that that argument is strange because my perception of roads is that one car comes along, then another comes along and then another. The serious point that I am making is that the principal cause of congestion is the volume of traffic. From our perspective, this debate is about proportionality. We agree that it is right to make efforts to improve the situation with regard to any form of congestion. We particularly agree with the point about co-ordination and the requirement to complete works to a good standard. Those are valid points, but I do not think that we should overlook the fact that road works, whether they are conducted by the highways authorities or by us, are not the main cause of congestion and that the volume of traffic is.

If the roads were being used to the capacity for which they were designed, the addition of road works would make little difference to congestion levels. We only have a problem because there is a problem of over-demand in road use.

**Nancy Saunders:** The convener talked about the television advert in which gas, water and telephone companies share the same trench. In practice, that would not happen because all those utilities have to be at different levels. You cannot have a water main near the surface of the road, which is where telephone cables generally go. Even though it would be nice to share trenches with our utility partners, it is not practical to do so, for many reasons.

**Paul Martin:** The issue of the banking industry requiring special security is a specific example, but there will be other situations in which we should be encouraging organisations to share ducts. I would argue that, even given the security issue, technology should allow us to enable banks to share ducts anyway.

Why are we allowing those customers to be so precious about the issue? You are trying to make the case that road works are not the source of inconvenience and traffic problems, but I have to say that that is not the perception. We want to minimise disruption so surely we should not be allowing clients to be so precious. When I got broadband installed, I do not recall being precious about where the duct came in. Duct sharing is not a big issue for every business that wants broadband installed, is it?
Domhnall Dods: I will not get into a discussion of how one negotiates with major banks—that way lies trouble.

The key word that you used was “perception”, as the perception is not matched by the reality. People have an idea that companies run around digging up roads willy-nilly wherever they feel like it and without regard to anybody, that there are no statutory controls and that we just do not care. That is absolutely not the case. As I said already, our industry is not in the healthiest of financial conditions, if I can put it that way. We would do anything to avoid digging up a road, because it costs a lot of money. We dig to respond to a customer’s order for service. If customers demand certain levels of service we have to find a way of guaranteeing them. That can mean—I am thinking of the banking example—ensuring security of supply. The customer might want diverse routing and we will have back-up generators and the full panoply of resilience.

I return to the point about perception. The best figures available, which, sadly, are UK-wide figures rather than Scottish ones—although I do not see why Scotland should be radically different—show that 65 per cent of congestion is down to too many of us driving around, 25 per cent is down to us bumping into each other and 10 per cent is down to road works and street works, which are split 50:50 between us and the public sector. Utilities therefore cause 5 per cent of the problem at most. I take your point that the perception is perhaps different, but that is the reality. Some time ago, we called on the Executive to carry out research into the facts in Scotland, but, sadly, that has not happened and we are now facing a bill. The reality is not quite as extreme as people perceive it to be.

Paul Martin: From where is the research that gave us the figure 5 per cent?

Domhnall Dods: It was from the Transport Research Laboratory, which was part of the former Department of the Environment, Transport and the Regions in London. We can and do share data wherever possible on a backbone network—on trunk roads, for example—because that makes sense. However, if I am connecting to a major customer and my guys have gone in and fought hard to win the business, the last thing I am going to do, much as I respect my colleagues who are sitting either side of me, is offer to take them up to my newly won customer, because that is commercial suicide. There are limits to where I will share.

Michael McMahon: Everyone who has spoken to us has expressed a desire to have a level playing field, to which the witnesses have alluded this afternoon. However, the UKCTA written submission argues for:

“extending the various provisions that penalise private sector companies that infringe the Act to those in the public sector.”

That is fair enough. You are asking for the level playing field, but how would that benefit road users?

Tony Cox: If you are arguing that the measures in the bill are going to improve the situation with regard to congestion caused by utility companies, it follows that applying the same measures to the road works carried out by highways authorities would have similar benefit. If the purpose is to improve the congestion situation—albeit that utilities are responsible for a relatively small component of that—it seems sensible to apply the same rules to all those who dig in the road. That is our basic contention.

Domhnall Dods: I would argue that the bill might have a greater effect on the other undertakers. We are already under huge commercial pressure to get the job done quickly, because until the job is done and the customer is connected, we are paying a contractor but are not being paid by our customer. Until the work is done, we have an unhappy customer. Public bodies do not face the same commercial pressure, which is understandable, so arguably there is an even greater need to give them an incentive to work harder and faster.

Michael McMahon: So it is all about incentives. How do you give your contractors an incentive to reinstat the roads as effectively as they should?

Domhnall Dods: As an industry we have taken part in a voluntary coring programme. We accept that there is a problem with the quality of reinstatements. It makes no sense for us to allow poor-quality reinstatements because we are paying the contractor to do a good job. If they do not do a good job we get a bad name, your constituents write to you, you give us a hard time and we will have to pay the contractor to go back and do the job again. We want to address the quality issue. A voluntary scheme has been developed and a national coring programme is under way to address the problems. We address the problems through our contracts, in which we can include penalties. If contractors fail to meet standards, we do all the usual things that one can include in the terms of a contract—either we do not pay them or they pay damages. A range of measures can be applied.

Michael McMahon: Do you think that the bill will help to achieve higher-quality reinstatements?

Domhnall Dods: To be honest, the bill will not help us to achieve any more than is being done at the moment. We want an incentive or encouragement to apply to all undertakers of street works. It is arguable that it makes no sense
to require the public sector to pay fines—that would just mean the same money going round in circles—but other options could be considered.

For example, a number of considerate contractor schemes are already in operation in places such as Aberdeen, where a scheme has operated very successfully, and in West Lothian, where an awful lot of work has been done recently to set up a new scheme. Indeed, I gather that West Lothian’s scheme will be taken on board in Glasgow as well. Although many people are sceptical of such schemes, which they think are just another badge that we stick on our vans, the schemes encourage—believe me—a great deal of pride in the job. No utility company or local authority wants to be named and shamed as an organisation that has consistently done a bad job. No one likes being in the position of being held up to public criticism and ridicule. The considerate contractor schemes have been very effective.

Another suggestion is to have a similar scheme that is based on points. If a company were to fail to do a good job, it would incur a number of points, and if the total number of points reached a certain threshold, fines would start to kick in. I am not convinced that fining everybody straight away is necessarily the way ahead.

Paul Martin: The UKCTA submission raised the concern that the requirement to resurface the entire width of a road might result in a 385 per cent increase in the cost of a telecoms installation. Will you elaborate on how that figure was arrived at?

Domhnall Dods: The figure comes from real-world experience.

In England, a similar power that was introduced under the Traffic Management Act 2004 has caused a great deal of anxiety about how it will work. However, the power down south is a little less extreme than the power that is proposed in the Transport (Scotland) Bill. For example, if we had dug up 10m of the Royal Mile in front of the Scottish Parliament building, a power such as that in the 2004 act could require us, at an unknown point in the future, to come back and resurface either half the width or the full width of the Royal Mile for that 10m. However, under the proposal in the bill, even if we had done a perfectly good and lovely job of digging up 10m outside the Parliament’s front door, we could be required to resurface the road from outside the Ensign Ewart at the top of the Royal Mile all the way down to the bottom, or any part thereof. That seems completely insane.

The proposed power in the bill will also be without limit of time. One has to feel for BT, which has been around for 100 years. If BT has ever dug up the Royal Mile, it could be required at any time to come back and resurface the whole street, or to contribute to the cost of doing so. How are we to work the cost out? How is a company supposed to price a service to its customers? If a customer orders a service from us, we will need to explain that, although the contract states that the job will cost £X, we will reserve the right to come back at any time in the future to ramp up the cost so that we can recover the unknown proportion of the cost that we might incur for resurfacing the whole street.

The 385 per cent figure comes from a real-world example. In England—in Leeds, I think—my company voluntarily offered to cover resurfacing costs, which were 385 per cent of the installation cost.

Paul Martin: Do you accept that the roads have sometimes looked pretty poor as a result of utilities carrying out work on them? Do you accept that the proposal has some purpose, because some utility companies have not always reinstated roads to the proper standard when they have gone about their business?

Domhnall Dods: I do not accept that the proposed power is required to deal with poor-quality reinstatements. Under existing powers, a utility that does not reinstate a road properly can be made to come back to do so. There is also a guarantee period in which we might be required to perform such an undertaking.

Paul Martin: Is not there technical evidence to show that the required finish for current reinstatements is not what it should be?

Domhnall Dods: Real-world experience shows that, in many cases, the reinstatement is of a better quality than the surrounding road. That was confirmed to me by Department of Trade and Industry officials, so it is not from a biased source.

Paul Martin: Have you technical evidence to back that up that we could get access to?

Domhnall Dods: I will certainly try to find some for you but, hand on heart, I cannot say at the moment whether I can provide that.

Tony Cox: It is quite right that we should be required to reinstate a road that we need to dig up to provide a service. If we are found to fall short in reinstating the road, it is right that we should be summoned back and made to do it properly. There is no question about that. The question is whether the provisions will be used as a rationale for extending our work and turning us into street resurfacers, which would be a step too far.

16:30

Domhnall Dods: As I said, I have no qualms—and no reasonable operator would—with the idea
that, if we have not done a good job, we can be brought back and made to do it properly. That is entirely reasonable and there is legislation that makes us do that at the moment, but I cannot accept the idea that, if I have reinstated one part of the road, I could somehow be required to redo the whole road, which has nothing to do with me because I have never been near it.

Paul Martin: You made the point earlier that you do not open up a road unless you need to, but I argue that, if the industry was more intelligence led in the way in which it went about its business, you could prevent a number of roads from being opened up. There are bound to be occasions on which you have opened up roads when you should not have done or when it could have been prevented in some way. Would the bill prevent such work?

Domhnall Dods: No. I do not think that it could.

Paul Martin: How about some forward development and considering where things could be done that were not done in the past?

Domhnall Dods: Unless the Parliament passes a law that requires Scottish businesses and consumers to tell us months and years in advance where and when they will want services, road works cannot be prevented. The telecommunications industry is unlike the gas, electricity and water industries, which have long-term programmes that have been planned long ahead. They know where services will be required and when mains replacement programmes will be required. For example, the Health and Safety Executive requires National Grid Transco to have a 30-year rolling replacement programme for gas mains. As a telecoms operator, I have no idea where my next order will come from. I do not know and cannot predict when company X or Y will order services and what they are going to order. I do not accept that we can prevent roads from being opened up unless the Parliament is prepared to pass a law telling businesses and customers to have a five-year plan for where they want services.

Paul Martin: Do you have no idea at all where the business will come from?

Nancy Saunders: We can have an idea with backbone networks, but we do not build a backbone network unless there is a bunch of customers at the end of it and we have critical mass. The industry is very much customer driven.

Domhnall Dods: If we were still in the era when companies were digging speculatively—perhaps the late 1980s and early 1990s—we could prevent road works, but those days are long gone. The industry is not digging speculatively and our backbone networks are in place; we now have to connect customers to get a return on the investment. My company has invested upwards of £280 million in Scotland’s infrastructure and it now needs to generate a return on that for its backers; to do that, it needs to dig to customers to connect them. The question would have been great 14 years ago, but those days are gone.

The Convener: When I spoke to one of the other utility companies it explained to me how it tried to go about what might be described as minimally invasive installation of services by digging holes at interim points and piping the services through. Can—does—the telecoms industry undertake that procedure?

Nancy Saunders: It has been tried.

Tony Cox: It has been tried and, to the extent that it makes economic and practical sense—that is, to the extent that we are able to do it—we will do it. As we said earlier, we do not dig up the roads for fun, so if there are cheaper ways of achieving the same result, we will use them, and non-invasive techniques would normally be cheaper methods, so we are considering new, non-invasive techniques.

We were asked whether the bill provides an additional incentive. I do not see anything in it that does so, but there are commercial pressures to consider other ways of doing things. A new technology that might provide a partial solution—and, to some extent, already does so—is radio connectivity. If we are providing a wireless service, we do not need to dig up the road, so that technology has potential. However, for a lot of applications, we are not at the stage at which such a service will fit customer requirements. Those are normal commercial pressures, and I do not see anything in the bill that directly encourages such solutions.

Nancy Saunders: One of the main problems with using non-invasive techniques is that when one uses what we call a mole to scurry through the earth, one has to be very careful that it does not scurry through someone else’s fibre. At the moment, one of the main problems with radio technology is the lack of spectrum for proper broadband services.

Domhnall Dods: The non-invasive technologies are there, but it is ironic that the areas in which one would want them most—in other words, the areas in which there is most risk of congestion—are those where there is most infrastructure in the ground, which means that they are least able to be deployed. In one case in which we tried to use a mole, it got deflected by a stone or a rock and came up and breached the surface of the A9, which caused congestion.

Tony Cox: In many cases, we can lay new cable and new fibre through existing ducts. That happens at present—that contribution to reducing
While you were asking the question, Fergus Ewing highlighted yet another reason why the A9 should be dual carriageway between Perth and Inverness. If that were the case, such disruption would not be so burdensome.

I want to ask about a different matter. We have heard that the days of gratuitous investment have gone and that, from now on, road works will be stimulated by repairs to existing fibre or by new customer demand. Basically, the process will be demand driven. I do not know from your written submission—which I might not have picked up your views—whether you anticipate that the quantity of street works occasioned by the members of UKCTA and, separately, by BT will be similar to, less than or more than the quantity of such works that have taken place in the past. I do not have a picture of whether we are facing an escalation in the amount of work.

I realise that you may find it difficult to comment on, because it would involve saying how well you think that your businesses will do in future. Are you able to say what extra volume of street works might arise if the potential demand that you have identified suddenly materialised as a result of broadband and ISPs having to get involved in new road work activities? What volume of extra works might arise in such circumstances? I know that that is a very difficult question to answer, but it would be useful if you could give a broad indication of what we are looking at.

Domhnall Dods: While you were asking the question, Nancy Saunders commented that it is impossible to say. It is very hard to predict the volume of such activity, but we can examine the trends on customers' bandwidth requirements. In this country, broadband uses a 512K connection—you must forgive me for using some technical jargon—which is about 10 times the speed of old-fashioned dial-up modems. If one mentions that in other countries, one is laughed at. We have a substantial operation in the Netherlands, where people ask us why we do not have 10 megabit connections, why we are not downloading DVDs and watching films and why we do not have all the wonderful services that they have. All that we can say for sure is that the demand for bandwidth will continue to rise.

There is a great deal of talk in the industry about the provision of fibre optic to the home. Fibre optic is the technology that is used to deliver services to the Parliament building, for example. Sadly, the only way of delivering fibre optic technology to people's homes is by digging up their paths or their gardens. The Office of Communications is promoting local loop unbundling as an effective way of promoting competition and delivering the benefits of competition more widely to the market. As Nancy Saunders has mentioned, that will involve some further digging. I do not know whether the overall volume of work, but will be higher or lower.

The backbone networks are in place and, as Tony Cox said, it is always possible to haul the fibre out, stick some more stuff down and put more boxes on the end of it. The clever people in the back rooms are always coming up with new ways of squeezing more data down the cables. We can probably say that, for the foreseeable future, backbone networks will not be getting dug up, but there may be an upsurge in the number of customers that are connected.

Tony Cox: I agree with what my colleagues say. Fergus Ewing's question is difficult to answer. The best prediction is probably that the volume of works will be about the same. I should add that BT is embarking on a programme of assessing the design of its entire core network, with a view to upgrading it and changing it to an internet protocol-based network. That does not mean that we are going to be digging up the roads, because we will not need to. As Domhnall Dods said, we can put new equipment in exchanges. However, there are likely to be some occasions when we need to dig up the roads. The best guess in the telecommunications sector is that the amount of road works will be about the same.

Domhnall Dods: I can give a bit of context about something that it occurs to me that I have not yet mentioned.

I am a motorist and a cyclist and the type of road works that bother me are the ones where the cones are left out all weekend and no one is digging. We have some works in Livingston at the moment that have been scheduled for more than a year. That is the sort of thing that annoys me.

However, such situations are not what we in the telecommunications industry are talking about. I am not an engineering person but I went out with my digital camera to take some time-stamped photos so that I could show politicians what we are talking about. I was astonished because the guys who are out there doing the work are digging trenches and then filling them in; they are rarely left open overnight. We are talking about works that take only very short periods of time to complete. Subject to trench sharing, if one operator is involved the typical telecommunications trench is the width of a piece of A4 paper, and it is dug and filled in within one day. When I went out at 8 o'clock in the morning, the guys had started digging—they had done a couple of hundred metres already. I went back at 2 o'clock in the afternoon and they had gone—not only had they filled the trench in but they had cleared up and gone.
Our colleagues in gas, water and electricity might have to dig some bigger holes, but members might want to consider exempting minor works. In our industry, we are not talking about the huge great holes that, because water pipes are bigger and have to be deeper, our colleagues at Scottish Water might have to dig.

Tony Cox: Going back to one of the earlier questions about the details of the proposals, this is another area in which there is no detail. We will be looking for proportionality in increased fines, decriminalisation and the imposition of penalty notices when we get things wrong, given the impact on congestion that is caused. As Domhnall Dods said, our jobs are frequently very small and of relatively short duration and might well be on minor roads where congestion is not an issue. That is why we are looking for proportionality.

Fergus Ewing: I have another question that arose from the written evidence under the heading “Telecoms as part of the solution”. I was intrigued by the reference to a report by BT that concluded that

“more widespread use of broadband to enable flexible working could eliminate 14.5 billion miles of journeys per year throughout the UK – equal to some three years’ of growth in car usage.”

That very dramatic statistic seems to suggest that access to broadband is good for congestion and takes people off the roads because they can work from home. That is the basic idea. How was that apocalyptic figure of 14.5 billion miles arrived at? I presume that it was plucked out of the air.

Tony Cox: Not at all. We examined the impact of broadband, although this is about more than broadband. Broadband has meant a step change in people’s ability to work from home, and communications play a role in that. I do not think that we should forget that the other infrastructure providers are essential to that as well—we cannot have broadband if we do not have an electricity supply, and none of it is a lot of use if there is no water supply, too.

We examined the current take-up and use of broadband and the number of people who are home workers and flexible workers at present across the UK as a whole. The figures suggested that approximately 7.5 per cent of the workforce is working from home. We compared that figure with other countries that are further ahead than we are in flexible working, particularly the Scandinavian countries, where about 15 per cent of the workforce works from home. To blow BT’s trumpet for a moment, we encourage home working where it makes sense and where it is possible, and we are up to that level of about 15 per cent.

If we extrapolate that 15 per cent and consider the impact on commuting, travel to meetings and so on, we come up with the figure of 14.5 billion miles. However, that is not the end of it. It is not just about flexible working and home working; there is a real net benefit from home shopping, for example. A lot of people point out that there will still be delivery vans, which is true, but there is still a net benefit. We have commissioned work on and carried out studies into this area and the figure that we have given is based on evidence. It is only one extrapolation, but we believe that the result is achievable.

It all comes back to the principal cause of congestion, which is basically the volume of traffic on the roads. Instead of telling people that they cannot travel, we need innovative methods of reducing traffic. After all, people will always need to travel. Some jobs are not so open to flexible working or home working; however, such approaches should be encouraged for those that are. That would make a lot of sense for the whole economy.

16:45

Domhnall Dods: We can extend the point beyond home working and flexible working to include, for example, videoconferencing and audioconferencing. Indeed, we make very extensive use of such facilities. For example, I used to spend every week slogging up and down to London, where the bulk of our industry is based. Instead, I now have videoconferences and audioconferences. People are much more receptive to those technologies, even to the extent that, although my head office is in Glasgow, I rarely slog along the M8. I simply turn the television on in a corner of one of our meeting rooms and have a videoconference. There is a whole range of similar measures that we can think about.

Tony Cox: In 1998, it took an average of 51 minutes to travel the length of the M8 corridor in the rush hour. It now takes 64 minutes. As a result, Domhnall is benefiting himself and everyone else by not making that journey so often.

Tommy Sheridan: I am a wee bit surprised by your attitude to the introduction of a penalty scheme. I do not know whether you heard the earlier witnesses or have read some of the evidence that we have received from other private contractors. However, everyone seems to be of the opinion that, as long as there is a level playing field for everyone involved in road operations, they have nothing to fear from a penalty scheme. Indeed, they welcome it.

I was interested to note that the word “proportionality” was used this afternoon. I wonder whether Tony Cox would, for example, proportionately reduce the cost of installing
broadband in a low-income household. In any event, if your record of road reinstatement is so good, you must surely have nothing to fear from a robust penalty scheme.

Tony Cox: Absolutely. If it seemed that we were against the application of penalties for doing something wrong, we were giving the wrong impression. Reinstatement is the classic example in that regard. It is perfectly legitimate to be given a penalty for not reinstating roads to a particular standard and we should be required to pay that. I must point out that we are already subject to such schemes.

That said, on proportionality, if the problem is congestion, proposals to extend a scheme should take it into account that something that goes wrong on a road where congestion is not an issue should be subject to a lesser penalty. I am not saying that no penalty should be levelled, even in that situation, but we need to address the real issue and concentrate our efforts on where the congestion problem is worst.

Domhnall Dods: At the Enterprise and Culture Committee meeting upstairs, we discussed what might happen with a simple error that had no impact on congestion. For example, if I put a notice on to the Scottish road works register that says that I will be digging outside 100 the Royal Mile, but in fact I will be digging outside 101 the Royal Mile, that is technically a finable offence. We feel that it is disproportionate to receive a fine at level 5 on the standard scale for such a little keyboard slip. I am sorry if we have given the impression that we are against a penalty scheme, but I feel that we need to make the penalty fit the crime.

I am worried that I might have given the wrong impression when I mentioned points systems and considerate contractor schemes. I was simply trying to counter the argument we often hear when people say that schemes should apply to everyone that the public sector cannot pay for the public sector’s errors and that the money will simply go round in circles. We could try to get round that with points systems, naming and shaming measures and so on. Other options can be explored.

Tommy Sheridan: That response is helpful because I felt that, particularly with your example of a points scheme, you were giving the impression that you were trying to avoid the type of penalty scheme that has been mentioned. I must signal some caution about basing your argument on the difference in effect on congestion between work on minor roads and work on major roads. What most people get angry about is not just the congestion but the idea of someone digging up a road and not fixing it right. Whether it is a minor road or a major road does not really matter for the local community. The local community might suffer more than the wider community. There is a principle here, which the committee is trying to identify. As I said earlier, it is in only a minority of cases that a contractor does not reinstate a road properly, but when that happens, it should be properly punished. If you accept that, that is fine.

I would caution Domhnall Dods—I am sorry if I am pronouncing your first name incorrectly; it is a unique first name—who gave an example involving the Royal Mile that was not helpful. Later, you gave an example of non-invasive techniques and talked about a very real example where an attempt to enter the network under one part of the A9 ended up causing damage elsewhere. You would obviously be responsible for the reinstatement of that portion of the road. As far as the bill is concerned, it is important to consider the fact that creating a hole in one part of the road network might, through structural problems, affect another part of it. You must have a certain level of responsibility for that. That is not to turn you into road reinstaters or resurfacers. The provision on that is included in the bill as a precaution.

Domhnall Dods: If there were evidence that we had destroyed or seriously damaged another part of a road, we could accept the logic that we would be required to repair it. However, the power in the bill would not cover that, as it is simply a power to resurface. I am not an engineer, so do not press me too hard on the details of this, but a requirement is not being made to completely reconstruct the substructure of the road; it is about a skim of the surface and putting the tarmac back. That is an aesthetic measure, not a structural one. I can accept what you say in theory and I am not educated enough to argue over whether that is a sufficiently realistic scenario, but the bill would not resolve that issue. The bill proposes an aesthetic measure to make the road look nice again, all with the same shade of tarmac, but it does not provide a structural solution.

Tommy Sheridan: Let us be clear about the whole idea of a road works commissioner and a more robust regime. If anyone involved in road deconstruction were to cause structural problems, we are very much of the opinion that that should be identified at an early stage. The bill is not about trying to get you to resurface the whole of the Royal Mile despite the fact that you have been operating on only 10m of it; it is about trying to get you to reinstate that 10m to the highest possible standard. If that requires a slightly broader area of resurfacing for the sake of consistency, I would hope that contractors would accept that.

Domhnall Dods: It is helpful to have that clarification as to the Parliament's intention. However, the bill does not say that. The provisions apply in perpetuity. They are without a limit of time.
or a geographical limit. Let us say that I am selling you a service for a certain amount a month; if the digging accounts for 80 per cent of my costs, and if those might be nearly quadrupled in 20 years’ time, how am I supposed to price that service? That would not be satisfactory for you, nor would it be satisfactory for me.

**Tommy Sheridan:** Appropriate amendments may be submitted.

**The Convener:** That brings us to the end of our evidence taking on the Transport (Scotland) Bill. I thank Domhnall Dods, Tony Cox and Nancy Saunders.

16:54

*Meeting suspended.*
MACS was set up in May 2002 as the Scottish Ministers’ Statutory Advisor on disability issues in relation to transport.

Concessionary Fares

In August 2003 MACS prepared the following concessionary fares position statement in response to the Scottish Executive Partnership Agreement:

“MACS Position on Concessionary Fares

MACS vision is of a Scotland where anyone with a mobility problem due to physical, mental or sensory impairment can go when and where everyone else can and have the information and opportunities to do so.

This means that we are seeking an improvement in transport services to make them available and accessible for everyone.

MACS considers that the Scottish Executive’s Partnership Agreement is deficient in that it only proposes examining and extending concession schemes. At no point does it suggest that making transport accessible is a priority. There is no point in a concession if you cannot use the transport.

MACS recommends that the policy goal should be to achieve Inclusive Transport. The diagram below shows the four key issues that must be addressed if this goal is to be recognised:

Access
From front door to transport services
In and out of vehicles and associated buildings
Availability of transport etc…

Information
Is the service available?
Is the service accessible?
Fares and timetable information useable
On-board information
Travel training etc…

Customer Service
Disability equality training
Attitude change
Communication
Customer feedback etc…

Affordability
Targeted investment?
Benefits (DLA, etc.)
Concessions
Minimum wage etc…

Inclusive Transport

There will always be a place for concessionary fares (such as for disabled people’s assistants/travelling companions) but offering a concession is only one part of a comprehensive
solution. For many disabled people cost is not the main barrier to travel. All the factors above must be addressed to provide inclusive transport for all the people of Scotland.”

**Scottish Executive’s proposals on statutory regional transport partnerships (RTPs)**

MACS is currently considering the proposals set out in the Scottish Executive’s consultation document.

**Our initial thoughts are as follows:**

- A founding principle of each statutory RTP should be to embrace inclusive transport.
- The structure of the RTP could have a significant impact on its ability to deliver improvements, which would benefit disabled people. We are concerned that each RTP takes proper account of the needs of the disabled people in its area.
- Disabled people should be represented among the external members of RTPs.
- RTPs take account of the MACS Transport Strategy Planning for Inclusion guidance, which we shall be publishing shortly.

We are considering our responses to the specific questions in the Scottish Executive consultation document.

**SUBMISSION FROM AGE CONCERN SCOTLAND**

**Introduction**

Transport, both public and private, is one of the key issues that impacts on the quality of life of older people\textsuperscript{157}. Age Concern Scotland members consistently bring it to us as an issue, whether it is the attitudes of bus drivers to older people, or the cost of fuel in rural areas.

Age Concern Scotland welcomes the proposed introduction of a national concessionary fare scheme, but believes that the Transport Bill offers an opportunity to improve other transport issues that impact on older people’s lives.

**Concessionary fares**

The introduction of local free bus travel has been appreciated and valued by older people, many of whom have taken advantage of the scheme. The scheme has enabled people to get out and about, and play a fuller role in society. Specifically, there has been a 149\% increase in the numbers of people travelling by bus for a medical appointment.\textsuperscript{158}

However the schemes have not been without difficulty. Specific difficulties reported to Age Concern Scotland include:

- Poor attitudes of bus drivers:

We have had many reports of older people being asked to wait until fare-paying passengers have boarded. This is an issue of driver training we have raised with the bus companies, and is not necessarily an issue on which it is possible to legislate, but there is clearly a need for promotion of the public good of the scheme. Older people are frequently being made to feel second-class citizens. On another level, older people are reporting that drivers are frequently inconsiderate in their driving, moving off too fast, and not waiting for older passengers to be seated.

\textsuperscript{157} Transport and Ageing: Extending the Quality of Life via Public and Private Transport; M Gilhooly et al; ESRC; 2003

\textsuperscript{158} Monitoring Free Local Off-Peak Bus Travel for Older and Disabled People; C Buchanan; SE Development Department; 2004
• Difficulties with cross-scheme travel:
These difficulties came to light early on, with passengers travelling across boundaries being made
to get off a bus and wait until the next one if they hadn’t paid the full fare for the whole journey. This
is in line with the rules, but is neither practical nor reasonable.

• Different rules from one scheme to another:
This is of particular difficulty for people who travel cross-boundaries. People fail to see why some
schemes allow free travel to a neighbouring authority (Aberdeenshire to Aberdeen, for example)
but not in the other direction (Aberdeen to Aberdeenshire).

There is a clear demand for one simple national scheme, which allows people to travel free by bus
throughout Scotland. The provisions of the Transport Bill would seem to be adequate to establish
such a scheme, but it is difficult to make further comment before the scheme is established.

Equal opportunities

The principles of equality are embedded in the Scotland Act, and should be enshrined in the
workings of the Scottish Parliament. Age Concern Scotland fully supports the establishment of free
bus travel for older people, but we have concerns that this does not help those people for whom
bus travel is difficult or impossible.

Many older people are frail or disabled, or live in isolated areas where access to public transport is
difficult if you are not fully fit. These people are not able to take advantage of the benefits of free
local or national bus travel. Many frail or disabled older people are dependent upon community
transport schemes or other tailored transport schemes to enable them to reach hospitals, clinics,
shops, etc. Age Concern Scotland receives regular enquiries from older people seeking information
about community transport, particularly for health or care related purposes. We believe that there
should be additional resources made available to develop and support such schemes both in rural
and urban areas, and to ensure that older people are well informed about travel options.

The issue of disability and impairment also relates to the use of public transport. As mentioned
before, the frailties of older people are frequently ignored by drivers. While significant progress has
been made in the provision of low-floor buses, there appears to be little progress in the easier to
achieve targets of driver training and accessible information.

Conclusion

The provisions of the Transport Bill are largely outside the remit of Age Concern Scotland.
However we welcome the provisions which allow the introduction of a national concessionary fare
scheme, but reserve judgement about the operation of such a scheme. We would like to see more
emphasis on transport for older people who cannot take advantage of the concessionary fare
schemes, and more emphasis on addressing some of the equalities related issues.

Jess Barrow
Head of Policy and Public Affairs
Age Concern Scotland

SUBMISSION FROM THE SCOTTISH YOUTH PARLIAMENT

Before our meeting on the 14th of December, I would like to state what the Scottish Youth
Parliament’s policy is on public transport. In our Manifesto, Getting the Message Right 2003, it
states:

“Young Scots should be encouraged to use public transport by the provision of free local and
education related bus travel for all those under the age of 16 and concessionary fares for those
under the age of 25 in full time education. Reduced price rail travel should also be available at all
times of the day to people in full-time education.”
Since this policy was written, we have realised that ferry travel was not included in our original policy and this is currently being worked on. The addition we are making is that: “All ferry transport in Scotland provides a concessionary travel scheme for young people initially through subsidy from the Scottish Executive. The Scottish Executive will also fund a feasibility study into whether companies could profitably run a scheme without subsidy from the Executive, the initial subsidy would allow all young people under 25 to travel at 70% of the full fare.”

We now also support the concessionary travel fares of all people in full time education, not just young people.

I look forward to our meeting where we may discuss this further.

Ross Watson MSYP
Chair – Transport, Environment & Rural Affairs Committee
Scottish Youth Parliament

Written Submission to the Local Government and Transport Committee

The question about discounted travel for young people was raised to First Minister Jack McConnell at the last Scottish Youth Parliament (SYP) AGM. The question was, “How can it be that a government subsidised company such as Caledonian MacBrayne will not allow Young Scot or Dialogue Youth discounts for travel, even though these are government funded organisations?”

Many different people have raised this question at different levels. We have also had contact with the following: John Farquhar Munro MSP, Fergus Ewing MSP and Alasdair Morrison MSP, amongst others, and have their full support, but still CalMac refuse to give a Young Scot/Dialogue Youth discount.

The aim of the spending under the transport portfolio is “to promote economic growth, social inclusion, and health and protection of our environment through a safe, integrated, effective and efficient transport system”. If CalMac were to offer young people discounts, all of these criteria could be met, so what do they have to lose?

A discount could mean cheaper access to training and to mainland jobs, for example the Mull to Oban and Dunoon to Gourock route. Also it would make it cheaper to come home and return to university or college, thus maintaining and promoting the economic growth of island communities. Discounts would offer social inclusion to deprived rural areas of isolation on islands, for example, parts of Islay have shown up as one of the most deprived areas in a recent Deprivation study. It would also help maintain social inclusion for low-income groups. Although CalMac already offers a discount to under 16s, the under 25s, who would also benefit if a discount was put in place, must not be forgotten as they also often fall into the category of low-income group. Many have poorly paid jobs, are on training schemes, students or unemployed. CalMac also offers 6 or 10 journey books, offering approximately 10% discount, but it is unreasonable to expect young people to have access to that amount of cash upfront to benefit from this. Discounts would promote health by making it cheaper to visit relatives either on the mainland or on an island, connecting families. It would also make it cheaper for under-25s to visit the dentists and other health and leisure services. Encouraging travel by public transport and integrating travel, for example, getting of the ferry and meeting a Citylink bus service, who are already a discounter, or local bus providers who offer free travel to Young Scot cardholders during the Young Scot free summer scheme and discounts during the rest of the year, helps in the protection of the environment.

NorthLink have started giving 10% discounts to students travelling to Orkney and 25% discount to students travelling to Shetland so they have proven it is not impossible. Citylink, National Express and Loganait also offer Young Scot discounts – surely CalMac joining them could bring the company some commercial credibility?

The ferry service’s spending plans are, in each year respectively: 2004/05 - £47.2million, 2005/06 - £59.7million and 2007/08 - £61.6million, as I’m sure you are aware. This reflects an increase of 20.8%, with a target of increasing passenger numbers by 2% per year.
How many of CalMac’s sailings sail full with a full capacity of foot passengers? If CalMac restricted the discount to only foot passenger’s fares, then what is there to lose? A radical discount of 50% may well see them with more than twice the number of passengers. Giving a Young Scot discount to foot passengers would surely be profitable by encouraging more young people to travel as a foot passenger and consequently increase the number of people travelling by foot, this would easily make sure they would meet the target of increasing passenger numbers by 2% per year.

With this all in consideration we would like to propose, that alongside a concessionary fares scheme on land-based public transport, that CalMac offer a discount to under-25s carrying a valid Young Scot card on their person when travelling as a foot passenger on any CalMac service.

SUBMISSION FROM THE NATIONAL JOINT UTILITIES GROUP

Introduction

The National Joint Utilities Group (NJUG) represents utilities from the gas, electricity, water and telecommunications sectors. The National Joint Utilities Group (NJUG) and its member organisations\(^{159}\) support measures that improve traffic flow and assist us in efficiently co-ordinating our essential works.

There are numerous aspects of the Bill that we welcome, such as the new Road Works Commissioner and the enhanced use of the Scottish Road Works Register (SRWR), which we agree, that if implemented properly, will further assist in improving coordination of road works. However, we have a number of serious reservations with other aspects of this new legislation and its implications for our industries and customers.

Scotland’s roads provide a thoroughfare for vehicles and pedestrians but they also act as conduits for many essential services that are often taken for granted – electricity, gas, water, sewers and telecommunications. We believe the importance of these services is not adequately recognised in the Bill, and are concerned that if this is not addressed, costs for undertaking our essential works will rise, and have to be passed onto the consumer.

We are deeply concerned to learn from a recent parliamentary answer\(^{160}\) that the Executive has no plans to apply the new rules to local authority road works. It is NJUG’s view that the only way to achieve the benefits from this new legislation that the Executive is seeking, is to apply the rules to all those who carry out road works. To treat them differently, will disrupt the good relationships that have built up between local authorities and utilities over a number of years.

We are very disappointed with the skeletal nature of the Bill. It proposes some significant changes to the way our industries will operate, but lacks detailed explanation as to how the legislation will work in practice. This prevents us from accurately assessing the true implications and costs of the Executive’s proposals.

Our Key Issues

Inclusion of local authority works

Given that utilities and local authorities are equally responsible for unavoidable road works, NJUG has always argued that they should both be subject to the same rules. For Scotland to fully benefit from the enhanced co-ordination that these proposals aim to deliver, works must be treated in an equitable fashion.

NJUG has always sought to work, where possible, in partnership with other undertakers and has already invested significant resources in the industry initiative - Susiephone, a system that registers utility road works. NJUG therefore supports the obligatory use of the SRWR by all those who undertake road works. In addition to improving coordination, this will bring about the additional

\(^{159}\) National Grid Transco, THUS plc, BT, Water UK, Telewest Broadband, Energy Networks Association, NTL, Cable and Wireless

\(^{160}\) Written Answer Number S2W-12212 to Bruce Crawford MSP from Nicol Stephen, 26 November 2004.
benefit of providing a true picture of what percentage of road works are caused by utilities and what percentage are caused by local authorities or others.

NJUG also look forward to working with the new Road Works Commissioner on the basis that he is independent, has sufficient resources to perform his duties effectively, does not duplicate the existing duties of local authorities, and applies the new rules equitably to all those who dig up the roads.

Given, that utilities and local authorities are equally responsible for causing 10% of congestion\(^{161}\), NJUG believes it is vital for all works to be subject to the same rules for this legislation to have any impact on congestion. We would also strongly encourage the Executive to carry out detailed research into the causes of congestion before bringing forward further legislation based on anecdotal evidence.\(^{162}\)

**Directions as to timings of works and placement of apparatus in road**

Much of NJUG members work is concerned with replacing, maintaining or connecting to existing networks already in the ground. Allowing local authorities to dictate where apparatus may be placed in the road will, in all likelihood increase costs and duration of works, by potentially increasing the distance required between new apparatus and utilities’ existing networks, or the distance to connect new customers. Utilities plan their networks in the most efficient manner possible to minimise their own costs / the price the customer has to pay. They already work closely with local authorities in the planning of major works, and accommodate requests to flex timings etc. wherever possible. This proposal will do little to reduce congestion, whilst increasing the cost to customers / consumers.

Additionally, NJUG is concerned that the use of this section by two adjacent road works authorities (e.g. Scottish Executive and Council) could prevent apparatus being laid at all by prohibiting its placement in adjacent roads.

NJUG is also concerned that granting local authorities the power to change the timing of work, and direct the placement of apparatus in the road, could have serious implications for the cost of services, the timely delivery of services, and the quality of the local environment. For example, forcing utilities to undertake road works at night would increase the cost of the work by an average of 37-42%, ultimately to the detriment of the customer, and have serious safety implications for the operatives and equally serious environmental noise implications for local residents.

It is vital that reasonable exemptions are written in to the legislation allowing utilities to undertake unforeseen emergency works, works to restore severed services and to provide new customer connections. Gas and water escapes, and electricity faults are dangerous and therefore need to be addressed as quickly as possible. Loss of gas, water, electricity supplies, or telecommunications services can be devastating to the community. Equally, computer systems not working can be commercially catastrophic.

Not only can delaying emergency and restoration works threaten national safety, delays can also harm the economy, businesses and communities that all rely on utility services.

**Powers to restrict works**

NJUG has serious concerns regarding a power in the Bill that would enable local authorities to restrict all digging in a street for up to three years following substantial road works. There appears to be no accompanying explanation as to why the duration has increased by 300%. Utilities must be allowed to undertake unforeseen emergency works, works to restore severed services and to provide new customer connections. Works to rectify, for example gas and water escapes, will have to be carried out for safety reasons, and the need to provide new customer connections will continue to have to be met. In addition to this, gas and water mains replacement programme agreed by industry regulators is already underway and the electricity networks are also at the beginning of a major asset replacement programme as much of it was built in the 50s and 60s.

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\(^{162}\) Ibid, (Column Numbers 1414)
Additionally, rather than extending the time when utilities cannot dig up the road, we would like to see greater notice given by local authorities when they are planning to resurface the road and following which the moratorium is to be implemented, in order to allow utilities to bring forward works and thereby necessitate the road not being dug up for some time afterwards.

Furthermore, restricting works for a long period can result in a relatively minor job escalating to cause larger scale problems requiring lengthier occupation of the road.

It is imperative that exemptions are written into the text of the legislation for emergency, urgent and customer connections. It is simply not commonsense to expect utilities companies and their customers to predict their repairs and required services up to three years in advance.

Road Work Offences
NJUG works towards ensuring all member companies carry out works to a high standard and accepts that punitive action should be taken when companies fail to perform to an acceptable standard. However, we ask that the Scottish Executive give serious consideration to measures that encourage good performance, rather than simply punishing poor performance.

NJUG is also concerned that the fixed penalty notice system will be used by authorities to generate revenue rather than to reduce congestion.

NJUG therefore suggests that the power to issue fixed penalty notices should be vested in an independent authority (possibly the Road Works Commissioner) and the rules applied to all those who undertake road works (utilities and local authorities).

NJUG recommends a sliding scale of penalties be introduced based on the disruption or inconvenience caused by certain offences. NJUG would encourage the Executive to provide guidance for both local authorities and utilities indicating the type of offences likely to incur the highest level of fixed penalty notice and would urge that the fixed penalty only cover the administrative costs of issuing the notice to ensure that it is not used by authorities as a means of raising revenue.

To avoid misuse of the system and ensure that bureaucracy is kept under control, NJUG recommends that fixed penalties must be proportionate to the offence committed, and take into account the level of congestion caused, and thereby the seriousness of the offence.

Resurfacing
Whilst NJUG agrees that utilities should be required to reinstate roads to an acceptable standard following works, full resurfacing of roads, over and above the area where works have taken place, will, in all likelihood, increase congestion and disruption with the duration of the works lengthening. Ongoing investigations in England have failed to prove that utility works damage roads, provided that they are carried out to the correct standard.

The quality of the road surface is dependent on the volume and type of vehicle movements, the original structure of both the road surface and sub-structure, the level and quality of maintenance undertaken by the local authority over the years, as well as the local authority’s own road works. Additionally utility works will vary in size and depth, and so any formula seeking to identify the contribution towards the costs of resurfacing from all parties, will be extremely complex.

There is also a potentially negative impact upon the reputation of companies who may be required to resurface roads on behalf of the local authority but still appear to the public to be responsible for the disruption of traffic flow for an extended period. NJUG is concerned that those road authorities that have failed to budget for their own necessary road resurfacing schemes could misuse this power. There is also concern over the legal ownership of the reinstatement and resurfacing works before and after the use of the new powers.

The proposals in this Bill are more extensive than those in the Traffic Management Act since they would lead to a perpetual contingent liability on utilities when they dig anywhere in a street, thus increasing regulatory and balance sheet uncertainty. This would force all utility companies to make
financial provision for the possibility of being required to resurface any part of a street (not even necessarily the part where they had dug) for all time. Even assuming the difficulty of calculating what provision would be prudent (which as is now being discovered in England, is fraught with difficulty) this provision has the potential to severely restrict the degree of investment which can be made in Scotland’s national infrastructure in the future.

Indeed, the proposals in this area are vague; and we are concerned that it will be difficult for Parliament to accurately assess their likely impact on length of disruption and impact on road users.

The requirements as they stand will increase costs enormously for all utilities that may well have to be passed onto the consumer. It is therefore essential to fully consider the implications and costs of any new measures that may be proposed and take them into account when considering the possible benefits of the Bill.

Conclusion

NJUG is extremely concerned that if the Transport (Scotland) Bill fails to recognise that roads act as essential conduits for many services that are often taken for granted – electricity, gas, water, sewers and telecommunications. It might also have a negative impact on a number of key Executive policy priorities:

- Ensuring the security of the Scotland’s Critical National Infrastructure (energy, telecommunications and water supplies);
- Protecting the environment (e.g. conserving water supplies by reducing leakage from water networks, minimising flooding from sewers, reducing the number of vehicle movements (likely to increase for spoil removal in respect of full street resurfacing);
- Encouraging urban regeneration programmes through the provision of new or enhanced energy, water and communication services; and the
- Promotion of network rollout to deliver broadband across Scotland and combat social exclusion (both urban and rural).

NJUG encourages the Scottish Executive to review the Bill to ensure that it balances the needs of consumers, residents, utility providers and transport authorities. At present, NJUG believes the importance of our essential services is not adequately recognised in the Bill, and are concerned that if this is not addressed, costs for undertaking our essential works will rise, and have to be passed onto the consumer. For the Bill to be comprehensively effective all works carried out in the road must be equally accountable.

NJUG would like to thank the committee for the opportunity to submit this written evidence and look forward to giving oral evidence on December 14th.

SUBMISSION FROM UNITED KINGDOM COMMUNICATIVE TELECOMMUNICATIONS ASSOCIATION

UKCTA is the trade association representing fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the views of its members to Ofcom, the communications regulator, the Government and the Scottish Executive.

UKCTA’s primary objective is to ensure the UK communications market becomes genuinely competitive, an environment that maximises investment and innovation by all competitors and one that is free from discrimination in favour of monopoly incumbents. Through effective representation on issues that promote competition, UKCTA aims to ensure that consumers will continue to enjoy the full benefits of competition in voice and data services.
OVERALL VIEW

UKCTA members recognise that traffic congestion is a key issue for the Executive, the public and Scottish industry but is concerned that the Executive in seeking to tackle congestion, may:

- Unduly penalise Scotland’s utility companies
- Increase utility bills
- Inhibit the roll out of next generation broadband networks.

UKCTA has campaigned against proposals that were ultimately enacted in the Traffic Management Act in England and Wales, measures that will do little to solve the problem of congestion and instead increase the cost of providing consumers with access to modern utility services. It is therefore disappointing to see that some, though not all, of the most damaging measures from the Act in England and Wales, have appeared in the Transport (Scotland) Bill.

We are concerned that the Executive has failed to take account of the essential nature of modern utility services and, in particular, the benefits which competition has delivered in the communications market.

This paper attempts to broadly outline the concerns of UKCTA arising from the Bill introduced at Stage 1 on 26th October 2004. These concerns are necessarily high level since the Bill itself is skeletal in nature, setting out in broad terms, some wide ranging powers for local authorities. Until detailed regulation or regulatory impact assessments are available, it is difficult to provide in depth analysis of the impact on industry of the legislation.

DETAILED CONCERNS

Co-Ordination of Works

While proposals to require greater degrees of co-operation are initially attractive and appear to be plain common sense, in practice there are limits on what can be achieved, particularly in the telecoms sector. UKCTA members often share and co-ordinate network construction, co-operation driven not by regulation but by sound economic sense and market forces. Where possible, it is in the commercial best interests of companies to share trenches, since this allows costs to be shared. Indeed, a number of UKCTA member companies have won awards from local authorities across the UK for coordinating works, including trench sharing.

Under current market conditions, there is limited investment in backhaul networks; indeed, arguably there exists over capacity in the backhaul market. Most telecommunication companies generally have a national network in place and therefore now conduct street work activities for only two reasons

- To connect customers in response to their demand for advanced services, or
- To repair equipment already delivering service to customers.

Network is not installed on a speculative basis so the opportunities to schedule work at times to coincide with other utilities or local authorities are inevitably limited. Coordination is, of course possible in some cases, however it must be recognised that there are limits on what can be achieved that are not always immediately apparent to the layman.

It is often impractical for a telecommunications operator to share ducts and trenches with water or gas companies. This is due to the differences in infrastructure to be installed: a telecoms fibre occupies a very narrow trench, typically dug and filled in within a day. Were a telecoms company required to share with another utility providing natural resources, which typically requires a larger and deeper trench, then there exists potential to cause severe delays and additional cost in providing a customer with a broadband service. Moreover, such trench sharing is likely to make congestion worse as street work activities would take longer to complete.
For communications providers, the sharing of ducts raises further issues of network security, integrity and quality of service, factors that potentially compromise levels of service increasingly being demanded by customers such as banks and government departments.

**UKCTA does not maintain that co-ordination is impossible, quite the contrary, as demonstrated by the number of co-operative projects that took place when the UK's backbone networks were being rolled out. Rather we caution against many of the naïve assumptions about what can be achieved.**

Finally, it should be pointed out that in the current uncertain economic climate, telecoms companies are already under huge commercial pressure to complete works as quickly as possible. This is a far greater driver to reduce the size and duration of works than any amount of red tape and legislation. We therefore question whether there is in fact a need for additional regulation in the telecoms industry.

**Level Playing Field between Public and Private Sectors**

Scotland has a head start over England & Wales, due to the existence of a national system (www.susiephone.co.uk) to record utility works. We welcome the Executive’s decision to extend this to include all public sector works thereby allowing more effective co-ordination of public as well as private sector works. Requiring all public sector works to be recorded will not only aid the public and private sectors when co-ordinating works but will provide a complete picture of road works across Scotland. **UKCTA suggests that the Executive in fact go further in levelling the playing field by extending the various provisions that penalise private sector companies that infringe the Act to those in the public sector.** Only by imposing the same penalties to both the private and public sectors when the Act is breached, can any degree of accountability be delivered.

**Powers to Direct timing and Location of Works**

UKCTA is concerned that proposals to give local authorities power to direct utilities as to where and when they may install their infrastructure may have the effect of distorting competition in the telecoms market. The Executive has in the past complained about the comparative lack of competition in Scotland when compared with England, but these powers have the potential to damage what competition has taken hold in Scotland. Telecoms companies need to dig to their customers’ premises in order to connect them to the network. If companies are barred from digging in a particular street outright or are delayed in so doing, customers are likely to cancel their orders and move to the company with ubiquitous network coverage, BT, thereby undermining the effectiveness of the market and reinforcing the market dominance of the former monopoly provider.

**Powers to ban works**

The Bill contains a measure enabling local authorities to ban all digging in a street for up to three years following major resurfacing. While there are exemptions that would allow emergencies to be dealt with, the Bill ignores the need to meet customers’ demands for service. The reality is that Scottish business customers do not forecast their orders three years in advance. **UKCTA suggests therefore that there be an additional exemption in cases where digging is required to meet customer orders or where works are minor and have little impact on traffic.** An amendment suggesting exemptions where work lasted one day or less and did not involve temporary traffic lights and did not obstruct the flow of traffic was advanced at Westminster in the face of a similar proposal and a similar amendment could be used in Scotland.

**Power to require resurfacing of entire streets**

The Bill also introduces outline provisions which would allow councils to require utilities to completely resurface a road in which they have installed infrastructure. Similar provisions were introduced in England and Wales and are causing widespread concern. **It is difficult to calculate the impact of such a move but best estimates have suggested that a full width reinstatement of a road would increase the cost of a telecoms installation by some 385% - costs which would be passed on to the customer.** Given that the order to reinstate would only be made after the service had been sold and installed, telecoms companies will be unable to provide customers...
with certainty in advance as to what services will cost. This is highly undesirable for supplier and for customer alike.

The proposals in this Bill are more extensive than those in the Traffic Management Act since they would lead to a perpetual contingent liability on utilities when they dig anywhere in a street. This would force all utility companies to make financial provision for the possibility of being required to resurface any part of a street (not even necessarily the part where they had dug) for all time. Even assuming the difficulty of calculating what provision would be prudent (which as is now being discovered in England, is fraught with difficulty) this provision has the potential to severely restrict the degree of investment which can be made in Scotland’s national infrastructure in the future.

Telecoms as part of the solution

It is widely recognised that communication services play a vital role as part of the solution to our congestion problems. These services make it possible for increasing numbers of people to work remotely and to make informed choices about when to travel. This contributes to more flexible traffic patterns that make better use of the road network. A recent report by BT plc concluded that more widespread use of broadband to enable flexible working could eliminate 14.5 billion miles of journeys per year throughout the UK – equal to some three years’ of growth in car usage. UKCTA believes that the Executive has failed to take account of the role that communications companies have as part of the solution, and the relatively minimal impact their works have on congestion.

UKCTA believes the Executive should provide evidence of the extent to which telecommunications companies impact on congestion, and how they intend to measure any decrease as a result of new regulations which may be introduced under the Bill. The Executive should also explain to what extent they have taken account of the potential for the Bill to produce anti-competitive effects in the market.

It is essential that the Executive produce Regulatory Impact Assessments, which consider the contribution of telecommunication companies to reducing congestion and explain in detail how the impact of these changes will be measured.

CONCLUDING COMMENTS

It is widely recognised that communication services are a vital part of the solution to our congestion problems. Telecoms services make it possible for increasing numbers of people to work remotely and to make informed choices about when to travel, contributing to more flexible traffic patterns that make better use of the road network. A recent report by BT plc concluded that more widespread use of broadband to enable flexible working could eliminate 14.5 billion miles of journeys per year throughout the UK – equal to some three years’ of growth in car usage. UKCTA believes that the Executive has failed to take account of the role that communications companies play in the solution to congestion, as well as the relatively minimal impact their works have on congestion.

In accordance with good government and law making, UKCTA suggests that the precise impact telecommunications street work activities have on congestion ought to be measured and demonstrated. In addition, the Executive needs to demonstrate how it intends to measure any decrease in congestion as a result of new regulations which may be introduced under the Bill. The Executive should also explain to what extent they have taken account of the potential for the Bill to produce anti-competitive effects in the market. This evidence needs to be brought forward in a Regulatory Impact Assessment.

Road works, whether carried out by utilities or road authorities, are only ever carried out when unavoidable, to deliver essential services. They are both expensive to the companies that undertake them and contribute to problems for other road users. In order to resolve these conflicts, a balanced approach is needed.

UKCTA members are encouraged by some of the proposals in the Bill. It appears that the Executive has taken on board the need to adopt a holistic approach, however, there are some
measures in the Bill which are potentially very damaging to the telecoms industry and therefore for the long term competitive position of Scotland.

UKCTA would like to thank the committee for the opportunity to sumbit this written evidence and look forward to giving oral evidence on December 14th.

14 December (29th Meeting, Session 2) (2004)) – Supplementary Written Evidence

SUBMISSION FROM THE UNITED KINGDOM COMMUNICATION TELECOMMUNICATIONS ASSOCIATION

Dear Sirs

In England under the Traffic Management Act, it has apparently been accepted that the Highways Authorities there can be liable to fixed penalty notices to give them an incentive to improve the conduct of their works. This was a point raised in both the Local Government & Transport and the Enterprise Committees.

Domhnall Dods
Head of Regulatory Affairs
The Convener: The second item is further evidence taking on the Transport (Scotland) Bill. Our first witness is Dr Iain Docherty, whom I invite to take his seat. Welcome back to the Scottish Parliament. You have become a well-kent face in the Local Government and Transport Committee in the past couple of years. As usual, you may make some introductory remarks, after which we will ask you questions.

Iain Docherty (University of Glasgow): I thank you for the invitation to come and share some thoughts with the committee this afternoon. My opening comments will be brief.

Many people are generally supportive of the move towards stronger regional governance of transport in Scotland. It has definitely been the case that since the abolition of regional councils in 1996 the pace of change and the agenda have slipped somewhat, so any move back to a more dynamic and delivery-focused environment would be welcome.

It is also true that when consultation on the bill started about 18 months ago, there was a general feeling that we would end up with meaty and strong regional structures. However, there is general disappointment that the bill does not propose the strong regional authorities that many of us had hoped to see. In particular, it is not clear that the basic level of powers that most of the new regional transport partnerships are likely to take up—at least in the short term—will make much difference to delivery of transport policy throughout Scotland. That is a major problem that the committee will want to probe further.

It is one thing to create strong regional structures to deliver transport policy, but if we are going to do that—I believe that it is the right thing to do—we must ensure that we get the political and decision-making structures of those bodies correct. Some of the proposals in the bill, particularly the form of political representation that is proposed for the new bodies, are quite weak and might constrain the new regional transport partnerships and prevent them from being as effective as they might be.

Fergus Ewing: Iain Docherty’s submission states that there is a

“move towards stronger regional governance”.

There is, perhaps, broad consensus on that. My difficulties with the bill—which you also describe in your written submission—are that we do not know what the powers of RTPs will be, we do not know what the boundaries will be, we do not know what the representation will be and we certainly do not know how funding will operate in practice. There is an awful lot that we do not know because we have not been told it. It is a bit like being asked to judge a Miss World competition in which the contestants remain behind the screen at all times.

Can you remind us what the consultation paper, “Scotland’s Transport Future: Proposals for Statutory Regional Transport Partnerships”, said about the levels of powers? I think that there are levels 1, 2 and 3. Could you explain those levels? I am sure that you will be able to do that far better than I could. What level of powers do you think the RTPs should have if they are to make a difference for the better in delivering transport improvements?

Iain Docherty: The consultation document that accompanies the bill envisages three levels of powers. Level 1 is concurrent powers which, in essence, describes a situation in which the member councils of a regional partnership will choose, on an ad hoc basis, to pool their responsibilities for particular policy delivery. That is basically the situation that we have today with the voluntary partnerships, which have not, in my opinion, produced much by way of delivery. The only change would be that the new RTPs will have to produce a statutory plan—it is envisaged that that would be done within 12 months—without necessarily having seen either the new national transport agency up and running for a considerable time, or the final form of a new national transport strategy for Scotland.

At the other end of the spectrum, level 3 power is fairly analogous to the current operation of Strathclyde Passenger Transport Authority. That will be the power for a statutory body in which constituent councils pool their powers over a range of transport issues in order to deliver regionally. That is on the way to what many people had expected. The Executive originally hinted that the new structure might look fairly similar to the traditional joint boards that we are used to in Scottish local government. Joint boards are quasi-independent statutory local authorities in which—in order to try to avoid some of the pork-barrel politics that often characterise weak partnerships—members operate in the interests of that authority alone rather than directly in the interests of constituent councils.

In the middle is a vague model of level 2 powers, which the consultation paper describes as “Some Transport Powers Transferred”. That means that the constituent councils might choose to give specific powers to the partnership over particular issues, such as bus infrastructure, to enable it to operate regionally. It is not particularly easy to see how that would build substantially on level 1.
I believe in regional governance of transport for numerous reasons. One of the biggest problems is that there is no coherent regional structure, but transport is by its very nature about strategic projects on such a scale. There tends to be decision making on the basis of “It’s my turn next year.” One of the biggest risks in the voluntary system—apart from its powerlessness to deliver anything at all, about which questions have clearly been asked in the past few years—is that if there are going to be weak partnerships in the future, there will in effect be a pork-barrel political decision-making structure in which one authority will get its pet project in one year and the political bargaining will be about who will be next in the list for the following year. Therefore, the more strategic and rational view of investment for which many of us hoped will perhaps have difficulty in emerging from that structure.

14:30

Fergus Ewing: You mentioned the duty to devise a strategy that will be placed on regional transport partnerships by the bill—I think that the bill provides that a strategy should be devised within 12 months. On the other hand, you referred to the national transport agency. The bill does not really flesh out what the role, function and powers of that agency will be.

I want to ask about timing and the interaction of the RTPs and the national agency. If the RTPs are to provide a strategy within a year, that is clear. However, am I right in saying that there will be no national strategy from the agency? There cannot be at the moment. Will the RTPs be hampered in fulfilling their task in the first 12 months of their existence by the fact that no national strategy will be devised? If you agree to some extent about that, should there be a national strategy to enable the RTPs to fulfil the one job that is provided for them in the bill?

Iain Docherty: There is an argument that under the voluntary system to date, the partnerships have not had much money or power to deliver, but have had time and space to think and to strategise. Therefore, some areas already have a regional strategy that could fairly easily be translated into the new level 1 partnership. However, if boundaries are to change, that will mean inevitably that considerations will be different; the situation would be more like that which Fergus Ewing suggests. There would be a clean sheet of paper and the new organisation would have to look afresh at its policies.

I understand that the bill does not talk about the national agency much because ministers already have the powers to create that agency—new legislation is not required. Nonetheless, it would be helpful to know what that agency was going to look like and what ministers expect it to do—particularly in the short term—because any organisation is bound to develop its own politics, agenda and priorities. The question is whether one is looking for a top-down or a bottom-up approach to strategising in general. I think that we have been weakest in strategic direction in the years since 1996, so I would prefer that the national agency be put in place and its strategy be well understood by the new regions before they start work on redeveloping what already exists.

There is, of course, an opposing argument that the bill suggests, which is that the new regional partnerships will create strategies that must be approved by ministers or the agency, so there will be an iterative process and consistency with whatever the national strategy becomes. However, it would be more helpful—for the sake of transparency and openness—if we knew more about the form of the national agency, how it will operate and its priorities. We need to know more about the institution itself, what it might seek to deliver and even where it will be located.

Dr Jackson: I was interested in your submission, which tries to summarise one or two issues that have been raised, one of which is obviously boundaries. Your submission states that boundaries are

“One of the most contentious issues”.

I did not realise the difficult situation that Stirling—which is my constituency—was in until the other week, when we considered the details of the matter. Stirling seems to be included in a region that also includes places where most of its commuters do not go to; they go to Edinburgh and Glasgow. You also mention the Highlands and Islands being kept on their own. Will you elaborate a wee bit on the issues that you raise on boundaries?

Iain Docherty: A fundamental problem with such a reform process is that we have inherited a set of local government boundaries that were of their political time and were—particularly in central Scotland—designed to institute unhelpful competition between local authorities and to break up the regional councils. That set-up stopped the regional strategic approach to service delivery of the kind that is set out in the bill. It is difficult to try to stitch that fragmented system back together to deliver joined-up working instead of competition.

The Executive might have made a rod for its own back by stipulating that all of Scotland must be part of a partnership and that any partnership must have more than one local authority as a member. For example, Dumfries and Galloway does not sit easily anywhere. There is obvious disquiet in the region about being part of a large partnership in the west in which decisions on local
bus transport might be made in Glasgow. Equally, because of its position at the corner of three regions, Stirling does not sit easily anywhere in a local government sense. However, if we consider transport flows, the majority of strategic movement to and from Stirling involves Edinburgh, Glasgow and the rest of the central belt. As a result, there is no credibility in the claim that an area that starts 10 miles outside Glasgow city centre and ends in Montrose in the north-east is a coherent region for transport planning.

Given the local government boundaries that we have inherited, it would make sense to be more proactive about dividing up existing council areas into more than one partnership. One rule of thumb is that, if any reform gets the approach to Fife wrong, the whole reform package will be wrong. Some people would argue—as I would—that the biggest failing of the Wheatley reforms of the 1960s and 1970s was the failure to address the Fife problem and to create proper functional regions for the east of Scotland. The same holds true today. To privilege political bargaining by keeping local authorities intact in partnerships instead of dividing them more sensibly along transport lines tells us much more about political realities than about strategic transport decision-making.

I was interested to note that certain authorities have been split up by some of the proposed boundaries. For example, I find it curious that the Highlands and Islands Enterprise boundary has more or less been preserved, which means that the Clyde islands region of North Ayrshire will be included in a partnership area that stretches all the way from Kintyre to Shetland. That rather large region will make political representation in the partnership difficult. Contentious questions always have to be resolved when we try to match a difficult set of local authority boundaries to what are essentially new functional organisations.

**Dr Jackson:** You appear to be saying that, as it might well be impossible to create partnerships that reflect areas in the way that we would wish, there should be representation on different partnerships. For example, Stirling might feature in three of them.

**Iain Docherty:** One way out of the problem is to make the regions bigger. For example, it would be possible to combine the south-east and central regions into a bigger area, although that would give rise to a whole new set of issues about the size of the institution and how we can have effective political representation on it.

Everything depends on the first principles that we adopt. If they centre on effective transport planning, how people travel around and the development of the transport network, we will have to think about a set of boundaries that are very different from those of the current unitary local authority boundaries. There are difficulties with splitting up existing councils into more than one partnership, but we might be able to overcome that problem.

**Bruce Crawford:** You are beginning to make me think more deeply about the matter. For example, your comments about partnership boundaries and political representation on the partnerships are more appropriate to the first model that the Executive has suggested. However, if we were to adopt the second model under discussion, which has more potential for delivery, the mechanisms for political representation might be different. You have already suggested having a joint board, which would move us from a representational structure for the regional strategy to a structure in which individuals on a board would be responsible to the whole region. How would that interesting concept strengthen the system? Furthermore, what would be the best funding mechanism for the first model or for the third model, as set out in “Scotland’s Transport Future: Proposals for Statutory Regional Transport Partnerships”?

**Iain Docherty:** The traditional idea of a joint board evolved in Scottish local government as a means of doing exactly what you said about taking decisions on a regional basis, if that was more appropriate for the public service that was to be delivered. Although the membership of joint boards was drawn from local councillors from the councils in the areas that the boards represented, when members acted for the joint board they did so independently of their sponsoring councils, so that there would be a degree of independence and a strategic regional outlook. A problem that has been apparent throughout the United Kingdom over 20 or 25 years is the general trend to weaken such structures and replace them with softer partnerships in which people represent their own local interests. In such partnerships, the strategic view tends to be displaced by short-term bargaining about the direction of resources, which is not very consistent over time.

It might be interesting to consider the model for the passenger transport authorities and executives in England. Those bodies are in essence joint boards, but their political representation, which is drawn from member councils, involves some form of political proportionality. Not only is funding proportionate to the size of the councils, but representation is proportionate, too, and there is a requirement on organisations to try to reflect the politically partisan as well as the geographical nature of the areas that they cover. The authorities in England cover relatively small areas compared with the larger regions in Scotland that we are talking about. However, there is a case for considering the traditional joint board model more
carefully, to ascertain whether we could construct partnerships that would be more reflective of wider regional priorities.

One of the biggest problems with the bill is the Executive’s decision to allow no more than one councillor per council to be a member of a regional transport partnership. The partnerships are to be focused on delivery and I therefore understand the overwhelming desire to make them small, flexible and responsive, so that they can deliver policies quickly. However, that approach could lead to all kinds of problems about representation and funding.

For example, the small partnership that is envisaged for north-east Scotland, which is expected to retain the features of the current north-east Scotland transport partnership and include only two member councils, would have only two councillors on board. That is a small number of people to make the political decisions for a strategic organisation. At the other end of the scale, given that SPT currently has around 33 or 34 members and works relatively effectively through good political debate and consensus, it is not clear what advantage there would be in cutting the level of representation on the future west of Scotland regional transport partnership, just to secure one member per council.

There are also issues about transparency and accountability of representation. The proposals envisage a sliding scale or weighting of members’ voting rights between one and four. For example, the proposed west of Scotland regional transport partnership would include a small part of Argyll and Bute Council’s area, with a population of 20,000 to 30,000, and the representative from Argyll and Bute Council would have one vote. However, the representative from Glasgow City Council, who would represent a population of roughly 600,000, would have only four votes, so there would be a clear political imbalance in decision making.

The system might sometimes work in favour of small, peripheral councils, but in other geographical areas it might work in favour of the councils at the centre, depending on the make-up of the RTPs. The system would not be consistent and there would be significant potential for problems, even in simply reaching agreement about a strategic medium-term investment plan, if there were such a level of political complexity and lack of accountability.

The Convener: Your paper expressed concern about non-elected members who would have “voting rights, and therefore powers over the spending of public funds requisitioned from local councils”.

Will you expand on that? What model would be most appropriate for the regional transport partnerships? Secondly, do you believe that the congestion charging powers that currently lie with local authorities would be more appropriately placed with regional transport partnerships?

Iain Docherty: I will answer your second question first. It is difficult to answer, because much would depend on the boundaries that were chosen and the way in which political power was distributed. The proposed region for the south-east Scotland regional transport partnership is currently drawn in such a way as to make it easy to see how authorities in south-east Scotland other than the City of Edinburgh Council, which are well known to have been somewhat hostile to congestion charging, might seek to neutralise the issue by taking responsibility for it in the region and killing it off.

Part of the balancing act of any regional reform is recognising that if an innovative and dynamic local authority wants to take difficult decisions—whatever they may be—it may be easier to have such decisions accepted locally within one boundary than under a regional system. The danger with congestion charging in a regional system is that councils that do not have strong and pressing congestion problems might seek to delay implementation of that policy. We must live with that. That does not mean that dealing with the matter from a regional perspective does not make sense.

14:45

The consensus on the representation of external members is that it would be good to extend the membership of RTPs beyond councillors. That involves a difficult choice. One argument is that a higher level of involvement and commitment is more likely from members who have a real say in a body’s decision making. However, a more traditional democratic viewpoint from local government is that, if people who make decisions about spending money that has been precepted or requisitioned from local authorities are not accountable through the electoral system to the people who pay that money, that creates the potential for a significant democratic deficit.

The bill and the consultation paper explain that a system of weighted votes will be used under which a majority of elected members will always be required to decide on such issues, so that danger is minimised. However, I return to the point that—depending on how the boundaries are chosen and on the final form of representation and weighted votes for councils—coalitions that are based on territorial politics could emerge inside regions. A coalition of councils plus outside interests that are represented on an RTP might frustrate a more strategic approach.
If we accept—as I do—that we need stronger regional governance, we must have the right political structures to deliver it. Some ways in which the debate is proceeding place hurdles in the way of that. We need to be a bit simpler and more transparent about how political decision making in the regions will work, if the structures are to deliver the improvements in policy making and implementation for which we hope.

**Michael McMahon:** You talked about the co-ordination and management of strategies. I am interested in your views on whether the establishment of the Scottish road works commissioner and the Scottish road works register will have an impact on the co-ordination and management of road works.

**Iain Docherty:** I am not sure whether that will have much of an impact in the short term. I am not an expert on such issues, so whatever I say will be conjecture. My view is that the establishment of the register and the fact that a named commissioner will manage it and act as a point of contact for queries on it are good things—they will provide transparency and make the system more accountable to those who use the roads and streets and to those who may be subject to financial penalty under the bill if their actions are deemed to cause problems. The register’s establishment and having a defined individual to manage it who is accountable through the parliamentary system are positive developments.

**Michael McMahon:** You spoke about the impact on RTPs of powers that are given to local authorities. The bill will give local authorities powers to change the time of road works and to deal with various aspects of how road works are conducted and their standards. Do you have an assessment of whether those powers will be effective?

**Iain Docherty:** My comments on that are mostly personal opinion. When the bill’s general thrust is about moving the level of decision making up to where it is most suited—to the regional or national agency level, rather than the local authority level—it is a bit curious that different standards and different decision-making levels could be introduced.

I understand local authorities’ arguments that they are best placed to manage local issues and that they can respond most efficiently and quickly to the short-term pressures that road works are often under, but that is a policy choice. Particularly in the central area of Scotland, which has many local authorities, it does not make sense to fragment responsibility and standards to that level. It might be better to conserve as much consistency in the application of policy as we can.

**Michael McMahon:** We have heard in evidence that only 10 per cent of congestion in Scotland is a result of road works. Do you concur with that assessment? Dubiety exists about the validity of the statistics, but is that the ballpark figure?

**Iain Docherty:** Studies from throughout the UK have come up with figures that are relatively consistent with that one, so it seems reasonable. It would be useful to broaden the debate about the strategies that the new institutions that the bill will create might seek to develop. The focus on congestion as the problem that we must solve is a political and policy choice that is not always as appropriate as we think it is. Congestion has economic and social costs, but we should seek to take other action, such as reducing the level of car use or achieving modal shift. Reduction in congestion is difficult to measure and deciding how to appraise its impacts is often a technical choice. The policy should not always be to direct the most attention and resources towards congestion. The wider point is that the bill should bring about less focus on congestion and more focus on outputs such as modal shift or environmental indicators than is the case at present.

**Michael McMahon:** So is the bill using a hammer to crack a nut? Will it achieve any of those broader aims?

**Iain Docherty:** I am not sure that road works and their effect on congestion should be a policy priority. I understand why people are frustrated when their daily journeys are affected by road works and when the same road is continually dug up by different contractors. People want a more systematic approach to the management of the road space. Such an approach would be good practice and would improve the quality of life, but we should concentrate on the more important issues—which include those that relate to congestion relief, as well as to the transport system’s outputs—rather than on the relatively marginal impact on congestion that better road works management will have.

**Bruce Crawford:** The bill will allow for a number of management schemes for concessionary fares. Whatever we say today, it will not make much difference, given that the Minister for Transport will make a statement on the issue tomorrow. However, given our present knowledge, which management system do you support and why?

**Iain Docherty:** The management system should be based on the journeys that people want to make and the journeys that make the biggest difference to people’s lives. To date, the most effective concessionary fares scheme is probably that in Strathclyde, which is less intact since the demise of Strathclyde Regional Council. That scheme overcomes many of the boundary issues that are faced when a number of small local authorities are involved.
Given that people often want to make journeys across arbitrary boundaries, it is important that the notion of the seamless journey is made real for them. When people get on a bus, they want to know how much it will cost them and whether they will get to their destination on time. The management of a concessionary fares scheme must at least be regional, to ensure that it reflects the locus within which people live their lives and the journeys that they make.

The Executive strongly supports a national concessionary fares scheme, but we are unsure how many additional journeys would be made from one end of the country to the other if a national scheme was in place. However, I understand the political arguments for such a scheme. The other arguments are about having a simplified system and reducing the transaction costs of running different concessionary fares systems throughout the country. A national scheme may make sense, but it would probably make a fairly marginal difference to people’s journey patterns and quality of life. Most journeys are relatively local and are made frequently. For most people, the important issue is being able to access the services that they need and live their lives at that level.

Bruce Crawford: I understand the arguments that you make. However, for people living in Inverness, it is not easy to access the major conurbations, for example. Should the concessionary fares scheme be extended to allow people to travel from Inverness or Stranraer to the main conurbations?

Iain Docherty: The question is whether concessionary fares at national level will enable people to make journeys that they do not feel able to make at the moment and will improve their quality of life. I am not sure how much that will be the case for people who depend on concessionary fares. People might find welcome additional opportunities for lifelong education and so on. However, any concessionary fares system is only as good as the transport network on which it is built. Unless we get the balance right between the revenue subsidy of fares and having infrastructure and services that give people the opportunity to go to places to which they are seeking to journey, the scheme will probably be less efficient than it might be. There is always a balancing act between the amount of effort and resource that is invested in managing the network, to ensure that it offers the opportunities that people want, and the pricing that enables them to make journeys once the system is in place.

Bruce Crawford: We have taken evidence on the Welsh experience of concessionary fares. Do you think that there are lessons from that experience that we can learn and apply in Scotland successfully? We have also received a considerable amount of evidence on ferry services and whether individuals who use ferries to the islands should receive the same concession, so that they can make necessary journeys. What are your views on those two issues?

Iain Docherty: I am not particularly up to date on the Welsh experience, so I would like to pass on the first question. Anything that I said in answer to it would be conjectural.

On ferries, there is always an interesting argument about a two-way street. If we encourage people to travel out of remote communities, especially island communities, and to service their needs elsewhere, subsidised by public money, that will always have a knock-on effect on the level of service provision at local level at the remote end of the journey link. If we decide to subsidise ferry links to the extent that has been suggested, we must be careful about the economic impact that that will have on people who do not want to travel from the islands or other remote communities to consume services.

In a way, the argument is similar to the one about increased car use in rural communities, which gives people much greater flexibility in accessing services that they want, when they want them. The problem is that, at very local level, small community services are put at risk, because their catchment is affected. Rather than subsidising journeys so that people can move around, we might be wise to examine how people access services and how we can intervene to increase accessibility. We should ensure that public money is targeted on providing services where they can be accessed, instead of making it easier for people to move around to consume the same things. It might be better for us to broaden out the debate from the subsidy of fares through a concessionary fares scheme to the subsidy of other lifeline or marginal local services.

Bruce Crawford: That is a very interesting point.

Paul Martin (Glasgow Springburn) (Lab): We have heard the bus operators express concerns about the level of subsidy that is available for concessionary fares. Do you have views on that issue? Is the current subsidy sufficient?

Iain Docherty: It is difficult for those of us who are observers on the outside, where data are not readily available, to make a judgment on that issue. The words “commercial confidentiality” always appear when we start to make inquiries about the real numbers. I understand bus operators’ nervousness about concessionary fares, especially if their introduction leads to the abstraction and subsidising of passengers who would normally pay fares to take the buses.
That brings us to the end of
information because of commercial confidentiality?
informative and well thought out.
the committee this afternoon; it was—as usual—
questions to you. I thank you for your evidence to
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for Christmas earlier than would otherwise have
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collected at the Scotland or the Great Britain levels
privatised rail industry. Even the statistics
operators. The same is increasingly true for the
financial or patronage information from individual
since deregulation, it can often be difficult to get
analysing the way in which the market operates at
any particular time.
The information that would enable me to make a
suitably objective comment on whether bus
operators’ concerns are justified is not available to
me.
Paul Martin: Is it difficult to obtain that
information because of commercial confidentiality?
Have you tried to obtain it?
Iain Docherty: I have not tried recently to obtain
information on the issue. However, because of the
way in which the bus industry has been structured
since deregulation, it can often be difficult to get
financial or patronage information from individual
operators. The same is increasingly true for the
privatised rail industry. Even the statistics
collected at the Scotland or the Great Britain levels
suffer to some extent because bus operators are
private companies operating in a deregulated
environment and that information is commercially
valuable to them. I can understand why the
operators are hesitant to give out that information,
but that hesitancy can cause some problems in
analysing the way in which the market operates at
any particular time.

15:00
The Convener: That brings us to the end of
questions to you. I thank you for your evidence to
the committee this afternoon; it was—as usual—
informative and well thought out.

We proceed with the second panel. It gives me
great pleasure to welcome to the committee
Professor David Begg, who is the chair of the
Commission for Integrated Transport. It is
probably fair to say that he has been a well-known
and, at times, provocative figure on transport
issues for many years through his roles with the
Commission for Integrated Transport, the Strategic
Rail Authority, the Robert Gordon University and
as a former colleague of mine on Lothian Regional
Council, the body that led the regional transport
strategy for the Lothians. Welcome to the
committee. I invite you to make some introductory
remarks, after which we will go to questions.

Professor David Begg (Commission for
Integrated Transport): I thank the committee for
inviting me here and getting me back to Scotland
for Christmas earlier than would otherwise have
been the case. I am delighted to be here.

We are here only because the former regions
were wound up—that is why the Transport
(Scotland) Bill is being put on the statute book.
The abolition of the regions in 1996 created a
vacuum in strategic transport planning that has not
yet been filled.

Bruce Crawford: It is good to see you here,
David. It will be interesting to see how we go about
filling that vacuum. Throughout your submission,
you say things such as:

“The Commission would have wanted to see the
proposals go further, ensuring significant powers being
transferred to regional bodies”;

and,

“CfIT would hope to see the establishment of strong
regional bodies”. We have heard evidence from Iain Docherty about
models 1, 2 and 3, and, from your submission, I
would say that you argue strongly that we should
have gone for model 3. Why? Will you also tell us
about the structure that you would use to deliver
model 3?

Professor Begg: If we were to start with a blank
bit of paper and try to come up with a regional
government structure that was right for delivering
transport, that structure would be based firmly
on travel-to-work areas. Iain Docherty was right to
to say that that would probably mean splitting up
authority areas such as Fife because the travel-to-
work flows are different in the north of Fife and the
south of Fife.

I would stand back from the issue. When we talk
about transport, we always make the mistake of
thinking about the type of transport system we
want and how we want it to impact on people’s
journeys. However, transport has much wider
significance: it is critical for the future strength of
our economy, for equality and for the environment.
It is not enough just to create strong regional
transport bodies that are based on travel-to-work
areas. Those bodies must also have economic
development and strategic planning powers. The
danger is that we could create transport bodies
that implement policies that are undermined by
bodies that are responsible for running economic
development or strategic planning.

It is difficult to top Wheatley. The Wheatley
commission, which reported in 1969, spent three
years undertaking in-depth robust research, after
which it came up with a model for government in
Scotland that was right for the 1970s. I suspect
that things in Scotland have changed a bit since
then and that its conclusions would need to be
tweaked. That said, the Wheatley model is still the
right one.

As always—indeed, it is the case in almost all of
the countries that I have examined—what has
happened is that politics have driven things, rather
than their being driven by what is fundamentally
right. I suspect that the Scottish Executive’s
difficulty is politics: it seems to be reluctant and
unwilling to impose the structure that it wants on
existing bodies, in particular the local authorities,
which are, at times, reticent on the subject.

The lesson I have learned is that every
government body that I visit wants more powers
and is reluctant to give up powers. That is true at Brussels, Westminster, the Scottish Parliament and local authority levels. I have known of community councils that would have taken control of nuclear weapons had they been given that option.

Although the Scottish Executive’s proposal is a step in the right direction in that it makes an attempt to fill the vacuum, the Executive will have to return to the subject again in the future. Most of the new statutory partnerships will opt for the weaker model 1. Although they may prepare regional transport strategies, they will then scratch around looking for ways to implement them.

Bruce Crawford: I guess that you are arguing that, six years down the road post devolution, we need to examine the operation of the local government structure and to consider it more regionally. We are not there yet, so we need to ensure that what we have at the moment is fit for purpose, and we need to ensure effective delivery of transport projects and a strategy for Scotland. Of the three options, is option 3—which is the purpose, and we need to ensure effective delivery of transport projects and a strategy for Scotland. Of the three options, is option 3—which is the strongest—the best? We have heard in evidence that, six years down the road post devolution, we need to examine the operation of the local transport strategies, they will then scratch around looking for ways to implement them.

Professor Begg: Yes.

Bruce Crawford: That was a short answer. What about the funding mechanism for joint boards, given the constraints?

Professor Begg: I would go for joint boards and precept powers. If one looks back over the past 30 or 40 years, transport has been a bit of a Cinderella service, not only in Scotland but throughout the United Kingdom. We know the figures on the extent to which we have underinvested in transport.

As I said, I would prefer the joint board model with precept powers under which the joint board would determine the level of spend and precept the money from the constituent local authorities. Iain Docherty was right; that model is closest to the passenger transport executive model in England, except that PTEs do not have precept powers. I would go one stage further and give the joint boards those powers.

Bruce Crawford: That is interesting. You also raise an issue that no one else has so far raised with us. Will you expand on why you think it is reasonable for the last, strongest model to be given powers over the railways? In your submission, you say something that surprises me—indeed, you said something similar earlier in relation to the Sewel motion. You state:

“The Executive will not, however, assume powers to direct Network Rail to effect particular investments.”

Should that power be given to the Executive or should there be a more powerful regional set-up?

Professor Begg: I will unpick the question a little, if I may. You are right to want to investigate closely how we will finance the UK Railways Bill and how much of its cost the Executive will have to pick up in Scotland. There is certainly a need for much more transparency than there is at present.

The tale is complicated. Network Rail in Scotland will argue that it spends much more per kilometre of track in Scotland than it does in England, but that has a lot to do with big pieces of infrastructure such as the Forth and Tay rail bridges.

It is also possible to construct a case for track access charges that says that the ScotRail franchise pays fairly hefty track access charges in Scotland. I do not know whether the outcome is that Scotland is getting a fair deal, but the issue warrants a lot of further research.

The Westminster Government has gone a long way in devolving powers over railways, but a critical piece of the jigsaw is still missing—Network Rail. There is a persuasive case for a Scottish version of Network Rail. Such a body would provide transparency, tell us what is being paid and provide the opportunity to achieve a vertically integrated railway in Scotland, for which I have argued for some time.

If strong regional partnerships are to be created, under model 3 it would make sense to give them control over railway services that operate entirely within their areas, because that would help with integration. It does not make sense for regional partnerships to control roads and buses but not rail. If they also control rail, they will be able to get right the resource allocation between modes of transport. If you were to ask me whether resource allocation is right between different modes of transport in the UK, I would tell you that I am not sure. One reason why we do not ask that question often enough is that different agencies with different pots of money are responsible for different modes of transport.

Bruce Crawford: That brings us to an inevitable question, given the complicated nature of the matter. How can we best use the regional structure to achieve a significant modal shift?

Professor Begg: I am not sure that the regional structure is a panacea in itself. The regional bodies will certainly help to achieve proper integration between modes of transport but, as I said, we will make big strides forward only if we get land-use planning right. That is the way to achieve a big modal shift.

I will use the Borders railway, which is a case in point, as an example. I am delighted that the Borders railway is at last being taken seriously, but it has always seemed to me that it will work financially only if there is considerable...
development of an appropriate density along the route. Some people who argue for the railway and are passionate about it are not prepared to agree to the land-use policy that will make it work. The creation of a strong regional transport partnership for the south-east of Scotland might help us to deliver projects such as the Borders railway, but without control of land-use planning, we will not see the big gains or the modal shift.

On modal shift, I have for some time been banging the drum about how wonderful the Länder system in Germany is. The area around Munich in Bavaria has everything to which we aspire. All modes of transport are controlled and regulated and public transport is priced to compete with the car. Levels of investment are made that we can only dream of. I took UK ministers there six months ago and my jaw dropped when the senior civil servant in Munich said, “There is one problem: we’re spending more money on public transport every year but we’re losing patronage.” The reason is that there is no stick—there is no car restraint. Munich is BMW territory and one in six jobs is tied up with the car industry. The politicians are frightened to do anything that appears to be anti-car, which tells us what we already know: we can produce lots of carrots and make public transport wonderful but that will not achieve much on its own. It is like scissors that have only one blade: you need two blades, and the difficult blade for the politicians is the stick.

I understand where Iain Docherty was coming from in his answer to Bristow Muldoon’s question about who should have the power to levy congestion charges. Iain said that if the south-east Scotland transport partnership had that power, congestion charging might not be pursued in Edinburgh, which would be a retrograde step. I agree with that, because congestion charging is a key measure in achieving modal shift. However, the principle is much more important. If we are talking about strong regional transport partnerships that have strategic control of roads, railways, buses, planning and economic development, we must include congestion charging.

Bruce Crawford: Thank you. I apologise to Fergus Ewing for nicking some of his questions from earlier.

15:15

The Convener: You suggested that responsibility for regional railway services should lie with the regional transport partnerships. In the west of Scotland, a large proportion of rail services reside wholly within the current SPT area and would be within the regional transport partnership. However, in other parts of Scotland there is a more mixed picture in which a larger proportion of services cross regional boundaries. How would that affect the relationship between the partnerships and the franchise holder? What scope would there be for a significant change in responsibility, given that the franchise has recently been let to FirstGroup for the next seven years?

Professor Begg: You would have to unpick that. I do not know whether that could be done successfully or in a way that would not be challenged legally. I am starting with that blank bit of paper and saying, “This is what’s best.” However, if we consider railways in Scotland, it is amazing how many services fall within the proposed regional transport partnerships.

In the Highlands, for example, much of the railway there would fall within the boundaries of the Highlands and Islands regional transport partnership. People in the Highlands know best how to allocate public funds there; elected members know best what level of spend is appropriate for the railway line between Inverness and Kyle of Lochalsh and the line between Inverness and Wick. They are in a position to make such important strategic decisions.

I would like the Scottish Executive proposal to have included the creation of a genuine partnership between Parliament and the new regional transport partnerships. We are creating strong and powerful bodies, and I would like to have seen MSPs sitting on the partnerships.

The Convener: I have another question on rail powers. You will be aware that the current situation in Scotland is that the Executive has varying degrees of commitment to, or prioritisation of, a number of transport projects that have been led by a range of different bodies throughout Scotland, such as the Campaign for Borders Rail and Clackmannanshire Council. Will the regional transport partnerships be more able to deliver on such projects than the range of often very small organisations that currently try to take the lead on them? Finally, this might be going a bit beyond the bounds of the discussion, but would it be sensible for us to revisit the way Parliament deals with railways, in that it must introduce bills to promote new railway developments?

Professor Begg: One of the encouraging aspects of policy in Scotland since the Parliament was established is that there has been a substantial increase in transport spend, particularly in the past two to three years, which is welcome. As we all know, however, the problem is that it is not just about increasing spending, but about whether we can deliver. There is a big question about the capability of the delivery agencies in Scotland, although that is also true in England. I do not think that the delivery agencies will be able to develop the railway infrastructure in Scotland, which is why there is a need for new and strong statutory partnerships.
The Convener: On other aspects of public transport, particularly bus services, the committee has recently been carrying out a fair bit of work on the degree to which the Transport (Scotland) Act 2001 has not been used by local authorities—or groups of local authorities, through existing partnerships—to introduce statutory partnerships, quality contracts and so on. Would a benefit of the proposed organisations be that they are potentially more able to bring to bear their expertise to drive forward aspects of the 2001 act?

Professor Begg: That is possible, but Strathclyde Passenger Transport Executive has such capability and expertise; it has not, however, applied for a quality contract, nor have any of the six passenger transport executives in England. There are a number of reasons for that. The legislation has it just about right on quality contracts versus statutory quality partnerships. It is important that the option exists for local authorities if a bus company is seen to be failing—[Interruption.] Is that Alistair Darling on the phone to tell me that I am out of line?

I strike a note of caution, however. Why do we want quality contracts? I presume that we want them to make buses better and to get more people on buses. We were not in the past good at doing that under a regulated system; local authorities were not very good at running buses. I remember that sometimes, when I was in local government, we put new bus routes on in areas where people were shouting loudest, rather than where they were most needed.

I also direct members' attention to Belfast, which has a regulated state-owned bus and rail system that is haemorrhaging large numbers of passengers every year. The main reason why is that there is hardly any car restraint. There has been a twelfold increase in the number of parking spaces in Belfast over the past 30 years. It is easy and cheap to park one's car there and buses cannot compete in that environment.

I am not saying that there is not a legitimate debate to be had on regulation versus deregulation—there is—but in terms of changing travel behaviour other policies are much more important, such as car restraint, decent urban density levels and so on.

The Convener: You had better be careful not to give the impression that you are speaking with the authority of Alistair Darling. Fergus Ewing might not let you leave this afternoon.

Professor Begg: I am not speaking with his authority. I should have stated that as a sort of health warning at the start.

Fergus Ewing: I apologise for the fact that I was not here at the beginning of your remarks. I had to go to another meeting.

In the section of your paper that deals with the financing of the RTPs, you suggest that the Scottish Executive should provide funding directly to RTPs in situations in which powers have been devolved from individual local authorities. Could you expand on that?

Professor Begg: When you were out of the room, I said that I prefer model 3, which involves the creation of strong regional transport partnerships. There are two ways in which that could happen: either the Scottish Executive and the Scottish Parliament say that that is what they want and prescribe it in legislation, or they create incentives for RTPs to be created. There are all sorts of ways in which local authorities can be incentivised to ensure that they would go for model 3.

I am impressed by what has happened in England. Before the heavy no vote in the north-east of England, England was headed down a regional route. However, the Government will still try to devolve more and more powers relating to regional budgets and regional development agencies. That is happening in shadow form. The Department for Transport is starting to work out how much it would spend in various regions and is allocating that amount of money to the regional development agencies and partnerships, which can determine how best to allocate funds—[Interruption.]

Bruce Crawford: That will be Alistair Darling on the phone now.

Fergus Ewing: Funding is one of the weaknesses of the bill; we have no clue as to how it is going to work. For example, Orkney Islands Council is extremely concerned that it will have to pay a contribution that might be more than two or three times its current contribution. Equally, other councils might benefit from the proposals and they will keep quiet. If there are to be strong regional transport partnerships, they must have a fair degree of financial independence. If they are too dependent on their constituent council members, they will be hampered from the start.

Secondly, will there be conflicts in respect of different populations of council areas and therefore in respect of the number of votes they will have—one, two, three or four—in RTPs' decision making? Do you see there being problems in securing a robust RTP model?

Professor Begg: I share your concern on finances. As I said, the way round that problem is to have a joint board format in which the regional transport partnerships can precept money from the constituent local authorities, which will give them autonomy and independence. Many people will not like that, because it will give what they might view as preferential treatment to transport.
However, I argue that the situation in Britain in the past was exactly the opposite; transport was treated in anything but a preferential way.

Voting rights are tricky. There are all sorts of difficulties and challenges. I can see the problems with the current proposal, in that a large urban authority that has a population base that is 30 times bigger than a small authority would have only four times the votes. I understand the principle behind the proposal—the aim is to ensure that the smaller areas have decent representation—but I suspect that it goes too far.

**Michael McMahon:** On road works, which I spoke to Dr Docherty about, you appear to be quite happy that the road works commissioner will not be particularly controversial at strategic level. At the practical level, do you have any concerns about the powers that the commissioner and local authorities will be given in respect of the reinstatement of roads and the condition of works?

**Professor Begg:** My starting point is that the way we have managed road works throughout the UK has been absolutely crazy—utilities companies have been able with complete impunity to dig up roads and cause levels of congestion that are unacceptable for many people. We would not do that with any other resource. A utility company would not phone up BAA and say, “Can we have the main runway at Edinburgh airport for the next month because a gas pipe needs repaired?” It would not happen. The more we charge the utilities companies for the economic costs they impose, the more quickly they will get in and out.

Serious debates have taken place on that issue at Cabinet level at Whitehall between the Department for Transport—the Department of the Environment, Transport and the Regions, as was—and the Department of Trade and Industry. The DTI always argues that to charge the utilities companies the true economic rent would push up our gas and electricity bills and our Sky television would cost more, but the Department for Transport produces figures that show how much it costs in terms of congestion.

On your question to Iain Docherty on how much congestion road works cause, Transport for London’s figures are that they contribute 15 per cent towards congestion. The Highways Agency for the UK states that the figure for the strategic motorway network is about 13 per cent. I suspect that the 10 per cent figure that has been quoted for Scotland is right, on the basis that Scotland has many more rural roads.

My problem is not with the creation of a road works commissioner—the more co-ordination the better—but it probably makes more sense to address the issue at regional level although, once again, what type of regional partnerships will we have and how strong will they be? If the regional partnerships were strong, that would make a lot of sense. My problem is that I wonder whether we have sufficient leverage with the utilities companies, and whether the fines are high enough.

**Michael McMahon:** Let us accept the 10 per cent figure. We have received evidence that 5 per cent belongs to local government road works and 5 per cent is due to the utilities companies. Is there a danger that giving powers over road works to local authorities will skew the argument towards the utilities companies when there is an even share of responsibility?

**Professor Begg:** Yes. It could be argued that local authorities are poachers and gamekeepers.

**Michael McMahon:** Does their having powers to act as gamekeeper on the issue have an inherent danger?

**Professor Begg:** Yes. That will have to be watched closely, because a conflict could occur.

**Michael McMahon:** Could the road works commissioner ensure that local authorities take an even-handed attitude to utility companies?

15:30

**Professor Begg:** I understand that that is one reason for creating the post of commissioner.

**Michael McMahon:** So you are content that that will serve a purpose.

**Professor Begg:** I hope that it will.

**Paul Martin:** You have said that you want a national concessionary fares scheme with a national reimbursement formula. Will you elaborate on that?

**Professor Begg:** There is no doubt that the reimbursement formula for the Welsh concessionary travel scheme is different from that in Scotland. Iain Docherty said that he was unsure about the statistics or whether bus operators in Scotland were right to complain that the reimbursement formula left them worse off. If they are worse off, that is not right, because a concessionary travel scheme should leave operators no worse or better off.

Interestingly, it could be argued that the Welsh scheme has been too generous and has left bus operators a bit better off. However, that has produced a desired result. It has changed the economics of the bus industry in Wales and meant that private operators have invested much more and shown decent levels of patronage growth, not only among people who pay concessionary fares but among full-fare paying passengers.

If we do not create strong statutory regional partnerships, I prefer a national concessionary
scheme, because that is much less complex and is easier to administer and understand than 16 separate schemes.

Paul Martin: We discussed reimbursement of operators as part of our bus inquiry. Can we not expect something from the operators, given the other business that the concessionary fares scheme will attract? Operators would run a bus anyway—I am talking in simplistic terms; I know that that is not very economically accurate. If the operators are operating the system anyway, surely we cannot reimburse them exactly to the extent that is being sought.

Professor Begg: There is a balance to be struck. Few people understand how concessionary travel finances operate or understand the generation factor, which is critical in determining how much bus companies are paid. I suspect that the scheme in Scotland has not been generous to operators.

Paul Martin: Your submission makes quite a strong statement about the potential for operators to abuse the national scheme in Wales. Will you elaborate on that?

Professor Begg: The potential exists. That needs to be bottomed out and more research is needed. The allegation that some have made is that if bus operators depend heavily on revenue from concessionary travel and that represents a significant proportion of their income, they will be more inclined just to increase fares for full-fare paying passengers, which is in their economic interest. However, I place a health warning on that. We have been given that evidence, but we want to research it further.

Paul Martin: With Iain Docherty, I touched on extending the scheme to ferry services. The Scottish Youth Parliament has called for such an extension for young people. What are your views on that?

Professor Begg: I used to like the road-equivalent tariff, which was abolished during the Thatcher Government. The tariff meant that if, for example, someone took a lorry from an island of Scotland to the mainland, their ferry fare was equivalent to what the mileage cost would be if the travel was on land. That required a significant level of subsidy, but the concessionary travel scheme should apply to ferries.

Paul Martin: Would that have an economic impact on the islands?

Professor Begg: Yes. Iain Docherty is right that the cheaper we make transport, the easier it is for people to travel and therefore the more likely they are to bypass local facilities. However, the arguments that we apply to the islands should not be different from those that we apply to rural communities on the mainland. If the arguments were different, we would not argue for cheaper motoring costs in rural areas.

The Convener: We have discussed a national concessionary scheme for bus travel and your views on such a scheme for ferry travel. Should we consider a national concessionary scheme for rail travel?

Professor Begg: In an ideal world, yes, but the matter comes back to cost and capacity. Fife Council was one of the first councils to introduce free rail travel and I remember trying to get on a train at Kirkcaldy to go to Aberdeen, but it was full of pensioners who were going from Kirkcaldy to Dundee to play bingo. I remember thinking that it would be much easier to have a bingo hall in Kirkcaldy than to have the pensioners travel to Dundee. I give a health warning about capacity issues and cost.

I support free travel for pensioners; it is an incredibly popular issue politically, but it would not be my first move on the concessionary travel front if I were a minister in the Scottish Executive. My first move would be to extend 50 per cent concessionary travel to excluded groups, to 16 to 18-year-olds who are in full-time education and to people who receive means-tested benefit. I understand the arguments for free travel for pensioners; the policy is popular, but it does not target the limited resources in the right way to tackle need. We have a problem when people who are not retired and who are on low incomes have to pay full fares—that undermines a key social inclusion objective.

Bruce Crawford: I want to wind back a little. When you were talking about roads, an issue struck me on which I would like to hear your view. At present, trunk roads in Scotland have premium units, which are put out to competition. Is it your argument that if we had strong regional transport authorities, they should take on board responsibility for trunk roads?

Professor Begg: Yes.

Bruce Crawford: Fine. That is simple.

The Convener: That brings us to the end of our questions. I thank David Begg for his evidence, which has been useful. I hope that we have let him go early enough to allow him to get all his Christmas presents in time.

Professor Begg: Thank you and good luck.

The Convener: I suspend the meeting for a few minutes before we take evidence from the Minister for Transport.

15:38

Meeting suspended.
On resuming—

The Convener: I welcome to the committee the Minister for Transport, Nicol Stephen, who is here to answer questions on the Transport (Scotland) Bill at stage 1. I also welcome the officials who are here in support of the minister. They are John Ewing, the head of the transport group; Jim Logie, a divisional solicitor with the Scottish Executive; Frazer Henderson, team leader for the bill team; and Richard Hadfield, policy officer with the bill team. I invite the minister to make any introductory remarks on the bill.

The Minister for Transport (Nicol Stephen): I am pleased to have this opportunity to discuss the Transport (Scotland) Bill with the Local Government and Transport Committee. The bill has already generated a good deal of interest and rightly so. Transport has a crucial bearing on Scotland’s economy, the social well-being of all its communities, and on our environment, health and quality of life. Good transport is crucial to Scotland’s future success.

We have ambitious plans for Scotland’s transport. Next year, our transport budget will be substantial and will exceed £1 billion. Some 70 per cent of that will be spent on public transport to ensure that we develop a sustainable transport system. By 2008, the budget will have risen to around £1.4 billion. By comparison, in 1999 the transport budget was £330 million, of which only 50 per cent was spent on public transport projects. Such major new investment underlines the vital role of transport in growing the economy. That is recognised not only by the Executive, but by all political parties in the Parliament and we believe that that partnership approach is important.

The key issue now is delivery—as I have said before, it is our biggest challenge—and the Transport (Scotland) Bill is central to delivering on that challenge of transforming transport delivery in Scotland. I intend to ensure that we invest in new professional skills to build capacity for our major projects and to promote a more strategic approach to transport at all levels. We will do that through the creation of a new national transport agency to improve the delivery of transport by central Government. Under the bill, we propose to set up new statutory regional transport partnerships to help the planning and delivery of transport in a more strategic way at the regional level. For the first time, we will have in place those new organisations and, just as important, a new Scottish transport strategy, which will be supported at the regional level by new regional transport strategies.

In setting out the context for the bill’s proposals, I want to bring the committee up to date on where we are with the establishment of the national transport agency. Detailed work on the issue continues, but ministers have agreed the high-level functions that the agency should take on once it is established at the end of 2005. The primary focus of the transport agency will be the delivery of the Executive’s £3 billion capital investment programme over the next decade. Therefore, its key responsibilities will be major transport infrastructure projects for rail, tram and trunk roads. The agency will also be responsible for the development and maintenance of our trunk-road network. In that way, it will be tasked with the management of Scotland’s major transport infrastructure. Some important transport functions will remain with the Executive’s transport group, but the agency and the Executive will work closely together alongside our other partners, including the new RTPs, to deliver the Executive’s crucial transport commitments.

As the committee is aware, the proposed regional transport partnerships, which will be established under part 1 of the bill, had quite a long lead-in time. However, the proposed arrangements are broadly in line with what had been indicated and what was expected. Last year, we carried out an extensive consultation on the future of regional transport delivery structures. That culminated in a national transport conference at the Scottish Exhibition and Conference Centre last November. Based on that consultation, we announced our policy proposals in June in the white paper “Scotland’s Transport Future: Proposals for Statutory Regional Transport Partnerships”. Those proposals have since been developed into the detailed legislative proposals in the bill.

Although I have followed the committee’s evidence-taking sessions with interest, I have also had my own discussions with the key organisations and individuals involved. I have met all the existing voluntary transport partnerships, the Convention of Scottish Local Authorities, Strathclyde Passenger Transport and a significant number of transport operators, councillors, business representatives and other interested individuals. Especially among those who were involved in the existing partnerships and in the delivery of regional and local transport, there was a strong level of support about the need to introduce a structure that was more formal and statutory in nature but which left many key decisions to the regional transport partnerships and their constituent councils.

In its discussions with witnesses, the committee has identified all the key issues—certainly, those that I have encountered in my discussions—and I welcome the opportunity to discuss with members some of the comments that have been made and the concerns that have been raised. Some of
those issues are the boundaries of the partnerships, the pros and cons of having one member per council on the partnerships, and the position of external members and their role in voting on certain sensitive issues. A further issue is the funding of the partnerships and requisition from the local authorities. I have always recognised the fact that that might not be welcomed by all the local authorities; nevertheless, there are no easy alternatives. Finally, our proposals for the west of Scotland and the future of SPT and SPT’s rail functions have been the subject of considerable attention.

In respect of part 2, I am pleased that there seems to be broad agreement with our proposals to improve the co-ordination and quality of road works. It is clear, from my review of the evidence that has been presented to the committee, that the witnesses have recognised the importance of roads to Scotland’s economy. Our roads need to be well managed and well maintained and kept open and free flowing wherever possible. That was also strongly recognised in the consultation exercise that we conducted last year. I welcome especially the strong support for the establishment of a statutory Scottish road works register and the requirement for all parties—utilities companies and road works authorities—to enter the relevant details on that register. When the register is complete, up to date and on a statutory basis, it will be valuable and will lead to better planning and more efficient delivery of local roads.

It is clear to me that there is support for a body through which overall national performance on road works can be monitored and improved. A number of influential organisations, including the national joint utilities group and COSLA, support the establishment of an independent commissioner. The committee has raised concerns about the adequacy of the resources that we are attaching to the post and about the fact that the commissioner will seek to achieve improvements by the utilities companies in a different way from that in which they will seek to achieve improvements by the road works authorities. Each of those parties performs a distinctly different duty; however, I would be happy to provide clarification, and I will listen to and, in due course, reflect on the further views of the committee.

In respect of concessionary travel, the provisions in the bill will provide the Scottish ministers with the power to run national concessionary travel schemes directly instead of according to the current model, whereby concessionary travel schemes are entirely a local authority responsibility. As members know, the introduction of national concessionary travel schemes is a partnership commitment. I will make a parliamentary statement tomorrow about concessionary travel.

There are other provisions at the end of the bill, but they have received less attention. It would probably be best for me to stop rather than to go over every issue at this stage. I would be happy to assist the committee in its consideration of any of the issues in the bill and to answer any questions that members may have.

The Convener: Thank you for those introductory remarks. Before we begin our general questions, Bruce Crawford would like to know the degree to which you will be able to answer questions on the concessionary fares scheme, given that you will make a statement in Parliament tomorrow.

Bruce Crawford: We have taken a fair amount of evidence on the national concessionary fares scheme and I am sure that committee members have lots of questions on it. Before we begin the formal process of taking evidence from you, can you tell us how much you will be able to tell us ahead of tomorrow’s statement? Your response will colour what we want to ask you about. If there are certain things that we want to discuss that you will not be in a position to discuss, there is no point in our wasting time on those things today. I would just like to understand where you are coming from.

Nicol Stephen: The details of our proposals are for Parliament tomorrow afternoon and it would be inappropriate for me to go into them just now. I am happy to take questions on the detail of what is proposed in the bill, although it is enabling legislation and it is not compulsory that we use the provisions. The only indication that I will give the committee ahead of tomorrow’s announcement is that it is our intention to make use of the section in due course, rather than to operate through the 16 existing schemes. The section will be important for tomorrow’s announcement, but I will wait until tomorrow afternoon to inform the whole Parliament of the detail.

The Convener: That is a sensible way in which to approach the issue. Members who want to ask questions about the detail of the proposals will have every opportunity to do so tomorrow afternoon. By the time the committee comes to conclude its stage 1 consideration of the bill, we will be aware of how the Executive intends to use the powers.

Nicol Stephen: That is correct. In due course, there will be a stage 1 debate on the bill and a stage 2 process. Members will have other opportunities to ask me questions.

Bruce Crawford: That is fair. However, tomorrow you will be making a statement and, because time will be limited, not all members of the committee will get a chance to put questions to
you and have them answered. Would you respond to a request from the committee for further information following tomorrow’s statement, so that it can be exposed to scrutiny not just by the Parliament, but by the committee?

Nicol Stephen: Obviously I would respond to such a request, which the committee could make through the convener or co-ordinate in some other way. I would be happy to respond to questions in correspondence.

Fergus Ewing: I want to ask about regional transport partnerships. I am sure that you will not necessarily disagree that our difficulty is that the bill does not say what the powers, responsibilities and duties of the regional transport partnerships will be, except that they will be required to formulate a strategy within 12 months. We do not know how powerful the partnerships will be, despite the fact that the consultation paper envisaged three levels of powers—levels 1, 2 and 3, with level 3 being the level with the greatest powers, perhaps along the lines of those that are held by SPT. That has caused me genuine difficulty in reaching a view on whether the RTPs will be toothless tabbies or sabre-toothed tigers. You have indicated that the acid test—what counts—will be delivery. The RTPs must deliver, but can they make any real difference to delivery if they have only level 1 powers?

Nicol Stephen: Yes. Let us be clear about this. The current voluntary transport partnerships are helping to deliver. They deliver a range of projects in place.

Fergus Ewing: I agree that the existing voluntary partnerships, including HITRANS, have been doing a good job. If that is the case and the proposed RTPs will have not dissimilar powers, that begs the question, “What is the point?”

Do you acknowledge that it is difficult for us to make a judgment on the bill, given that it does not spell out what powers and responsibilities RTPs will have? Before we proceed to stage 2, will you produce statutory instruments—in draft form, at least—that spell out those powers and responsibilities? Can you tell us today whether the RTPs will have powers over rail routes, for example, as I believe Professor Begg recommended?

I will pick a pertinent example in which many people will be interested. Should the RTPs be assigned the legal responsibilities and rights in relation to trunk road maintenance that BEAR Scotland and Amey Highways Ltd carry out and will RTPs be given responsibility for determining whether arrangements for the maintenance of trunk and non-trunk roads should be decided by the RTPs themselves rather than centrally by the Scottish Executive?

The Convener: That was about five questions.

Nicol Stephen: The question certainly covers a lot of ground. I will start at the beginning. I fully understand the committee’s concern about the lack of detail in the bill. By stage 2, we will have made available draft regulations. Although I am always concerned when there is a lack of detail in a bill, sometimes there are good reasons for that. In the present case, there are good reasons. We want to give the RTPs the flexibility to have constitutions and sets of powers that are specific to their circumstances; in other words, we are not opting for a one-size-fits-all solution.

I am certain that the west of Scotland will have a powerful regional partnership that has significant public transport powers as well as some roads authority powers. In other parts of Scotland, there might not initially be a desire to transfer those powers from local authorities. However, it is interesting that there is already a suggestion that some authorities will consider such a transfer. We should not just assume that other parts of Scotland will opt for RTPs that have the lowest level of powers. Even if they do not go for RTPs that have stronger powers from day one, there will still be a healthy interest in developing RTPs that have stronger powers.

We will ensure that the regulations are made available. That deals with your first point; you
might have to prompt me on some of the other points that you made.

You asked why the RTPs should not just stay as voluntary partnerships. They should not do so because a number of the partnerships, together with COSLA and the transport operators, realise that the current voluntary arrangements are being stretched and that it would be helpful if progress were made on some of the schemes—whether those are park-and-ride schemes or bus priority measures—the delivery of which has been frustrated. If we could make such progress, we would give people in Scotland confidence that we will deliver new public transport projects effectively, on time and on budget.

The Convener: The other questions were about whether RTPs would be given powers over trunk roads and railways.

Nicol Stephen: On trunk roads, we have made it clear that we are willing to consider not only the transfer of powers from local authorities to the RTPs but, in due course, the transfer of powers from the Executive to the RTPs. The partnerships would have to make a case for that and it is unlikely that the powers would be transferred from day one. If proposals were made on trunk roads, ferries, air services or airports, we would give them serious consideration, provided that we believed that they would lead to benefits in transport delivery.

On rail powers, we have been consistent in saying that such powers should rest with Scottish ministers. That is reflected in the UK Railways Bill and in the proposals in the Transport (Scotland) Bill, as well as in the work that has been done on the Sewel motion for the Railways Bill. The intention is for powers over the ScotRail franchise and the rail infrastructure to be transferred to the Scottish ministers. However, if a regional transport partnership—the proposed west and south-west partnership, for example—wanted to take powers for the management of services, we would be willing to transfer powers to the partnership to give it responsibility for the development and management of the rail franchise and local rail services. If other parts of Scotland made similar proposals, we would consider them seriously.

Fergus Ewing: As I understand it, each RTP will have one councillor from each local authority within its boundaries. Does the minister feel comfortable with the fact that, just as the single transferable vote system of proportional representation is introduced for local government elections, he—a Liberal Democrat minister—is introducing a first-past-the-post system for representation on RTPs?

Nicol Stephen: I have given a lot of thought to that issue. It would be possible to have a larger number of representatives from each authority, but another factor is the size of authorities and whether or not we should allow all authorities, no matter how big or small, to have an equal number of representatives on the regional transport partnerships. We could end up with very big regional transport partnerships, the boards of which would cease to be boards and would become like mini councils. If we were to limit the number of councillors per authority and perhaps allow larger authorities to elect more than one member but allow the smaller authorities only one member each, political balance might come only from the larger authorities.

I have also considered introducing a provision such as a duty on regional transport partnerships to have political balance in their structure and then leaving it to each partnership to decide how best to arrange that. However, that raises difficult issues about ensuring that a local authority’s powers of requisition are fairly protected. Many local authorities are nervous that the executive—the ruling administration of whatever political colour—might lose control of its budget if a reasonable approach is not taken to requisition powers.

Having considered all those issues, I made the proposals that are in the bill, but they are not absolute. If sensible, constructive suggestions are made for how we can address some of the issues, I will consider them carefully, but I do not want to end up with huge regional transport partnerships with significant memberships. Outside representation on RTPs is important and we need to encourage it—it has been successful in the voluntary partnerships in which it has happened; however, the RTPs need to be able to make decisions and need to be of a size that will work, which suggests to me that the overall size of the membership must be kept sensible.

The Convener: Aside from the issue of the number of council members who will be on each partnership, a number of authorities—in particular Glasgow City Council—have made representations about the weighting of votes on the RTPs. In his evidence earlier this afternoon, Iain Docherty drew attention to the fact that a small part of Argyll and Bute would have one vote on the proposed west and south-west regional transport partnership, but the city of Glasgow, which has perhaps 20 or 30 times the population of Argyll and Bute, would have only four times the weighted vote. Do you feel that, in trying to give recognition to some of the smaller authorities, due recognition is not being given to the population of some of the larger authorities?

Nicol Stephen: I understand that argument, and exactly the opposite argument has been made to me by Shetland Islands Council and Orkney...
Islands Council. They have small populations and they are extremely concerned about being outvoted on the proposed Highlands and Islands regional transport partnership by the mainland councils—Argyll and Bute Council and Highland Council. They believe that they should have some sort of blocking vote to ensure that nothing is imposed on the islands that their communities would not want to happen. They want a more significant vote than they are being offered, which is the reverse of the other argument.

We are not following the joint boards example. Having joint boards would mean that island communities in the Highlands and Islands area would be even more considerably outvoted. We are trying to offer a compromise solution and a balanced way forward. You are right to say that Glasgow and the other larger authorities, such as the City of Edinburgh Council, will not receive their full share of votes, but my view is that we do not want any authority to be dominant in any of the regional partnerships. We want a genuine partnership approach. I think that it is reasonable to offer the larger authorities up to four votes, which gives them significant power. It would have been difficult to convince the west of Scotland partnership to go for a one-authority-one-vote approach. I understand that and appreciate the point that you made in your question.

Giving Glasgow and the other large authorities four votes is a reasonable step that will help the consensus approach in the partnerships and will ensure that, although the larger authorities will have greater weight, they will not have dominance and will need to work with other local authorities in a consensual fashion. That is how the voluntary partnerships have been working. Few of them ever have a formal vote; they try to overcome their difficulties and reach joint agreements. That is how I would like the statutory regional transport partnerships to operate as well.

**The Convener:** As I understand it, SPT rarely has a formal vote on its main board. However, the representation on SPT takes account of the relative sizes of the various local authorities. If that has not caused a problem in SPT, why do you envisage it causing a problem elsewhere?

**Nicol Stephen:** SPT operates in that way because of the number of councillor representatives that it has. The authority is big and there are several representatives from Glasgow. Again, the number of weighted votes is something that I am willing to consider. If there is a sense of unfairness in that regard, I will consider that. However, as I say, there are arguments in both directions. While I am willing to consider allowing various regional transport partnerships to start off with different sets of powers, I would like to ensure that there is as much consistency as possible so that the regional transport structure across Scotland is as easy to understand and as clear as possible. If there are different weighting systems, different voting systems, different financial systems, different constitutions and different approaches in various parts of Scotland, that would cause me concern. I want to try to protect the approach taken in the bill as far as possible without necessarily defending every last detail of it.

**The Convener:** Would it be better if local authorities or regional transport partnerships held the powers to introduce congestion charging? My second question is topical, given your announcement earlier today. Would it be better if local authorities or regional transport partnerships held the powers to control the tolled bridges?

**Nicol Stephen:** It would be fair if both of those issues were dealt with at the regional level. If that was something that the local authorities wanted to share through the regional transport partnerships, that would be appropriate.

On tolled bridges, the situation is not quite as straightforward as simply having a group of local authorities transferring the powers, because there are formal structures in relation to the Tay bridge and the Forth bridge and we would have to consider the future of the Forth Estuary Transport Authority, for example. I would be happy to liaise with the emerging regional transport partnerships on the second stage of the tolled bridges review that will now take place. I say "emerging" because, under the current plans, if the bill proceeds through the Parliament in the way in which I hope it will, the partnerships will not be formally constituted until spring 2006. However, the issues could be considered throughout 2005 as we develop our proposals.

If any regional partnership wants to examine congestion charging, they should get the issue on to their agenda as soon as possible next year while they are developing their thinking. For the moment, the position is clear, and that position will not change for the existing proposal. However, I should not say anything more about that because I will have to give formal consideration to that proposal if it comes to me in due course.

16:15

**Bruce Crawford:** All of us on the committee agree that transport is crucial to the growth of our economy and to enhancing inclusion. There will be no argument from any side about that. However, I am not sure that I am convinced about the means of getting there and some of the processes in which we are involved. I know that during the past 18 months, the Scottish Executive carried out research that examined models across Europe.
One of the models that it came up with was a strong region-based model.

I have also been very impressed by the way in which you are prepared to consider issues. We have you at a disadvantage because we have just taken evidence from Professor Begg and Iain Docherty, who gave some pretty compelling evidence about why they thought that model 3 in the consultation document might be a better model for delivery. David Begg’s submission states:

“It is clear that the Scottish Executive’s proposals, as they stand, fall short of what many observers had wished for.”

Iain Docherty’s submission says:

“However, the Bill’s proposals (as they stand) fall well short of the kind of strong regional bodies highlighted”

by the Executive’s research. Given your willingness to reconsider and the evidence that we took just before you came to the committee, would you consider going back and looking at some of that evidence before we get to stage 2 and the draft statutory instruments that you propose to take just before you came to the committee, would you consider going back and looking at some of that evidence before we get to stage 2 and the draft statutory instruments that you propose to bring to us, and reconsider whether model 3 might not be the one that will deliver the projects that we require in Scotland?

Nicol Stephen: I have always tried to work with the grain and with others such as COSLA, the local authorities and the existing partnerships. As I think was already mentioned, there was some reluctance to move from a voluntary structure to the proposed statutory structure. Initially, there was a strong element of nervousness about the implications of the statutory regional structure. Of course, that is different in the west because it already has SPT and wants to continue with that stronger structure.

When I went to speak to the south-east Scotland transport partnership at its recent gathering, I was surprised but encouraged that when there was a show of hands on which option would be best for their area, virtually everyone in the room, including the transport professionals and the elected representatives, supported model 3. I spoke informally to several councillors from the SESTRAN area, who told me that they believe that, although they will not go for model 3 initially, it will not be long before they move in that direction and want to transfer more powers. That seems to be the unanimous view of those involved in transport; I wonder whether there is still a degree of nervousness among others in local authorities who are not transport conveners or transport professionals at seeing local government powers moving to a new regional partnership.

That is why I am trying to do as much as I can to reassure people that the Executive will consider transferring some of its powers to the regional partnerships. It should not be seen as a threat to local authorities. It is all about improving the delivery of transport in Scotland and making sure that some of the projects of real strategic or regional significance that are being neglected or are failing to deliver at the moment are tackled and delivered as quickly as possible.

It is down to all of us in this room, and those involved in the transport sector in general—including David Begg, transport operators and all the people who really believe in transport in Scotland—to go out there and sell the message powerfully that the transport partnerships have to be more than the current voluntary partnerships. There is a real opportunity here to build something significant for Scotland. The faster we can move, and the more we can develop the partnerships at an early stage, the greater the opportunity we have. If I were simply to say that, from today or from next month, this is the way that it is going to be, and if I were to dictate that from the centre, my fear would be that we would not get the spirit that is so important to making progress in Scotland on important transport issues.

Bruce Crawford: I am encouraged by that. You are obviously prepared to move on. I hope that, as this matter rolls on over the coming weeks, we may yet allow fortune to favour the brave.

I notice in the bill that the regional transport strategies will need to be in place within 12 months. Do you intend to do something similar for the national strategy? If not, why not?

Nicol Stephen: Yes. We intend to start the consultation on the national strategy early in 2005. We intend to give some guidance to the regional transport partnerships on their developing regional strategies to ensure that the regional strategies align with each other and align with the emerging national strategy, and we hope to have completed all of that work by the end of 2005 or early 2006, so that we have a national strategy in place at the same time.

Bruce Crawford: Do you intend to write a requirement for that into the bill in the same way that it is written into the bill for regional strategies?

Nicol Stephen: No. That is not currently a requirement in the bill, and we do not intend to write it into the bill. There are arguments either way on that, but the current proposal, as you know, is that it should not be in the bill. It is simply a ministerial policy decision that has been taken to have a national transport strategy.

David Mundell: Will you clarify section 1 of the bill? On reading it after hearing some of the evidence, I was not 100 per cent clear whether the intention of the bill is to divide the whole of Scotland into regions and therefore to require a regional transport partnership to cover every part of Scotland, or whether it would be possible for
areas of Scotland not to be covered by a regional transport partnership.

Nicol Stephen: The current intention is for the whole of Scotland to be covered by the regional transport partnerships, so that no area of Scotland would be left out.

David Mundell: You would agree that most people's interpretation of the word "partnership" would be that all the parties to that partnership would be in agreement to being in partnership, yet from your review of the evidence you will know that we have heard from Dumfries and Galloway Council that it considers that it is not appropriate for the council to be part of the west of Scotland partnership. That is partly a boundaries issue, on which you are consulting, but it partly goes to the heart of the bill, because if the council was not to be part of that partnership and if it was not to be part of the east of Scotland partnership, it would effectively have to be a partnership on its own. That is highlighted in Dr Docherty's evidence. Do you envisage it to be possible for a council to be a partnership on its own if that was what it saw as the most appropriate strategic position?

Nicol Stephen: I struggle with the logic of that. As you say, it is difficult to be a partnership of one, but I do not rule that out because I know that Dumfries and Galloway, which is now a single-tier authority area, was a regional council area. There are some strong arguments about the different regional interests in Dumfries and Galloway. It is obviously not a natural part of the west of Scotland travel-to-work area. There is not the same obvious connection that most of the other local authorities in the west of Scotland area have. That said, some might argue about the closeness of their links to Glasgow compared with some of the others. I do not rule out making one authority into a regional transport partnership on its own or even suggesting that it develop closer links with another authority.

That said, I have argued to Dumfries and Galloway that it would be a significant authority in the west of Scotland partnership. After all, it has already received significant benefits from being part of WESTRANS. Indeed, I have visited Dumfries to launch some of the transport initiatives that have been funded through that route and am certain that being part of a west of Scotland partnership would bring similar benefits to the area. However, I am not reaching a final decision today. We will examine the consultation responses very carefully and take the committee's views into consideration.

David Mundell: But you must accept that any decision to proceed along the single partnership authority route would have to be allowed for in the regulations that you will make. After all, you cannot have one and a half representatives on a board.

Nicol Stephen: Of course. We would have to allow for that in the detail of the bill and in the regulations. All that must await any final decision on the matter, but I do not rule anything out at this stage.

David Mundell: You said earlier that you envisaged the west of Scotland partnership having strong powers. You will appreciate that such a comment might reinforce concerns in Dumfries and Galloway.

Nicol Stephen: That brings us back to Bruce Crawford's question whether we should encourage—or indeed force—local authorities to transfer public transport powers to create stronger partnerships that would be able to tackle major transport issues at a regional level. However, some local authorities are protective of such powers and will be slow to transfer them. Obviously, in the west, the old Strathclyde Regional Council area—which is also the SPT area—is the only one where powers are already pooled and shared. The exception in that example is Dumfries and Galloway, which is not part of SPT but is a member of WESTRANS. If we forced it against its wishes to become a member of the west of Scotland partnership, we would effectively force it to transfer its public transport powers.

I understand all the arguments and believe that the partnership could bring benefits for Dumfries and Galloway for some of the reasons that Bruce Crawford highlighted earlier. I am certain that the partnership would ensure that a fair share of its resources and a considerable amount of its attention would be focused on Dumfries and Galloway and do not for one second believe that Dumfries and Galloway would be left out. Indeed, as it stands, the bill requires that all parts of a regional partnership area—including its more remote and peripheral parts—are taken into full consideration in developing the new regional transport strategy.

For all those reasons, I believe that Dumfries and Galloway's position would be well protected, but I realise that the authority is considerably concerned about its position. Instead of leaving an area entirely out of the regional transport partnership structure, I would prefer to allow a single authority to be its own regional transport partnership. That said, as you pointed out, we would need to think through the full implications of such a move.

David Mundell: I welcome the tone of your response. However we view the introduction of regional transport partnerships, it would be most unfortunate if the system began with an authority being forced into a partnership and to give up powers.

When your officials gave evidence, they suggested that partnerships were required to have...
a statutory basis because local authorities had failed to work together to deliver strategic transport projects and indeed had to be compelled to do so. However, we have received little or no evidence of examples of local authorities, under the current voluntary arrangements, effectively blocking projects by failing to work together. Do you have any specific examples of a project not being delivered because we do not currently have the appropriate statutory framework?

16:30

Nicol Stephen: I could tell you about plenty of projects whose progress has been slow and other projects that have not been delivered years after we have announced financial support for them. I do not think that that is because of a failure of the local authorities to work together, however. I would not criticise the current arrangements or voluntary partnerships in that regard. I think that they have been a considerable success. As I mentioned earlier, it is to build on that success and strengthen the partnerships in a way that will drive delivery forward that we are suggesting the new statutory arrangements. On most transport projects that you can think of, it is frustratingly difficult to ensure quick delivery. Often, the project takes far longer than it was initially intended to. That is particularly so with regard to some of the rail projects, but it is also true of a number of park-and-ride projects, bus priority measures and so on in virtually every part of Scotland. We have to do more to speed up delivery and giving the new partnerships greater statutory strength is an important part of ensuring that we can deliver in the future.

Dr Jackson: You have already heard that we have had discussions with David Begg and Iain Docherty. David Begg said that the travel-to-work area should be a strong basis for any regional transport partnership. Would you care to comment on that and the concern that has been expressed previously, and today by Iain Docherty, about the proposed central Scotland and Tay partnership? You can imagine what I thought the other week when I saw the position that Stirling would be in, with three regional transport partnerships around it. I do not think that Stirling has strong connections with the Tay area, given that most of the commuters in the Stirling area go to Edinburgh or Glasgow. Iain Docherty suggested that it might be more suitable for Stirling to be involved in a partnership in the south-east of Scotland.

If, by arranging the regional transport partnerships on geographical lines, you find that there is a situation in which one council butts up against two areas in which it has strong involvement, what happens in terms of representation from that council?

Nicol Stephen: We decided on the boundary proposals on which we are consulting—I should emphasise that they are only proposals and that we have made no final decisions—after having consulted the authorities. We had the greatest difficulties in relation to the area of Scotland that does not currently have any voluntary partnership, which is Dundee and Angus, and in relation to the area around Clackmannanshire, Stirling and Perth. Fife is another area that clearly looks two ways—to Dundee and Edinburgh—and it is currently a member of SESTRAN. However, while Fife indicated that it wished to remain a member of SESTRAN, others suggested that they might be willing to enter into the proposed partnership that covers central Scotland and Tayside. We will carefully consider the representations that are made by councillors, transport operators, MSPs and other elected representatives and will try to make a decision that best reflects the interests of the area.

In terms of the journeys to work that people make every morning, the area around Stirling is always going to be one that looks in a number of directions. Obviously, a significant number of people who live in the area also work in the area, but many work in Edinburgh, Glasgow, Perth and—to a lesser extent, I accept—the Dundee area.

Perhaps that central and Tayside partnership would effectively have two or more than two travel-to-work areas within its boundaries and its regional strategy would have to address that. It is never as simple as any regional area having one travel-to-work area; there are always going to be some complex interactions. However, you can see that in the west and the east, there tends to be a focus on Glasgow and Edinburgh. It was by no means certain that the Borders would want to come into the south-east partnership, but it has decided that that is the best option for the area.

Iain Smith: Using the example of Fife, as I am wont to do, I am not necessarily in accord with some of the points that were made about Fife earlier in the meeting—

Nicol Stephen: Was that before I was sitting here?

Iain Smith: It was indeed. If Fife were to be in the south-east area partnership, decisions would still have to be made in the central and Tay area that would have an impact on Fife; likewise, decisions on transport issues in Fife might have an impact on the central and Tay area. Will the legislation allow for observer membership between partnerships so that, at the very least, Fife could be an observer member of the board for the central and Tay area to ensure that there is some consistency on both sides of the Tay bridge?
Nicol Stephen: That is a very good idea and it should be included as a firm proposal in the regulations. We always intended that there should be provision for observers. For example, the Executive might want to have an observer on all the regional partnerships so that we ensure that they co-ordinate with the national strategy and that we are aware of any cross-border issues. Equally, Fife should be represented on the partnership that covers Dundee, whatever that partnership is, because of the closeness between Dundee and north Fife.

I think that that has triggered a further question from Bruce Crawford.

Bruce Crawford: It is in relation to observer status. David Begg suggested that MSPs might serve as observers on the regional transport organisations. What does the minister think of that idea?

Nicol Stephen: Are you suggesting that they could be observers?

Bruce Crawford: The best status would probably be observer in the initial stages, but perhaps the role could grow.

Nicol Stephen: I am willing to consider any proposal that the committee makes. My only reservation is that the situation must be manageable and we must ensure that the partnership board is small, manageable and tight enough to be able to make decisions and to deliver the transport projects that we are talking about. I would be interested to know how we might limit the number of MSPs because there could be quite a significant number who would have an interest in the areas that we are talking about. I would be relaxed about the individuals who could serve as observers; a range of individuals could be involved.

Bruce Crawford: It could be limited to regional MSPs.

Nicol Stephen: We could do all sorts of things.

The Convener: The committee might want to nominate Fergus Ewing to serve on all of the regional partnerships to keep him busy.

Fergus Ewing: You do not get rid of me so easily as that.

The Convener: I have another question that might overlap with discussions on the Sewel motion on the UK Railways Bill. The existing rail passengers committees are being abolished and replaced with a UK rail passengers council. What ideas does the minister have about involving rail passengers and general public transport passengers regionally and nationally? Is there any intention of making proposals at stage 2 to establish passenger representation?

Nicol Stephen: I am quite clear that, in Scotland, passenger representation should continue to have an important role and that there should be some sort of Scottish passengers council. We will consider the best arrangements for achieving that. As the new powers pass to Scottish ministers, we will take the opportunity to make known our views on the proposed rail passengers council.

If we are serious about integrated transport, it is important that we do not end up having a rail passengers committee, a ferry passengers committee, a bus passengers committee and, in due course, a tram passengers committee. It is important that we ensure that there is a more integrated approach. I will examine those proposals carefully as we move forward. We do not have detailed proposals at present, but when we establish the agency and the regional partnerships, it is important that the voices of passengers and freight users are heard. We should not lose sight of the importance of freight to our transport strategy.

The Convener: Once the Executive has its new rail powers, what relationship do you envisage it having with the proposed UK rail passengers council?

John Ewing (Scottish Executive Enterprise, Transport and Lifelong Learning Department): The new rail passengers council will have an interest in rail passenger services in Scotland, so the Executive and the transport agency—and First ScotRail—will have to engage with it on delivery.

Paul Martin: I want to return to what the minister said about not wanting there to be separate committees for different modes of transport. What is wrong with having a passengers committee that is specific to rail users? Rail users are entitled to be focused on rail and to take part in a rail committee. Why should a member of a rail users committee be concerned about a strategic approach?

Nicol Stephen: There is nothing wrong with having individual committees, but I think that we need to link them together through some sort of Scottish passengers council, which could have representatives from individual committees. The set-up might not need to be as formal as that—it might be possible just to have an informal annual or biannual gathering to ensure that passengers can force the Executive and the Parliament to consider the issues that need to be tackled if we are to have more integrated transport in Scotland. That way, we would be able to make a powerful case to the transport operators to ensure better co-ordination of services.

There is still a long way to go on improving the integration of transport in Scotland, but the rail
franchise powers and the other rail powers that are coming to Scotland, together with the relationship that we are building with the bus operators, mean that we have some good opportunities. Transport and transport investment are now being given greater priority.

Paul Martin: We need to focus on the issue of formality. In relation to the set-up for passengers, you used the word "informal". Why should what I would say is the most important element of the transport system—the body that represents passengers—have an informal structure, when every other part of that system has a formal structure? Is it not necessary to have some bureaucracy to ensure that passengers are taken seriously in the process?

Nicol Stephen: I agree. The rail passengers committee that we are considering will be formal and the proposed ferry passengers committee will be formal. We just need to consider the appropriate level of bureaucracy and the best way of delivering some sort of Scottish passengers council, if that is what we believe is the best thing to do. As we move forward next year, we should consult on the formality of the set-up and find out what the existing committees believe is the best way of delivering representation for passengers. Because of your suggestion, I will undertake to do that. Alongside the development of our proposals for the agency and for the national strategy, we will consider the best arrangements for ensuring that passengers are at the centre of all that we do on transport.

The Convener: We will now move on to part 2 of the bill, on road works.

16:45

David Mundell: I would like to ask about the current situation with regard to the New Roads and Street Works Act 1991. Initially, when officials gave evidence, I was under the impression that there had been no prosecutions under the 1991 act in relation to road works management. However, I have subsequently discovered that there was one, in Banff, in connection with inadequate lighting.

What assurance can the minister give us that the measures in the bill will be any more effective in delivering a reduction in congestion-causing road works than the current, detailed provisions in the 1991 act, given that there has been only one prosecution under that act?

Nicol Stephen: I am certain that, if there are failures—and, currently, there are failures every week—the new powers will be much more widely used than the existing powers of prosecution are. When the civil penalties are used, that will provide the utility companies with a significant incentive to improve their performance and ensure that road works are managed better, that reinstatements are of a higher quality and that we keep the roads open and the traffic flowing wherever possible. There will be a major improvement in the system. It is interesting that the new system has the backing not only of the local authorities but of the utility companies. There has been a remarkable degree of agreement and unity of purpose from the utility companies and local authorities that have been carefully considering the proposals.

David Mundell: From the evidence that we heard, I would say that the utility companies are rather keen on the new proposals because they are not the lane-charging measures that are being introduced in England and Wales. However, how are we going to ensure that the increased penalties will be enforced? We heard the suggestion that procurators fiscal did not regard such infringements as being particularly serious and that there was no indication that they would be regarded any more seriously in future.

Nicol Stephen: I am sure that they will be enforced because all the evidence shows that, when fixed penalties are introduced—for example, in relation to parking offences—the system operates in a far more comprehensive way than if the police and the procurator fiscal are given the task of enforcing penalties. The fact that we are strengthening the penalties for the more serious offences at the same time as we are introducing the fixed-penalty notices is likely to lead to significant improvements in the system. There would be little point in introducing the fixed-penalty notice system, the statutory register and the new Scottish road works commissioner—or the road works tsar, as he or she has already been termed in the media—if we do not expect that to result in a significant improvement in enforcement.

We want to encourage a far more effective enforcement system in respect of utility companies and their contractors. We should always remember that relatively few road works are carried out by the utility companies and that a lot of the problems are to do with the quality of work that is being delivered by contractors. That is why, along with the enforcement issue, we are also considering the issue of training and management. We want to work on the important issues of who is responsible for the road works, how the management of individual road works can be improved, the quality of the staff who work on them and so on.

David Mundell: I do not dispute that but, to return to the original point, a number of serious offences—not fixed-penalty offences—are already on the statute book. You are making the penalties more severe. How can you guarantee that that will be effective in the sense that people will be put
forward for prosecution and will actually be prosecuted when, over a significant period of time, there has been only one prosecution in relation to the existing offences?

**Nicol Stephen:** The fixed-penalty notices will be the responsibility of the local authorities in the first instance, although the road works commissioner will have a role to play. I am certain that the local authorities will act on their new responsibilities. I would be very surprised if the Society of Chief Officers of Transportation in Scotland and the respective authorities did not make significant use of the new powers at an early stage, once the bill is passed.

More serious infringements of the law, which lead to more serious prosecutions, might be dealt with following a referral by a local authority or the intervention of the road works commissioner. David Mundell addressed a question on that to the Solicitor General for Scotland, Elish Angiolini. I refer to the answer that she gave on 25 November. I am certain that the local authorities and the road works commissioner would draw the attention of the prosecuting authorities to those more serious offences, about which Parliament has made clear its concern. If the bill is passed in its present form, the severity of the penalties will increase. That will ensure that the Crown Office and Procurator Fiscal Service treats those matters with great seriousness and that, if there continue to be infringements in future, they will be handled appropriately by the Crown Office and procurators fiscal throughout Scotland.

**Michael McMahon:** It goes without saying that the bill’s focus is on how to get the most integrated transport systems that we can in Scotland. The minister has already said that. However, in its evidence to us, the national joint utilities group said that in focusing so much on the vehicles on the roads, the bill may have lost sight of the fact that the routes themselves are the conduits along which many services are delivered. By giving local authorities the powers to change the timing of works and to act in relation to how the utility companies operate, the bill could prevent the utility companies from doing their job and could increase costs in other ways. What is your view on that? Do you think that the road works commissioner has a big job to do in that respect, to ensure that people are not hindered from doing their work so that the integrated transport systems that you want can function fully?

**Nicol Stephen:** As was said in our discussions on part 1 of the bill, some people—notably the utility companies and their representatives—might well argue in that direction. However, others might argue that, to get the new system right and to ensure that it works, has teeth and produces significant action, the role of the proposed road works commissioner needs to be built up more and that the commissioner needs to have a more significant presence and more staff. We must also ensure that the local authorities are properly resourced and encouraged to make use of their new powers. That is partly why we are seeking to ensure that local authorities have the power to retain their administrative costs when they impose and deal with fixed-penalty notices.

As far as your question is concerned, we will always need to strike a balance. However, when most people travel around Scotland and see the road works in our towns and cities, they know that there is room for very significant improvement. Indeed, that is the very reason why the introduction of the road works register and the creation of the road works commissioner have found such wide support.

I should also emphasise that the proposals have received positive comments from the national joint utilities group. Given that a significant proportion of the proposals are targeted at improving the companies’ performance, the current level of delivery and the quality of road works that are being carried out on their behalf, we will never reach a solution that they will feel wholly comfortable with. However, we are encouraged by the fact that after discussing the matter at great length we have arrived at an approach that the companies are at the very least willing to work with. If we can put the road works register on a statutory footing, give these new powers to the local authorities and establish the road works commissioner, we will be seen to have adopted powerful measures to tackle the problem of poor-quality road works.

As I have said, most people and businesses in Scotland feel that a great deal could be done to improve the quality of road works, to deal with people’s frustration and anger and to tackle the damage that road works do to our economy. I accept your point that we want broadband and higher-quality modern communications systems, and I understand that Scottish Water has to carry out certain works if we are going to open up new development opportunities and meet environmental standards. However, issues such as the timing, management and pace of the work and the quality of reinstatement are not being tackled well enough.

**Michael McMahon:** I completely understand and concur with your comments. However, might such an approach not lead to difficulties for other Scottish Executive policies? For example, you mentioned broadband. Given that the bill seeks to give local authorities powers to delay utility companies’ road works and other road works for up to three years, the minister with responsibility for rolling out broadband might chap your door and
say, “I can’t deliver this policy on time because of this transport legislation.” Do we have to address some cross-cutting issues to get the balance right?

Nicol Stephen: I do not think that what you have suggested will happen, because utility companies will retain their statutory and emergency powers. The assumption behind all our proposals is that those companies will continue to dig up our roads to access their services, because that work is necessary to deliver, improve and expand on those services. Broadband is a key example in that respect.

We are simply saying that when companies carry out that work they must take into account its impact on the road network, do it efficiently and complete it quickly. Moreover, the quality of reinstatement needs to improve. Too often we have suffered because roads have collapsed into potholes a matter of weeks after initial reinstatement works have been carried out.

Everyone, even the utilities, acknowledges that we have a problem. If we can turn the situation round, improve the quality of road works and monitor, manage and co-ordinate them better, that will benefit everyone in Scotland, including those companies.

Michael McMahon: Again, I appreciate that, but does that raise a contradiction? If utility companies’ statutory obligations to deliver services can override the powers that are set out in the bill, what is the point of having those powers in the first place?

17:00

Nicol Stephen: The powers in the bill will make a difference. All I am saying is that the new powers that we will give local authorities and the commissioner are significant, but they will not sweep away the powers of utility companies. We want to ensure that the road works commissioner will be able to develop codes of practice, for example, and help to conciliate and arbitrate between local authorities and utility companies in difficult situations. I suppose that the best way of describing the existing position is that we are much more actively managing situations. There is too much of a hotch-potch and too little co-ordination. People do not think that they can take firm enough action if there is poor-quality reinstatement. We want to strengthen local authorities’ powers, create the new position of road works commissioner and give new powers in that respect.

However, we recognise that utility companies will still need to carry out road works. If we were starting all over again in a different world at a different time, we might have wanted to separate our roads from our utilities. In some parts of the world people have endeavoured to do that; for example, in some parts of Scotland it has been possible in new towns and new communities to have separate tracks alongside roads under which pipes and wires can be laid. However, in the main our telecommunications, sewerage, water, electricity and gas pipes and wires go under our roads. Therefore, we must continue to dig up our roads to maintain and improve those utilities. I do not think that anyone in Scotland believes that we currently have a good system for dealing with road works or that there is no room for significant improvement. The bill is intended to tackle such matters.

The Convener: Representatives of the utility companies perhaps gave the impression in their evidence that there is too much emphasis on the utility companies’ impact on congestion and not enough on that of local authorities, which is partly what Michael McMahon was trying to say. Do you accept the suggestion that has been made to us that half of all congestion due to road works is due to road works that are initiated by the Executive or local authorities? On the half of congestion that is initiated by utilities, I think that around 60 per cent of all current capital investment in utilities comes through Scottish Water, which is a publicly owned organisation. Therefore, around 75 per cent of the congestion that relates to road works is initiated by the public sector.

Nicol Stephen: I understand the point that you are making. It is clear that a significant amount of road works in Scotland is carried out by local authorities and the Executive. However, the main purpose of those road works is to improve and resurface roads and to fill in potholes in the road network. Indeed, there is a duty on local authorities’ roads authorities to manage and maintain all the roads in their area. Many local authorities would argue that they require more funding in order to be more active in managing local roads and to help to maintain and improve the quality of those roads. That is why I am pleased that we were able to allocate £60 million extra through grant-aided expenditure as part of the budget settlement to local authorities for that purpose, as COSLA requested. As I said and should repeat, I understand your argument. Indeed, I have a degree of sympathy with it. We must consider such issues as we move forward to stage 2 consideration of the bill.

We have proposed that there should be significant powers in the hands of the new road works commissioner to take action that involves the local authorities, but we have stepped back from and fallen short of giving powers to introduce fines and fixed-penalty notices for roads authorities or the Executive. There are issues around whether fining a public authority to take
money to another public authority is a sensible use of time and a sensible way forward.

You make a fair point about Scottish Water. The powers will be exercisable against it in its role as a utility company, but we need to examine all the implications across the whole public sector. I hope that the committee will play an important role in that work and produce its own ideas and proposals in response to the measures in the bill.

The Convener: While you rightly identify that the Executive and local authorities endeavour to complete road works to improve the road network swiftly, the utilities also say that they endeavour to complete work as swiftly as possible to meet the needs of their customers. While it is economically important for Scotland to have an efficient road system, I expect that the minister will agree that it is also important for Scotland to have efficiently working telecommunications, gas and electricity systems. What liaison is there within the Executive working telecommunications, gas and electricity systems? Is there liaison between you and the Minister for Enterprise and Lifelong Learning to ensure that we strike the right balance in ensuring that the road and utilities systems work effectively to support the development of our economy?

Nicol Stephen: That is an interesting point. As you know, I have been given responsibility for telecommunications and broadband within the transport portfolio. I have always thought that that is a sensible grouping of portfolio responsibilities, because communications should be seen in their widest sense. Roads communication, transport communication, broadband communication and telecommunication are all important for business and the economy. It is important that we grow our investment in those areas and commit to infrastructure improvements.

I understand your point about balance, but the primary aim of utility companies is to lay gas mains or introduce broadband connections or lay optical fibre underneath the road surface. Their primary concern is not the quality of the reinstatement of the road. Once the road has been reinstated, they do not have an on-going responsibility in the same way as local authorities do. There should be much greater pressure on the utility companies to carry out high-quality road works and reinstatement, and to resurface roads if necessary, rather than have sections of filled-in trenches. I could show you many good examples of that in my city, and I am sure that members around the table know of examples where road works have been carried out by utility companies and there are still significant problems with the road surface or pavement surface.

No one doubts that there is a significant opportunity for improvement. The issue is how we do it and impose these new duties and responsibilities in a responsible way that recognises that electricity, gas, water, sewerage and telecommunications are all important for Scotland’s economic future. We must not place too many additional burdens on those companies, which is why it is important that we have worked with the utility companies and their representative bodies in developing the proposals. We will never reach complete agreement, but we have a good level of agreement on the importance of the measures, which will impose new duties on local authorities as well as on utility companies.

The Convener: I have a final question before I bring in Bruce Crawford, who has been waiting beside me. The utilities also drew to our attention the fact that the vast majority of local authorities currently do not enter their own road works on the Scottish road works register. They also highlighted one area of good practice in West Lothian Council, which I am always pleased to praise. The utilities advise us—I have not double-checked it—that they and that council have a 100 per cent record of entering their road works on the road works register, and that there is also effective liaison with the utilities in that area. To what degree do you and the minister with responsibility for local government aim to drive best practice of that sort throughout local authorities in Scotland?

Nicol Stephen: We want to achieve that and we want to introduce codes of practice. The Scottish road works commissioner has an important role to play in that. I have just been helpfully provided from my right-hand side with the document, “Considerate Contractor Road Works Scheme Code of Practice”, which delivers the “Co-ordination of Roadworks in West Lothian”.

That is a good example of what can be done with the local authority and the contractors in an area working together. We need to do more of that throughout Scotland.

You are right, convener, to mention that some authorities do not enter their own road works on the register. That is why I am hesitant to quote percentages or other figures. I could quote some percentages back in response to some of the figures that you and others have quoted, which tend to suggest that the overwhelming majority of road works in Scotland are carried out by the utilities companies. That is based on the current use of the register, however, and I am pretty convinced that it is inconsistently used across Scotland. That is why we need to invest in the register and to ensure that it works effectively, placing a duty not only on the utilities companies, but on local authorities to use it. That way, we will develop a better picture of the road works that are taking place and we will be able to achieve better co-ordination. It is difficult to co-ordinate road works if we do not let people know about them through the register.
Bruce Crawford: The phrase that we kept hearing from the utilities companies was “level playing field”—a desire for everyone to be treated the same. I understand the possible difficulties with one part of the public sector having to fine another part of the public sector. However, such a situation already exists with the Scottish Environment Protection Agency, for example, which has wide-ranging powers to fine other parts of the public sector. Such arrangements would therefore not be new if they were to be introduced in order to achieve a level playing field with regard to the public utilities.

If road works cause 10 per cent of congestion—5 per cent being caused by local authorities and 5 per cent by utilities—and if a lot of that 5 per cent from utilities comes from Executive spend, I would hope that, the current legislative process aside, the Executive might be able to provide some additional guidance to local authorities, to non-departmental public bodies and to its own road works people, such as Amey Highways or BEAR Scotland, and that the requirement for the companies to register and to co-ordinate with one another could be built into their contracts. That way, change could be effected and major improvements could be achieved over a big section of Scotland’s road works without the need to cover that in the bill.

Nicol Stephen: That is a perfectly fair point. We should all endeavour to encourage such an approach, I hope with the Executive setting the first example through its management of the trunk road network and of the road works required on it. Each of us could encourage a code-of-practice approach in our respective areas at local authority level.

Much could be done in that respect, and a lot has been done. Most of us will have seen a significant change over the past 10 years or so, for example in the use of speed cameras to help reinforce safety around road works. There is also the enhanced use of lighting and coning. It is about the general efficiency of management. We now want to move on from there, ensuring that speed-activated signs can be used when significant road works are being carried out and always considering ways to improve the safety and quality of the management of road works.

We need to do more about the time of day when road works are carried out and about the quality of reinstatements in some cases. That means not only having codes of practice, but acting on them and ensuring that we have sufficiently well-qualified staff, who know what they are doing and who are able to carry out high-quality road works. It also means being tough where there are infringements or rogue contractors. I think that the utilities companies would welcome our flushing out some of the problem areas, with poorer-performing contractors being targeted and the general standard of reinstatements being driven up throughout Scotland.

17:15

The Convener: That brings us to part 3 of the bill. We have discussed that the minister is unable to answer questions about the details of the concessionary scheme that will be announced to Parliament tomorrow, when members will have the opportunity to question him. I therefore invite members to ask more general questions about the powers in part 3.

Paul Martin: I will ask whether transport accessibility has been considered in preparation for your statement tomorrow. We have heard from several groups that represent those who have difficulty in accessing public transport. One comment from the Mobility and Access Committee for Scotland was that concessionary travel has no point if people cannot use transport. I appreciate that we cannot have details, but will you assure us that accessibility will be part of your statement?

Nicol Stephen: It is important that we take steps to give the journey from the home of an elderly or disabled person to a bus stop or railway station or directly to a shop or hospital—the local service that the older or disabled person is trying to access—greater attention than at present. We are starting to achieve that with our dial-a-taxi and dial-a-bus schemes—the demand-responsive transport schemes in which we are investing.

Initially, most of that investment was in demand-responsive transport in rural areas. A significant issue in rural Scotland is that a free bus scheme is all very well for those who can reach a bus stop and have a reliable service that passes close to their house, but those who are some distance from a bus service and cannot access it are trapped in their home. Examples of that exist in Scotland’s cities, which is why we are now—but only now—starting to roll out Executive-funded demand-responsive transport schemes in Scotland’s major cities. We will have to do more of that in future.

Tomorrow’s statement focuses mostly on the detail of the concessionary scheme, because it is important to deliver on that commitment and to make clear the scheme’s details. However, I give the member the absolute assurance that we are working to improve access to public transport for all elderly people and all disabled people. We recognise that some of those people cannot make easy use of any concessionary fare scheme because of their difficulty in reaching a bus stop and using a bus service.

Paul Martin: By the time that we reach stage 3, do you expect us to have satisfied the groups that
are involved that we will take action to deal with accessibility issues, or will those issues continue to be part of a public debate for many years?

Nicol Stephen: We will have to continue to invest more and to build the quality of service for disabled users. New issues will come along. For example, many disabled people now use electrically powered wheelchairs instead of traditional wheelchairs. Some trains that were adapted for wheelchair users cannot easily accept the new electric wheelchairs, whose size and design are not necessarily consistent. Different shapes, sizes and weights are involved. We will have to work at that continually, as we must work at disability access across the board, whether in schools or hospitals.

Paul Martin: Can we be perfectly blunt? The organisation that made the representations to us—MACS—will visit the committee again after the bill has been passed and make the same statements unless a creative approach is adopted to satisfy once and for all some of that group’s concerns about accessing the concessionary fares scheme.

Nicol Stephen: I ask Frazer Henderson to answer, because he is anxious to explain the current legislative position.

Frazer Henderson (Scottish Executive Enterprise, Transport and Lifelong Learning Department): A Disability Discrimination Bill is going through Westminster at the moment; it was introduced on 25 November. In that bill, there are provisions to remove the current exemption for providers of public transport. That means that providers of public transport will have to provide facilities for disability groups within their various bus and rail services. As you are probably aware, although bus, rail and taxi operators adopt good practice, that is not universal. The provisions in the bill try to make good practice universal. The consultation that the Department for Transport recently launched invites people to respond to that. I should explain that disability discrimination is a reserved matter.

Paul Martin: I hope that the Executive will reflect on that.

Nicol Stephen: We provide significant funding to the regional partnerships. Some of that funding has been used for new, low-floor, wheelchair-accessible vehicles, and I am sure that that will continue. We have to do more, but it will take time. Not all buses and coaches in Scotland will be wheelchair-accessible until around 2015—I do not have the exact dates in front of me, and the date is different for different types of vehicle. We will continue to work on that.

Paul Martin: The evidence that we have received from organisations such as MACS makes the case that, although they believe that that should happen, they appreciate the challenges that the industry faces and want a more creative approach to overcoming some of those difficulties. We should reflect on the fact that concessionary travel means nothing to disabled people who face difficulties in accessing public transport in the first place.

Nicol Stephen: I will address that tomorrow in my statement. In the partnership agreement, there is a commitment to a concessionary scheme for the elderly and the disabled on the buses and a commitment to concessions on bus, rail and ferry services for younger people. There is also a third commitment, which is not mentioned so much but is, nevertheless, important, which is to review the current arrangements for disabled passengers and to produce proposals to improve those arrangements. I have not forgotten about that. We are moving forward on those proposals and will issue a statement on them sometime in 2005, having studied the issues and considered the proposals that MACS and others are putting to us. Although it is relatively new, MACS will have a central role to play in the development of our strategy; it was established by ministers to advise the Executive, so it is an important body. It will be a real opportunity for MACS to make a significant impact on public transport improvements.

The Convener: There are no further questions. Thank you very much for your attendance and participation this afternoon, minister. I also thank your officials, who had a remarkably easy time, because you took the whole burden. I wish all members of the committee, the minister and all the members of the public a good Christmas and a happy new year.

Nicol Stephen: Merry Christmas to you all.

Meeting closed at 17:23.
21 December (30th Meeting, Session 2) (2004)) – Written Evidence

SUBMISSION FROM DR IAIN DOCHERTY

Introduction

This summary of evidence focuses on the main strategic development proposed by the Bill, namely the creation of new statutory Regional Transport Partnerships (RTPs) for all of Scotland.

General Comments

To my mind, there are three key issues that need to be explored during the passage of the Bill with respect to the proposed RTPs. These are:

- Powers
- Boundaries
- Political representation and decision-making.

Powers

The arguments in favour of a stronger system of some sort of regional governance structure for transport in Scotland are well known. Indeed, within the last 18 months, the Scottish Executive commissioned independent research into best practice in transport governance across Europe. This research concluded that strong regional systems, with substantial autonomy from central government and their own funding streams, were the best means to deliver real transport improvements.

However, the Bill’s proposals (as they stand) fall well short of the kind of strong regional bodies highlighted by that research, and called for by many observers. In the initial consultation exercises undertaken in 2003, there was broad support for a structure similar to that of the traditional local government joint board. This reflected widespread desire to create regional bodies strong enough to overcome competition between too many small fragmented councils, so that there would be a real step change in transport policy delivery.

It is difficult to see how the basic level of competence envisaged for the RTPs – that of “concurrent powers” with their constituent councils – will actually make a difference to the delivery of transport policy. Other than the statutory requirement to produce a regional transport plan, this form of operation is essentially the same as that of the existing voluntary partnerships, which have been criticised as lacking teeth.

The second level of competence, that of “some transport powers transferred” from councils to the RTPs, is also ill-defined. The Executive could have given a much more explicit lead on the kinds of powers to be transferred at this stage, and on the incentives available to the RTPs for doing so. This would have helped focus debate on how quickly the partnerships should move towards taking on more responsibility, and which powers might be more effectively held at regional level.

The third level – that of “significant powers transferred” – broadly corresponds to the current operation of Strathclyde Passenger Transport, and is closer to the kind of structure many respondents to the original consultations had preferred. This model envisages the transfer of a wide range of transport powers to the regional body, so that effective regional delivery is possible.

Boundaries

One of the most contentious issues in any local government reform process is that of choosing boundaries for new bodies. However, and despite the rhetoric of much “partnership working”, boundaries remain critically important as the shape and constrain the activities of organisations to a very great extent.
Any contemporary reform of local institutions, such as the one proposed by this Transport Bill, suffers from the political nature of our existing local government system, which was created to promote competition between councils (particularly in the central belt), and to diminish the power of the cities within their wider hinterlands. With this in mind, the boundaries for the RTPs as proposed in the consultation paper that accompanied the Bill raise a number of issues:

- Why has the Highlands and Islands Enterprise boundary been specially preserved when others have not?
- Why, since the precedent has been set to split local council areas along the HIE boundary, have other local authority areas not been allocated to more than one partnership?
- Is the proposed “Central and Tay” partnership area credible? (Stirling has much stronger transport links to both Edinburgh and Glasgow than it does to anywhere in the proposed RTP area.)
- Should Fife be split in two between the Tay and the South East partnership areas?
- Would Dumfries & Galloway not be better served by a one-council “partnership”?

Political representation and decision making

The Bill proposes that each council should send only one member to its RTP, with a basic degree of weighting ensured by differential voting rights. Further, it is proposed that external members should be appointed, and that these members should also enjoy voting rights.

There are three key issues emerging from this. First, why is the Executive set on one-member-per council RTPs? This will make it very difficult for the smaller partnerships to operate – NESTRANS, for example, is made up of only two councils. Perhaps more fundamentally, since there is no requirement for the RTPs to be politically balanced (as is the case with the English Passenger Transport Authorities), there is the potential for significant partisan bias in the political structure of the new RTPs. With proportional representation for local government due as the RTPs take up their powers, this risks the new structure of local transport governance running counter to the spirit of political plurality being introduced to local government more generally.

Second, why is the proposed voting differential between councils of different population limited to a factor of four? Such a structure very seriously constrains the impact of the larger cities – particularly Glasgow and Edinburgh – which lie at the heart of our transport network. Further, it will encourage the development of territorial alliances, since it will be possible for the smaller councils to continually out-vote the cities in order to favour their own interests. This risks a kind of “buggins turn” strategy, where the dominant political criteria for investment is to have a scheme in each local council area, rather than focusing investment on the best schemes for the region as a whole.

This in turn raises a third important question, namely the level of political accountability of the RTPs. If funding for RTP activity is to be proportionate to the populations of constituent councils, then why should voting not also be strictly proportionate? Equally, why should non-elected members have voting rights, and therefore powers over the spending of public funds requisitioned from local councils?

Conclusion

The move towards stronger regional governance for transport in Scotland has been broadly welcomed. However, there a number of areas of the current Bill that are much weaker than envisaged by many of those who responded enthusiastically to the original consultation round in 2003. Most importantly, these are the current proposals for the modest range of powers afforded to RTPs in the first instance, their boundaries, and the balance of political representation.
SUBMISSION FROM PROFESSOR DAVID BEGG

Background

The Commission for Integrated Transport (CfIT) was established in the 1998 Integrated Transport White Paper “to provide independent advice to Government on the implementation of integrated transport policy, to monitor developments across transport, environment, health and other sectors and to review progress towards meeting our objectives.”

Following an independent review of CfIT in 2003, the Commission’s remit is as follows:

Providing policy advice via evidence based reports on:

- Future policy options, so-called “blue–sky thinking” on future strategic issues
- Policy issues spanning departmental boundaries (i.e. environments, social etc.)
- Best practice amongst local authorities / delivery agencies to encourage improved performance and to highlight barriers to best practice
- Comparisons with European / International policy initiatives and dissemination of best practice
- The impact of new technology on policy options
- Specific issues as requested by the Department for Transport

Refreshing the transport debate, based on published reports and with a view to raising the overall level of the “Transport Debate” and where possible to build consensus among stakeholders.

CfIT advises the Westminster Government and its remit in relation to the devolved areas only covers reserved matters. However, the Commission has looked to build strong links with the Scottish Executive through meetings between the Chair, Professor Begg, and Scottish Ministers and senior officials.

CfIT submitted a response to the Consultation on a New Approach to Transport in Scotland, carried out by the Scottish Executive in September 2003. A copy of this response is attached at Annex A.

Introduction

The Bill does not deal explicitly with the establishment of the new national transport agency for Scotland. In some respects this is unfortunate - although the new Agency is to take on the existing powers of Scottish Ministers, analysis of the form and structure of the proposed new arrangements for regional transport governance would nonetheless have benefited from clearer indication of the Scottish Executive’s preferred model for the national agency. It is inevitable that the new national strategy, and the stated direction of the agency’s leadership, will have a direct bearing on the policy climate in which the new regional bodies will operate.

This submission focuses on the potential issues arising from the measures in the Bill designed to facilitate the creation of a new framework for sub-national transport governance in Scotland, primarily through the establishment of new statutory Regional Transport Partnerships (RTPs) across the whole of the country. It does not address the clauses associated with the roadworks provisions, as these appear to be largely uncontroversial in strategic terms. The submission also addresses the question of concessionary fares.

Regional Transport Partnerships

The proposals set out in the Transport (Scotland) Bill relating to the establishment of Regional Transport Partnerships are welcomed by CfIT as a positive first step in delivering more joined up transport planning and delivery. The Commission would have wanted to see the proposals go further, ensuring significant powers being transferred to regional bodies, however, it recognises the wider context within which decisions on the pace and direction of change are taken.
This paper analyses the proposed measures relating to the establishment of RTPs in Scotland with respect to four key issues, viz:

- Structure and Powers
- Geography
- Representation
- Finance.

**Structure and powers**

It is clear that the Scottish Executive’s proposals, as they stand, fall short of what many observers had wished for. Although statutory transport partnerships are to be established across all of Scotland, there appears to be little encouragement in the Bill for the majority of them to adopt a full range of powers in the short term or medium term, necessary to deliver integrated transport solutions at the regional level. It is likely that in reality, the *status quo* will endure in most regions, without further incentives. Only in the west of Scotland does there appear to be an institutional legacy likely to sustain the genuine joint working of local authorities in the near future.

The Bill’s proposals have the potential to deliver more strategic transport planning and delivery, but only if Local Authorities take the opportunity to establish truly effective partnership working relationships. If that does not occur, the Scottish Executive should give a much firmer steer on the transfer of significant powers.

In its early statements as part of the process leading up to the publication of the Bill, the Executive made clear that its suggested model for the structure of the new regional bodies was close to that of the *Joint Board*, a longstanding form of Scottish local authority to which councils agree to pool specific responsibilities so that they can be performed over a wider area.

The final Bill text, however, has not recommended the creation of transport Joint Boards for all of Scotland. Partnerships can be set up to exercise a more limited set of powers than would be the case with formal Joint Boards. Second, under Joint Board legislation, it would be for the constituent councils to nominate external members rather than Scottish Ministers. Thus the constitution of the new bodies as Statutory Partnerships facilitates an additional degree of independence in the nomination of non-councillor members, as Ministerial approval of nominations will be necessary.

As RTPs (like Joint Boards) will have the power to precept constituent authorities and will have flexibility to raise funds under prudential borrowing, CfIT does not see the move away from the Joint Board model as a particular weakness.

The Bill proposes three levels of responsibility that the RTPs might seek to adopt. The first is a model of *Concurrent Powers*, essentially a situation where the constituent local authorities in an RTP agree to cede specific powers or responsibilities for particular projects to the Partnership on an *ad hoc* basis. Whilst this has the potential to be a flexible position well-suited to the prosecution of small-scale projects, it is difficult to see how this situation is substantially different to that of the voluntary partnerships currently established across much of Scotland.

At the other end of the Executive’s proposed spectrum of power lies the third proposed model, that of an RTP with *significant powers transferred* from its constituent local authorities. As the Bill currently stands, this model is likely only to be adopted by the successor partnership to Strathclyde Passenger Transport, which for over 30 years has developed a track record in delivering transport investment over a wide regional area.

CfIT would hope to see the establishment of strong regional bodies with significant powers over planning and delivery of Public Transport.

The Bill allows for Regional Transport Partnerships to assume a broad set of powers, albeit that the new Partnerships will not have powers over rail franchising. This change is being proposed as part of the wider reorganisation of responsibilities for the railways following the national Rail Review, which will transfer the majority of the functions of the outgoing Strategic Rail Authority in Scotland.
to the Scottish Executive. These will include the final sign-off of the ScotRail franchise, and a range of other matters relating to the strategic planning and management of rail infrastructure in Scotland. The Executive will not, however, assume powers to direct Network Rail to effect particular investments. At this stage, the funding settlement under which responsibility for rail infrastructure will pass to Scotland is still to be resolved.

Whilst the creation of a more cohesive system of governance for the railways at the Scottish level has been widely welcomed, the potential loss of local accountability stemming from the withholding of rail powers (over local rail services) from RTPs should not be underestimated, particularly if it is accompanied by a shift in the balance of resources towards the more strategic services.

In addition, there is significant debate over whether the new West and South West RTP should seek to adopt the roads powers of its constituent authorities. Whilst such a move would present the opportunity to achieve substantial integration of transport policy between modes, some observers have argued that the priority afforded to public transport would diminish under such a structure. CfIT believes such a proposal to be, on balance, beneficial with RTPs taking highway authority powers.

Responsibility for regional rail services should rest with the Regional Transport Partnerships to ensure the correct balance of funding between local rail services, the different PT modes and roads.

The central model proposed by the Executive, that of “some transport powers transferred” is vague. By proposing the establishment of statutory arrangements for the governance of transport at the regional level in Scotland, it was to be hoped that the new structure would avoid the paralysis of most of the existing voluntary arrangements. But by failing to give strong direction in terms of the desire to formalise regional cooperation through deliberate transference of powers to the RTPs, the Executive risks missing the opportunity to achieve better delivery of strategic transport planning and investment. In short, there is little concrete indication of how the proposed first and second stages of powers would actually facilitate improved policy delivery.

The case of the south east of Scotland, that is the area focused on the Edinburgh city region, is particularly pertinent. With a growing economy, and particularly pressing demands on a limited existing transport infrastructure, the south east is a prime candidate for a strong regional transport body in the mould of SPT focused on delivering significantly enhanced infrastructure and services. However, there is little indication in the Bill as it stands how, for example, the south east region will function more successfully under the new system. The recent situation in which councils faced each other across the floor of the public enquiry into congestion charging in Edinburgh is but the latest in a series of conflicts that have characterised inter-authority relationships on transport policy since local government reorganisation in 1996.

CfIT would have wanted to see a stronger steer in the Bill toward the transfer of significant powers to RTPs. Failing this some sort of incentive should be given to encourage authorities to cede significant powers voluntarily.

**Geography**

The first principles of any new structure of regional transport partnerships are undoubtedly that the chosen structure of governance should reflect:

- the major transport flows within and between areas
- the structure of the existing transport network
- spatial and social structure
- the inherited pattern of local government.

This is particularly true given the shortcomings of the existing structure of local government, and the Executive’s desire to (quickly) improve the quality of decision making and delivery on a regional basis.
The consultation paper that accompanies the Bill sheds doubt on the capacity of the proposed structure to achieve these objectives. In particular, some of the proposed regions do not obviously reflect the realities of either the transport network in Scotland, nor the pattern of mobility that the network provides.

It is vital that there is a strong link fostered at the regional level between land use planning and the development of transport strategies. This is essential if travel to work patterns are to be influenced in such a way as to encourage the development of other more sustainable modes of transport to the private car.

The Commission also believes that a key role for the regional bodies involves setting the strategic transport planning policies required to sustain and enhance the regions’ economic competitiveness and social cohesion, RTPs should be given wider powers over strategic spatial planning.

The “West and South West” region suffers from predictable weaknesses arising from the boundaries of local authorities as created by the 1996 reform of local governance in Scotland. Specifically, the case of Argyll and Bute stands out, since only a small part of the council area is included, despite the area’s wider links to Glasgow as its main high level service centre. The same is true for the Clyde Islands, which have been allocated to the very large Highlands area, rather than to the west Partnership area with which the islands are linked by integrated rail-ferry connections. Equally, it is difficult to construct a robust argument about why Dumfries and Galloway should be included in the proposed “West and South West” region whilst areas that are clearly much more directly part of the Glasgow travel to work area – some of which lie within a few miles of the city centre – are excluded.

Similarly, the “South East” region suffers in terms of its coherence with respect to travel to work areas and the existing transport network from the exclusion of the Stirling council area. Whilst the Stirling local authority area does not easily fit into any of the regional partnerships, transport flows from the area to both Edinburgh and Glasgow are nevertheless an order of magnitude stronger than those to the north and east. Thus, the proposed inclusion of Stirling within an area centred on Dundee and Perth is an obvious anomaly.

One potential solution to this problem – which would also deal with the special circumstances of Fife, which looks both south to Edinburgh and north to Dundee – would be to create a much larger south east region by combining the present plans for the south east and Central & Tay regions. However, this would present other problems of accountability given the present proposals for finance and political representation on regional partnerships as they currently stand (see below).

The Bill envisages that the RTPs should be managed by small political boards, with each constituent authority providing only one member. In addition, it is envisaged that a proportion of the membership of each RTP should be drawn from interests other than elected local councillors, and that these members should be given voting rights.

There are clearly some significant issues associated with these proposals. First is the impact of the proposed geography on the democratic and territorial balance of the RTPs. The decision to limit the proportionality of each constituent council’s representation will lead to the over-representation of smaller authorities. For example, under the proposals as they stand, Argyll and Bute, will have one vote in the West and South West partnership thanks to the small part of its area that is included in the boundaries of that partnership. Meanwhile, Glasgow City will have four votes, despite having nearly thirty times the population included in the RTP area.

This situation potentially gives rise to some obvious anomalies. First, it severely constrains the influence of the urban councils that lie at the centre of Scotland’s major travel to work areas and, by definition, at the centre of Scotland’s principal regional economies. This is at odds with the spirit of...
a number of other recent Executive policies. Perhaps most important are the reform of structure planning and the direction of the new National Planning Framework, which stress the importance of the city region as a basis for sound economic planning.

Second, the form of representation envisaged could encourage the formation of territorial rather than policy alliances inside the RTPs, precisely the situation the reform is designed to ameliorate. In the South East, for example, the over representation of small member authorities will give them a built-in majority over the City of Edinburgh, which will reinforce the city-hinterland split in transport policy apparent since local government reorganisation.

The second significant issue arising from the Bill’s proposals on representation is that of the voting rights of non-local authority members. Whilst the general principle that a wider range of stakeholders should be involved in the shaping of transport policy has been generally welcomed, support for allocating voting rights to such representatives is less widespread. This is due to the obvious ramifications of giving non-elected individuals direct influence over the policies of statutory public bodies.

The third significant issue regarding representation is the limitation of one member per constituent local authority. This means that the scope for genuine democratic proportionality across the RTPs will be limited, as there are no specific measures in the Bill requiring balance to be achieved overall. Perhaps most significantly, the RTPs are due to assume their functions around 2007, precisely when Scottish local authorities will move to a system of proportional representation. This means that the political make up of the RTPs could be at odds with that of local government more generally.

CfIT would want to see RTPs that are constituted to reflect the democratic balance of constituent authorities, either through more representative weighted voting or a larger number of representatives from each authority. Also:

- the need for area balance suggests more representative weighted voting rights
- non-councillor members should have similar voting rights to the representatives of the constituent authorities.

**Finance**

The potential for the new RTPs to levy their constituent member authorities has long been sought by some observers, and is likely to improve the chances of their being able to improve the pace of transport policy delivery. However, there are specific issues arising from this that could turn out to be problematic, given the Bill’s proposals as they stand for the political and geographical structure of the RTPs.

Chief amongst these is the potential for conflict over the links between financial contributions to the RTPs and the relative voting strengths of their constituent councils. Given that there is substantial scope for territorial alliances to emerge given the potential bias towards smaller members in the larger Partnerships, it is not inconceivable that larger councils will contribute the most to the work of the RTPs whilst having less (direct) influence given the limitations on their voting strength determined by the system of weighted voting envisaged by the Bill. On the other hand, large urban authorities could seek to impose their will on smaller authorities.

Equally, there is the potential for dispute given the proposed role of non-elected RTP members, and their power over the resources of publicly-accountable local authorities.

**Notwithstanding of the issues set out above, CfIT believes that RTPs should have the ability to precept constituent authorities. The Commission also believes that transport funding for investment in regional infrastructure and services should be devolved by the Scottish Executive SUBJECT to the ceding of significant powers to the RTPs by the constituent authorities.**

This could be done in shadow form initially, with RTPs advising on regional allocations from an indicative regional transport budget. Subsequently, as the RTPs develop the technical and
organisational capability effectively to plan and implement regional transport strategies, budgets should be devolved directly to RTPs.

**Concessionary Travel**

CfIT is aware that many stakeholders in Scotland are keen to see the implementation of a concessionary fares scheme to be nationally administered with a national reimbursement formula. The current situation whereby 16 different schemes are in operation is said to be confusing for passengers as well leading to wasteful administration costs.

CfIT is mindful of the benefits of the national scheme in Wales, which is supported by both local authorities and bus operators alike in terms of its simplicity to administer. CfIT also recognises the Welsh scheme has contributed to considerable passenger growth due to the investment in vehicles and improvements in services by operators which has encouraged non-concession passengers to use the bus more frequently. Figures from CPT Wales show a 2.5% growth for Cardiff Bus’ patronage, 3.5% in Stagecoach’s and 1.7% in First Bus’.

However, CfIT would also point out that the scheme does have the potential to be abused by operators should they choose to do so. For example, on some Welsh routes fee paying passengers are in the minority meaning that, in theory, operators are no longer constrained by the potential loss of passengers if fares are raised. CfIT understands that the Welsh Assembly Government is about to commission a study which will examine some of the returns particularly where the costs have gone up significantly to determine whether this is due to volume increase or perhaps due to some especially high fare increases.

CfIT’s own research undertaken in 2002 (‘Public Subsidy for the Bus Industry’) in to concessionary fares on bus services in England demonstrated that the optimal concession level is about 65%. To gain best value we concluded that half price concessionary fares should be extended to all socially disadvantaged groups on ‘means tested’ benefits and to under 16s available for all journeys as well as for education journeys for 16-18 year olds and others in full time education.

CfIT December 2004

**Annex A**

_CfIT response to the Consultation on a New Approach to Transport in Scotland, carried out by the Scottish Executive in September 2003_

Scotland's transport: proposals for a new approach to transport in Scotland

Scottish Executive
Transport Scotland Consultation
Victoria Quay
EDINBURGH
EH6 6QQ

4 December 2003

_Scotland's transport - proposals for a new approach to transport in Scotland_

This letter represents the Commission for Integrated Transport response to the consultation document issued in September 2003 concerning the proposal to establish a new national executive agency, Transport Scotland.

The Commission very much welcomes this consultation exercise. We view it as a significant development in tackling transport issues in Scotland given that we have expressed concern in our second assessment report of the 10 Year Plan in England that a strong role for regional transport planning is essential to bridge the gap between the national strategic planning and delivery at the local level. Indeed, if anything, the need for a strong regional transport planning role in Scotland is
of even more importance than in England, given the current predominance of local councils that are too small to cover travel to work areas.

That said, I should say at the outset that the Commission is not able to provide responses to the specific questions you have posed. In particular, we are neither in a position to offer a view on the size or organisational structures that should be operated at a local level, nor on issues which are unique to Scotland. We have instead offered a series of comments that are intended to help the development of the policy process outlined in the submission document. We very much hope that these comments will be of assistance to you as the policy process is developed.

A National Transport Body

The abolition of the Regional Councils as part of the 1996 reorganisation of local government fundamentally weakened the capacity of the governmental system to carry out effective strategic transport planning. The reform fragmented local governance, both 'horizontally' in terms of the greatly increased number of councils serving Scotland's urban regions, and 'vertically', with strategic functions being removed from councils and instead assigned to a range of special purpose authorities with weaker inter-organisational links.

This fragmentation means that no forum is currently capable of taking a strategic regional outlook on crucial inter-connecting issues, such as the provision of transport infrastructure, strategic land use planning and economic development. For this reason, there is clearly merit in the creation of a National Transport Body designed to end this fragmentation. And an organisation that is designed to deliver real improvements across all the transport modes would have many strengths, not least in that it would not favour the private car over other more sustainable modes of transport. It could instead provide for an integrated, multi-modal approach seeking to achieve reliability and improvements in services for all transport users, not just drivers.

Powers to be exercised at a High Strategic Level

At this early stage of the development of the policy process there are still many questions to be determined as to how a new National Transport Body should operate and the powers it should have. One such key question is what functions should be carried out at a high strategic level.

We note that it is suggested that the management of the Scottish trunk road network could be brought under the control of a new National Transport Body. This leads us to question how it is intended to manage rail infrastructure in Scotland and plan for future rail projects. Is it, for example, planned to subsume the powers of the Strategic Rail Authority in Scotland into the new body?

The Commission's view is that it is vital that there is a strong link fostered between the planning and development of rail and road services. This is essential if travel to work patterns are to be influenced in such a way as to encourage the development of other more sustainable modes of transport to the private car.

We also believe that a key role for the new body to carry out involves setting the strategic transport planning policies required to sustain and enhance Scotland's economic competitiveness and social cohesion. In England, local planning authorities are responsible for making such decisions, but the ultimate responsibility rests with the Secretary of State. The new body should exercise a similar responsibility to the Secretary of State in England in respect of strategic transport planning functions.

This responsibility is necessary because the national body needs to be in a position to take an overview of transport planning policies across Scotland. So, for example, a demand management strategy needs to be formulated across the nation that avoids one city introducing stringent parking strategies that in turn leads to a greatly increased competitive position for other regional centres who do not introduce such stringent measures.

CfIT strongly believes that a national scheme of concessionary fares operating across all modes of public transport should operate within Scotland. This would suggest that decisions relating to the introduction and operation of concessionary fares should rest with a national body.
In the Commission's recently issued report "Public Subsidy for the Bus Industry", a number of recommendations were made to further promote patronage growth and modal shift and to further reduce social exclusion. These recommendations included making under-16 half fare concessions available for all journeys where not already provided, extending half price concession fares to socially disadvantaged groups on means-tested benefits and introducing half fare concessions, where not already provided, for education journeys for 16 - 18 year olds and others in full time education. We strongly believe that these proposals, designed to deliver concessionary benefits to socially disadvantaged groups and to those 16 and over in full time education, should be embodied in any concessionary fare scheme introduced in Scotland.

Local Delivery

The other key issue that is central to this consultation exercise is how this new National Transport Body will inter-relate at a local level.

CfIT has carried out research into European Best Practice in the Delivery of Integrated Transport. This has shown that in many European countries there is a strong regional responsibility for transport integration. Regional authorities provide a bridge between national policy formulation (including infrastructure investment of national importance) and implementation of local transport and have been successful in bringing together all the bodies responsible for public transport and agreeing common policies and objectives.

The Commission is not in a position to recommend which local organisational structure should be established for such regional partnerships, nor on the size and make-up of the body. However, CfIT believes the key elements that need to be considered in establishing such a body are the economies of scale it can provide and local accountability. That said, CfIT is attracted by the Joint Board concept as such bodies are fully accountable and have the power to set a budget that is binding on the constituent local authorities.

Irrespective of the type of organisational structure established for regional partnerships, it is essential that the body should be democratically accountable. It must also be able to integrate transport planning, land use planning and economic development policies across the region, in order to achieve the best returns from public investment and to avoid the zero sum game of intra-regional competition for resources, which damages the overall competitiveness of the city region.

I hope you find these comments helpful. I should be very pleased to elaborate on any of them if necessary.

Professor David Begg
Chair, CfIT
PART 1 REGIONAL TRANSPORT

Part 1 deals with the proposed introduction and duties of regional transport partnerships and the duties and responsibilities of the Minister in that respect. Since the matter is being considered by NESTRANS, with a recommendation to both the City Council and Aberdeenshire on a means of securing collective comments on this section of the Bill, and the separate consultation on the “Proposals for Statutory Regional Transport Partnerships” we would not wish to make comment at this time until members have had the opportunity to debate the issues fully.

PART 2: ROAD WORKS

The Scottish Road Works Commissioner (Ss 14 – 16)

The proposed Scottish Road Works Commissioner appears to have the same terms of reference as the existing Roads Authorities and Utilities Committee (Scotland) (RAUC(S)). Is it, therefore, correct to assume that RAUC(S) will no longer exist or should one assume it will continue with the Commissioner as chair.

The Commissioner does not appear to have significantly different powers than Roads Authorities currently have and would thus appear to have the same difficulties in getting New Roads and Street Works Act 1991 (NRSWA91) offences prosecuted.

Whilst the White Paper (Scotland’s transport future) proposed strengthening training, the Bill (as introduced) does not appear to give the Scottish Road Works Commissioner any powers or duties relating to it. If a Commissioner must be appointed then monitoring or training standards and qualifications should be one of his/her functions.

The duty of road works authority and undertakers to provide Commissioner with information will be a significant additional workload for Councils as road works authorities.

The Scottish Road Works Register

The SRWR is one of the real successes of RAUC(S). As mentioned above, the Scottish Road Works Commissioner appears to take over the functions of RAUC(S) and the appointment of the Commissioner calls into question the vehicle used to deliver the SRWR – Susiephone Ltd. Has the fact that this is a private company be taken into consideration in developing the legislation.

The requirement to enter information into SRWR is a positive but this could be done at the moment and does not require a Commissioner.

The proposed section (112B) to be inserted into NRSWA91 includes some minor provisions of the Roads (Scotland) Act 1984 but omits two major sections (S56 – Control of Works and Excavations and S61 – Granting of Permission to Place and Maintain etc Apparatus Under a Road). The new section also makes much of skips but should cover all types of street occupation such as scaffolding etc. It is felt that this section will require significant additional work for road works authorities.

Miscellaneous (Ss 18 – 27)

Section 18: Directions as to timing of road works. Sub-sections (1) – (3) clarify the wording in NRSWA91 and are useful.

Section 19: Directions as to placing of apparatus in roads. This section is complex and would benefit from its own Code of Practice – the writing of which has resource implications for RAUC(S) in its current form and by implication local road works authorities. It is conceivable that the use of
this section by two adjacent road works authorities (e.g. Scottish Executive and Council) could prevent apparatus being laid at all by prohibiting its placement in adjacent roads. It is likely that this Section will be used infrequently.

Section 20: Restriction on works following substantial road works. The extension to 3 years is good news for road works authorities but there are a significant number of exemptions for undertakers in the existing S117 of NRSWA91.

Section 21: Duty of road works authority to co-ordinate road works etc. Whilst strengthening co-ordination is to be welcomed, ACC have concerns about the resource implications of this duty.

Section 22: Duty of undertakers to co-operate with authorities and other undertakers. From past experience it has been found that undertakers are at times reluctant to co-operate in this manner. It is likely that this section will be difficult to implement effectively until new (GIS) developments are introduced to the SRWR. There is a need to clarify/reinforce that co-ordination remains a road works authority function.

Section 23: Enforcement of Section 119 of the 1991 Act. No comment but see paragraph 2 above.

Section 24: Qualifications of supervisors and operatives.

This section should include requirements to do with training as well as for qualification. Currently qualifications once gained can be renewed (after 5 years) without any requirement for refresher training.

If a Scottish Road Works Commissioner is to be created then the Commissioner should be given powers in this section to monitor compliance with standards and also to issue sanctions (up to and including the removal of qualification).

This section should be extended to ensure that all those working on public roads are appropriately qualified (whether working for Councils, undertakers or private contractors).

The requirement for notification etc may be complicated, particularly for signing/guarding where many people might be involved for very short periods. Whilst this section as written might assist in tracking which supervisors and operatives were engaged on a particular set of road works, it does not require that supervisors/operatives are able to show evidence (on-site) of their qualifications (i.e. to Police, Road Works Authorities or the proposed new Scottish Road Works Commissioner).

Section 25: Duty of authorities, undertakers etc. to ensure competence of employees etc.

This section may require guidance or a code of practice to ensure consistency.

Section 26: Duty of undertaker to notify completion of road works: form and procedure.

This section clarifies the original intent of the NRSWA91.

Section 27: Notices requiring remedial works relating to reinstatements.

No comments.

Resurfacing (Ss 28 – 30)

The principles contained within this element of the Bill are good but there is some concern about their operation in practice and the difficulties that will be faced by roads authorities in securing co-operation.

Enforcement of the 1991 Act (Ss 31 – 33)

Councils find it difficult and are generally reluctant, due to the significant resources that would have to be deployed, to take legal action under the 1991 Act and thus increasing penalties provides no deterrent or punishment.
ANNEXE D

The introduction of Fixed Penalties is welcomed but it is disappointing that Schedule 4: Schedule 6A to the New Road and Street Works Act 1991 only contains Fixed Penalties relating to notice offences. There are a number of offences listed in Schedule 3: Increase in maximum fines for certain summary offences under the 1991 Act for which Councils would like to see Fixed Penalties introduced to facilitate effective management of the road network.

Councils have a concern that the right to request a hearing (Paragraph 7) might be used in a vexatious manner to stall the prosecution of offences. It would be preferable for the right to request a review of the evidence in a similar fashion to parking offences through the independent body in the form of the traffic commissioners. It is not clear why Paragraph 7(4)(b) requires the notification of the procurator fiscal.

Resolution of disputes under 1991 Act (S34)
In general this is to be welcomed, though arbitration is currently a function of RAUC(S).

Enforcement of certain offences under the Roads (Scotland) Act 1984 (Ss 35 – 36)
Currently these sections provide useful albeit limited powers to Councils as Roads Authorities.

PART 3

Miscellaneous

National Concessions Scheme

The Council understands the reasoning for the drafting of the legislation to allow sufficient flexibility for the Minister to ensure best value in terms of dealing with operator issues and reimbursement.

Sections 38 to 46
No comment

SUBMISSION FROM ARgyLL AND Bute COUNCIL

Part 1 Regional Transport

Regional Transport Partnerships
Argyll and Bute Council is in agreement with the principles supporting the introduction of a National Transport Agency and Regional Transport Partnerships. The Council is also pleased to see the commitment to produce a National Transport Strategy, a long awaited document which should be available to inform local and regional Transportation Strategies.

However, given that Argyll and Bute, by virtue of its geographical position, potentially straddles 2 partnership areas, it is important that the final decision made on its inclusion in either or both partnerships, reflects the wishes of the Council, and should not be a matter for prescription by the Executive.

Although these points are also likely to be made in the response to the ‘Regional Partnerships’ consultation, their importance merits repetition.

The fundamental issues involved in the determination of the best way forward for the Council are in the degree of influence it might bring to one partnership or another, and in the protection of the concessionary fare scheme advantages its citizens have enjoyed through being part of the scheme administered by SPT.
Functions

Whilst the Bill identifies that Ministers may, by order, empower Regional Transport Partnerships to carry out functions formerly carried out by others, there appears to be no specific power to devolve functions to the partnerships from the Executive.

These functions might include strategic planning of air and ferry services within the partnership’s area.

The bill also presents an opportunity for Ministers to legislate for the changes which are to be made in the arrangements for representing ferry users, but no such reference has been made.

Part 2 – Road Works

**Road Works**

Argyll and Bute Council supports the policy objective to improve the quality and co-ordination of road works throughout the country.

The Council has previously responded on the consultation regarding the “The Regulation of Utility Company Road Works”. The Council stated that in general there had been poor performance from some of the utility companies and there was need to improve the system; improve the quality of reinstatements; to achieve better co-ordination; and make co-operation between roads authorities and the utilities more integrated.

The appointment of a Scottish Road Works Commissioner, a Scottish Road Works Register and stricter legislation including fixed penalty notices will address many of the issues currently encountered.

It would be hoped that the Scottish Road Works Commissioner is afforded appropriate powers to ensure that the new legislation can be adequately enforced.

Argyll and Bute Council fully supports the objective that road authorities can instruct utilities to carry out full or half-width resurfacing following reinstatements as it is considered that this is perhaps the major issue in failing reinstatement work.

Part Three – Miscellaneous

**Concessionary Fares Schemes**

The document refers to ‘The Partnership Agreement’ which commits Scottish Ministers to extending concessionary travel with the introduction of a National off-peak bus scheme for the elderly, and for the progressive introduction of a scheme of national bus and ferry concessionary travel for young people. Given the paramount importance of the principles of equality in the operation of the scheme, and the peripherality of Argyll and Bute’s island and peninsular communities, the Council would wish to emphasize the need for ferry travel to be included in the National scheme from the outset. Clearly, given the likely high costs of this provision, the highest priority should be given to achieving the aim of introducing a satisfactory, national scheme for the elderly and disabled before diluting effort on the introduction of a national scheme for young people.

A further concern for this Council, particularly in relation to which ‘parent’ Regional Partnership/s it joins, is the flexibility apparently granted to Ministers in section 37 of part 3 towards the operation of a national scheme.

To quote

“A National travel scheme may operate throughout Scotland or only in a part or parts of Scotland; and in any case may provide differently for different areas.”

The Council’s concern, therefore is in the potential for the ‘scheme’ to be administered on some form of Regional basis with consequent reduction in the levels of concessionary travel currently
enjoyed. Residents within Argyll and Bute who currently enjoy free travel from the island communities to the mainland, and from mainland communities to Glasgow and further south, require to be protected.

**Pedestrian Crossings**  
Argyll and Bute Council supports the minor amendments to the legislation.

**Highlands and Islands Shipping**  
Argyll and Bute Council supports the intention to terminate the requirement for advance Parliamentary approval being required before financial assistance can be given to shipping services in the Highlands and Islands. This will allow the Transport (Scotland) Act 2001 to serve as the legislation.

**Harbour Orders**  
Argyll and Bute Council supports the intention to make procedures for Harbour Orders to be more flexible and accessible.

**Bus Issues**  
The provisions in the bill concerning Quality Bus Partnerships could certainly prove useful in urban areas where there is intense competition and local authorities are keen to raise standards. They may even be useful for a rural authority such as Argyll and Bute at some point in the future, but at present there is little use for them.

Within this Council’s area, there is very little competition between bus operators. The network is also some 90% tendered with one dominant operator. Even in Helensburgh, the nearest town to the central belt there are only three or four bus routes radiating from the town centre and some of those journeys are also tendered, although in this case funded currently by SPT.

In essence, this suggests that there already is tight control over the bus network in Argyll and Bute and the Council can set standards without the requirement for a formal Quality Partnership. The situation lends itself to the continuation a voluntary partnership.

The powers to operate joint ticketing schemes are worthwhile and it is an aspiration for the Council and its partners to make more use of them.

Blair Fletcher, Transportation Manager  
Stewart Turner, Head of Roads & Amenity Services

**SUBMISSION FROM THE ASSOCIATION FOR PUBLIC SERVICE EXCELLENCE**

**APSE response to the Scottish Executive’s proposals for Statutory Regional Transport Partnerships**

As you may be aware, the Association for Public Service Excellence represents the interests of front line service providers across the United Kingdom.

In Scotland, all 32 local authorities are members of the Association, as are Tayside Contracts, Strathclyde Fire Brigade and a number of associate organisations.

The Association has welcomed the opportunity to provide detailed feedback on the proposals regarding the establishment of new Statutory Regional Transport Partnerships in Scotland.

**Background**

In formulating this response, the Association held a special meeting with a number of representatives from across Scotland’s front line road services providers on 1st/2nd December 2004 in Lochgilphead.
19 of the Scotland’s 32 Local Authorities and Tayside Contracts were represented at the meeting and following detailed discussions; an agreed response was detailed on behalf of APSE to the various proposals contained within the consultation.

Proposals

The white paper ‘Scotland’s Transport Future’ sets out the Executive’s proposals for a more strategic approach to the planning and delivery of transport at all levels through the formation of new statutory regional transport partnerships.

In summary, the proposals state that:

- There will be five Regional Transport Partnerships covering the whole of Scotland
- RTPs will have rights, duties and responsibilities similar to those of local authorities
- The core function of each RTP will be the production of a regional transport strategy, taking account of guidance from the Scottish Ministers – strategies will be used to steer funding priorities
- Around 1/3 of voting membership will be made up of external members (business sector etc.) – the voting weight of the council members shall never be less than two thirds of the total
- They will become statutory participants in community planning
- Requisition Funding is the proposed mechanism for the partnerships as the Scottish Executive believes that this will ensure that there is a proper democratic link to the spending decisions of the RTP
- The orders establishing RTPs will be laid before Parliament in autumn 2005 for the formal establishment of the statutory partnerships in early 2006

APSE Response

General

Firstly, it should be noted that APSE and its members believe that these Regional Transport Partnerships (RTPs) have the potential to provide for a more strategic approach to the planning of transport services across Scotland.

The Association has taken the view that in light of recent developments in areas such as Efficient Government, and the publication of Audit Scotland’s Road Condition report, there is a clear drive towards greater economies of scale in terms of both the planning and delivery of services. However, such frameworks should not be at the detriment of delivering responsive and democratically accountable front line services at a community level. Under Best Value, front line organisations have demonstrated within a framework of local authority management, an ability to meet and overcome the ongoing challenges of continuous improvement in an open and responsive manner.

In responding to the consultation document, the three models proposed each offer a degree of reorganisation, and as raised within the document itself, the potential for staff transfer. It is our clear view that you can achieve the goals of more effective planning, greater efficiencies in procurement and assessment on the basis of need via a hybrid approach to the models outlined within the document.

The case has been made repeatedly that front line services are best delivered locally. They are more responsive, more knowledgeable of local needs and fundamentally, directly accountable for their actions. Equally, the opportunity to help guide and co-ordinate the work of such organisations
across a wider geographic locality, tied to the ongoing development and delivery of integrated approach to transport in Scotland is one that is welcomed by all.

Concurrently, the Association has taken the view in response to the document that the Scottish Executive ultimately intends through time that a Model 3 type approach be adopted across Scotland. However, we would wish to make it clear that progress towards such should be dictated by the RTP’s themselves, and their constituent member councils so as to ensure full engagement and to enhance both accountability and transparency. Local flexibility and choice must not be undermined by the development of any new partnership arrangement.

It is also noted that Model 3 has the potential to provide for the potential large-scale transfer of a range of management and front line services and functions into the proposed new transport authorities. It is our view that whilst on paper this may look to some as the best way to demonstrate the greatest savings in terms of integrated structures and procurement activity, the reality of such a re-organisation would most likely be reduced flexibility at a local level (where it is most needed) and the creation of additional bureaucracy in critical areas such as effective procurement.

Furthermore, by no means are such issues exclusive to the Model 3 type approach, and careful consideration must be given to transitional arrangements within both Model 1 and Model 2. For example, control over parking charging is critically linked to revenue in many authorities and is managed in a way, which supports a range of related activities, including neighbourhood/community regeneration activity and/or a wide range of linked environmental, economic and social objectives. Subsequently, transfer of such functions, which may be deemed by some as of limited importance, may have a significant and immediate impact upon both taxpayers and linked council objectives.

To date, there is little evidence that such matters have been given due consideration in the establishment of any new model, regardless of scale.

There is a real danger that the objectives of Efficient Government may be actively undermined by an ill judged move towards greater centralisation of services. For example, a centralised body that may attempt to maximise contracts to achieve savings in procurement without a past specialism in such activity e.g. Trunk Roads (or indeed detailed experience within the service area in question) may in reality slow down or indeed, prevent a range of critical activity across a range of service providers, public and private alike. History is full of the inherent inflexibilities of such systems and any real evidence that they deliver efficiency savings once the full costs of such undertakings become known is at best, limited.

It is our belief that the goals of the exercise can be better realised by leaving the physical front services and specific management arrangements within the locality of the councils and communities they serve whilst concurrently, empowering the new transport authorities with the planning and indeed, co-ordinated procurement activity (in partnership with the actual providers) they need to develop and deliver an integrated approach to transport in Scotland.

Efficient Government supports more effective procurement and the development of a single e-procurement system for Scotland can equally benefit both devolved services and a central transport authority, operating under a unified strategic transport plan which still retains and supports local flexibility.

**Boundaries**

The proposed regional transport partnership boundaries are generally supported the Association, however, the possibility for an existing council area to be split across two or more RTPs will have significant implications for in terms of financing and community planning arrangements e.g. Argyll and Bute.

**Constitution**

The Association agrees that any external members on the board of the partnership should be there on the basis of the personal contribution, skills and experience they bring rather than representing
a particular organisation or interest group. However, any such member should be classified as observers without equal voting rights, as although they would contribute expertise, it is the local authority’s that physically contribute to the budget and resources of the new partnership.

Equally, it is our clear view that decisions on who is appointed as an external member should undoubtedly be made by RTPs themselves on the basis of need. Guidance should be developed by the Minister to ensure openness and transparency is maintained under such arrangements, and to ensure a consistency of approach across the five transport authorities.

Critically, the Association does not agree with the proposed representation of one member per council organisation. Such a system would create inherent difficulties within local authorities in ensuring cross party participation and representation. Equally, such a restriction would likely lead to the north east structure having a board of only 2 elected members and one additional representative from the private sector. A board of three can hardly be deemed representative for such a large and diverse area.

In terms of stakeholder engagement, it is our view that any new authority should be made subject to the Duty of Best Value in Scotland. This will ensure parity across its members and deliver an established and proven structure in terms of engagement, and indeed, performance accountability. The Association agrees that the RTPs should be formally endorsed as community partners. However, steps should be taken to ensure that the development of an integrated transport strategy does not detract from the flexibilities required in making a success of the community planning process. If not, such linkages will only lead to conflict amongst stakeholder organisations. For example, the proposed West & South West RTP, with 13 local councils engaged, and 13 or more variations within community planning policies and priorities.

With regards decision making within the RTP, the Association propose that a two-thirds majority should be required to agree the actual regional transport strategy. When a vote is needed to reach a decision on occasions thereafter, it should ordinarily be decided by a simple majority voting system.

**Functions**

Section 33 of the consultation document clearly highlights the Executive’s intention for all RTP’s, in time, to operate using the same model to avoid a ‘proliferation of different arrangements’. The proposal for the west of Scotland to initially adopt Model 3 (based upon transition arrangements for Strathclyde Passenger Transport), and the talk of evolving from one model to another, would seem to emphasise the view that the vision of the Scottish Executive is to have all RTPs eventually operating under a Model 3 approach. This would suggest the transfer and integration of a number of functions at a regional level although there is limited detail of regarding specific functions within the consultation.

The Association does not support such a conclusion.

As noted, the Association is of the view that RTPs have the potential to operate at the strategic level and via partnership, work effectively with local authorities in delivering services in support of the achievement of such. A hybrid approach to the three models proposed is therefore suggested as offering the best of both worlds. It would allow the councils themselves through time to develop a measured approach to the ongoing development and delivery of their agreed strategies, with variations across the five boards reflecting local needs and priorities, a framework for delivery long promoted by the Scottish Executive across a range of policy areas.

As stated, the benefits outlined under such approach would offer additional improvements by ensuring that the physical front line services themselves are managed and delivered within the local authority context. The proposed local government led structure of the new partnerships, working in combination with concurrent procurement efficiency drives and enhanced community planning frameworks provides for a cohesive, and above all, responsive and accountable service structure.
Funding

APSE does not agree that requisition funding should be the preferred funding option for Regional Transport Partnerships as it fundamentally undermines the role of local government and exacerbates the already well-documented problems and inflexibilities of ring fenced funding arrangements.

It is our view that the new bodies should be funded directly by the Scottish Executive. However, if requisition funding is adopted, any subsequent levels must be agreed in detail with the constituent member councils affected.

Summary

APSE has welcomed the opportunity to respond to the Scottish Executive’s proposals for statutory regional transport partnerships.

It is the Association’s view any transfer of function, and by association, resource, to any of the new transport authority’s must be given detailed consideration. The goals of local flexibility and indeed, accountability, require that the actual physical delivery of many services is best left to those who have already demonstrated an ability and a responsiveness to local needs and priorities. Front line services under local democratic control have consistently demonstrated the difference they make to the quality of life evidenced within the communities they represent across Scotland.

Concurrently, the transfer of any strategic transport powers must be measured effectively by all stakeholders to ensure that the goals of an integrated transport plan for Scotland are realised.

To this end, APSE would welcome the opportunity to provide further commentary on the enclosed to aid in the successful achievement of this key objective for Scotland future.

SUBMISSION FROM DUMFRIES AND GALLOWAY COUNCIL

INTRODUCTION

Dumfries and Galloway Council welcomes the opportunity to give evidence to this Committee with regard to the Transport (Scotland) Bill. The consultation process is being progressed in parallel with the progression of the Bill and the outcome of the consultation process cannot possibly be known, at this stage. The progression of the Bill, does therefore appear premature and should reflect the outcome of the consultation exercise.

Dumfries and Galloway Council maintains the view that it should remain a Regional Transport Authority for its own administrative area because of its existing circumstances, viz:-

Boundaries - a large rural area of 644,567 Hectares in S.W. Scotland based on our existing local authority boundaries reflecting the geography and location and identity of Dumfries and Galloway (see attached plan).

Successful Record - a strong focus and record of successful delivery of national and local transport resources within the South West region of Dumfries and Galloway - culminating in the award of Rural Transport Authority winner at the Scottish Transport Awards 2004.

Constitution – this is evidenced by the unique delivery of community planning and all public services within the co-terminus boundaries of Dumfries and Galloway. This was recognised with the receipt of the first CoSLA Excellence Award for Community Planning in 2003 prior to community planning becoming a duty in Local Government Scotland Act 2003. Only Dumfries and Galloway Council throughout Scotland is being singled out with unique proposals in the Transport Bill to transfer powers, functions and resources, rather than recognising our unique position to remain a Regional Transport Authority on existing boundaries.
Funding - our consistent and successful focus and track record of delivering transport within the Region against national expenditure programmes and priorities in full consultation with partners and stakeholders.

Functions - to maintain the existing functions within the region because of the strength of both internal and external partnerships including Border Visions (with Scottish Borders, Cumbria and Northumberland) and North Channel Partnership (with Northern Ireland, and South Ayrshire).

MAIN POINTS

Specifically, the principles outlined in Section 17 are particularly relevant;

Reflecting travel to work patterns and other user needs

93.5% of travel-to-work journeys are wholly within the Dumfries and Galloway boundaries. 3% are to Carlisle, whilst only 2% are to the west of Scotland area. The remaining journeys are to Scottish Borders and Edinburgh.

- Following the existing boundaries of local authorities and other public bodies

All of our public services are organised and managed within our present boundaries, namely Police, Fire, NHS Trust, Local Enterprise Company. The only exception is the South of Scotland European Partnership, which also includes Scottish Borders, the neighbouring authority in the south-east of Scotland.

- Capturing a regional boundary that would make sense to its inhabitants

The present grouping of Dumfries and Galloway has existed since 1975, when Regional Councils were created in Scotland. This was consolidated in 1996 with the aggregation of the District Councils and Dumfries and Galloway Regional Council to form the new unitary authority within these boundaries. In addition, the geographical position of Dumfries and Galloway in the Southern Uplands is clearly defined by natural barriers in the form of high hill ranges. There are also considerable distances from major centres of commerce, which influences the inhabitants’ choice of employment opportunities. Dumfries and Galloway is therefore unique in its existing regional boundary.

- Bringing together local authorities with common interests and issues.

We have had discussions with all of our four neighbouring authorities about possible partnership arrangements. The three in the west of Scotland, South Ayrshire, East Ayrshire and South Lanarkshire see themselves needing to be aligned with the Glasgow City-Region to further their travel-to-work objectives. Similarly, Scottish Borders Council wish to align themselves with the Edinburgh City-Region. None of them would be prepared to join with Dumfries and Galloway solely in a south of Scotland partnership.

- Ensuring partnerships with sufficient critical mass to deliver services effectively but without including so many members so as to become unwieldy.

The proposed west and south west grouping would have 13 local authority members plus Strathclyde Passenger Transport, the largest partnership being proposed. This would have half the population of Scotland.

When the Scottish Executive awarded additional monies to improve public transport in 2003/04, SPT was unable to spend it as a result of the decision making process. On the other hand Dumfries and Galloway was able to spend enhanced allocations because of efficient delivery mechanisms.
Dumfries and Galloway Council has an exemplary record in bidding for and being awarded, funding from the Scottish Executive for integrated transport projects, in pursuit of Executive policies, namely:

- Dumfries Integrated Transport Package £1.065m
- Stranraer Public Transport Interchange £2.350m
- Stranraer Integrated Transport Package £0.943m
- Dumfries Southern Sector Access Strategy £1.785m
- West Coast Main Line Local Services Study £0.095m
- Lockerbie Station Accessible Footbridge £0.750m
- Cycling Projects £3.400m
- Public Transport Quick Spend 03/04 £0.725m
- Public Transport Quick Spend 04/05 £0.437m
- TOTAL £11.550m

The ethos behind the current thinking for RTPs is explained in the Introduction sections of the Consultation document. In particular:

“…to take a strategic view of the transport needs, and offer a consistent service, for the people and business in their region”

Dumfries and Galloway already does this through its Local Transport Strategy, as far as those services and transport infrastructure, which comes under its control.

85% of the local bus services are subsidised by the Council, which in turn requires significant additional funding over and above the allocated GAE level of some £700,000. There is now a comprehensive network of bus services, operating early morning to late evening, Mondays to Saturdays, to allow access to work, leisure and essential services over the whole region. It should be noted that the funding deficit is made up from the allocation for concessionary travel and there would be serious implications if this were to be transferred to a new national agency, without recompense.

Our residents rely on the major Trunk road network for travel, namely A74(M), A75, A76, A77, A7 and A701. The responsibility for the maintenance and improvement of the network rests with the Scottish Executive and will pass to the new National Transport Agency. Regional partnerships or individual authorities will have little influence over identified priorities in their area. There is no likelihood that the pace of progress will change or that an RTP will make a difference.

The railway system is under the control of national agencies and train operating companies. Again, regional partnerships or individual authorities will have little influence over identified needs in their area.

To assist “journeys which increasingly cross council boundaries created in 1996 due, in part, to many of the council areas being relatively small, and to progressive increases in the distances people travel to work”

93.5% of our residents’ journeys to work are wholly within our boundaries.

Dumfries and Galloway is not a small area; it is the same size as the proposed north-east area of Aberdeen City/Aberdeenshire.

“To wield more influence in discussions with government at Scottish, UK and EU levels and with the providers of transport infrastructure and services.”

Dumfries and Galloway has membership of a considerable number of outside bodies in order to have such influence at the Scottish, UK and EU levels, namely:

COSLA, including current Vice President, Andrew Campbell
South of Scotland Alliance (economic development)
Border Visions (cross-border group with English authorities)
South of Scotland European Partnership (EU funds)
Westrans (voluntary grouping)
A7 Action Group (lobbying for Trunk road improvements)
A76 Action Group (lobbying for Trunk road improvements)
North Channel Partnership (with ferry operators & N Ireland councils)
Prestwick Airport Consultative Committee
Carlisle Airport Group
Dumfries and Galloway Timber Transport Group
West Coast Rail 250 (national rail lobby groups)
Conference of Peripheral Maritime Regions, and
Atlantic Arc (both lobby EU for funding priority for economic regeneration, transport, local economy)

The various initiatives have safeguarded the European status of routes such as A74(M) and A75 Trunk roads, the major rail network and the status of the ferries serving Northern Ireland, areas of interest that hitherto have not featured strongly with officials within the Scottish Executive.

“...to work in partnership with a range of regional, local and national bodies... we propose that they become statutory participants in community planning...”

Dumfries and Galloway already has an award-winning Community Planning Partnership, with a joint board comprising the Council, NHS and Local Enterprise Company, dealing with strategic issues for our area.

Dumfries and Galloway has a partnership with Stagecoach Western Buses, the dominant local bus operator, to promote safe and healthy travel. This arrangement is bringing closer working arrangements, improved vehicle quality, joint-working on bids for external funding and cost-effective bus contracts.

Dumfries and Galloway already operates cross-boundary bus services in conjunction with SPT and Scottish Borders, without the need for formal regional partnership arrangements. This has shown that two or more tendering authorities can work together successfully and achieve benefits for residents in their respective areas.

The single most-contentious proposal relating to Dumfries and Galloway is contained in the section relating to Boundaries. Section 18, page 10, of the document notes, “...The geographical position of Dumfries and Galloway means that its partnership options are limited. We propose that the Council be a full member of the west and south-west of Scotland partnership. Uniquely, this will require a transfer of public transport powers from the Council to the RTP, but we believe that the existing local accountability for public transport can largely be maintained”. No other councils are being singled out for treatment in this manner. This transfer of powers would be a severe breach of constitutional powers and could undermine the whole make-up of local government.

What the foregoing would mean would be the Council’s powers, budget and staff for the delivery of all of its local bus services, concessionary travel, education transport and publicity and promotion being subsumed by Strathclyde Passenger Transport (SPT). This currently amounts to 7 staff and a gross annual budget of some £8.3m. Decisions relating to Dumfries and Galloway would be taken by a Board of elected councillors, mainly from Glasgow and its environs, at an office in Glasgow.

The proposal is quite unacceptable given the recent moves towards the decentralisation of delivery of Council services and decision-making at the lowest possible, viz local, level. It is also against the interests of Best Value and democracy within local government.

In addition, Dumfries and Galloway has shown itself to be to the fore in the delivery of effective, efficient, value for money and innovative public transport services, recognised on 1 November 2004 with the award for Rural Transport at the Scottish Transport Awards 2004, which is hosted by the Robert Gordon University. Being subsumed by SPT could lead to higher costs for the Council, since SPT employs some 300 staff and this Council would be expected to pay its share. This could also be affected through a reduction in the amount of services operated for the same level of funding. One advantage might be lower train fares on the local train services.
In conclusion, we submit that Dumfries and Galloway Council should be allowed to continue as an autonomous regional transport authority, a role it has successfully undertaken since 1975. It would make no sense for a body in Glasgow to be expected to decide the transport priorities of an area like Dumfries and Galloway when its clear priorities would be the Glasgow Travel-to-work area. Similarly it would make no sense to transfer the responsibility for the delivery of local bus services in Dumfries and Galloway to a strategic body, SPT, based in Glasgow.

The proposals must be re-examined and the mechanisms in the Transport (Scotland) Bill must be reviewed.

CONCLUSIONS

Form should follow function. Dumfries and Galloway currently has the functions and the budget to continue successfully delivering public transport (local bus services) within the South West region against national and regional priorities for Scotland. As indicated in the submission, funding from the Scottish Executive is needed to be able to deliver identified improvements in our area to the trunk road and rail networks.

The introduction of legislation, which creates statutory, regional transport partnerships should be modified to:

- recognise Dumfries and Galloway as a regional transport authority for South West Scotland based on its existing boundary.
- ensure the existing functions and funding arrangements are maintained.
- accept that this is not inconsistent with or prejudicial to the proposals for Regional Transport Partnerships for the rest of Scotland.

We respectfully request that these views are accepted and the Transport (Scotland) Bill is amended to accommodate our proposals.

To do otherwise would uniquely transfer our public transport powers from the Council to a Regional Transport Partnership which is primarily intended to serve the west of Scotland based on the existing Strathclyde Passenger Transport arrangements, thereby removing local accountability and delivery from the South West region of Dumfries and Galloway.

This would be fundamentally wrong:-

- Constitutionally
- Geographically (boundaries)
- Functionally
- Financially

We trust that the unique circumstances relating to Dumfries and Galloway and its successful record in lobbying for transport improvements and the delivery of transport infrastructure will be taken fully into account in determining the future Regional Transport Partnerships.
Plan of Scotland showing the Dumfries and Galloway position relative to Regional Transport Partnerships and external connectivity with other regions of the UK.
SUBMISSION FROM FALKIRK COUNCIL

SUBMISSION IN RESPECT OF ‘PART 2, ROAD WORKS’

THE HEAD OF ROADS & DESIGN

DEVELOPMENT SERVICES, FALKIRK COUNCIL

The following comments are to be considered in confidence and are not to be placed on the Parliament’s Website.

General

As indicated in the submission to the earlier consultation, the proposed tightening up of arrangements under Part 4 of the New Roads & Street Works Act 1991 is strongly welcomed in principle.

However, the following discussion touches on those aspects of Part 2 of the Transportation (Scotland) Bill which are considered to be less than satisfactory or requiring further consideration.

May I also associate myself in general terms with the submission made by the Roads & Utilities Committee (Scotland) [RAUC(S)] on this matter.

I am not clear as to whether it is the intention to transfer this duty from Roads Authorities to the new transportation bodies. However, if it is, I could not support such a move.

Much of the following discussion relates to operational experience of the existing Act and Regulations and may appear to refer to matters of detail. Nevertheless, the points raised are relevant to the consideration of the primary legislation.

The proposals in their entirety will increase workload and hence costs for the Roads Authority to a considerable extent. On the whole, the increase in workload is deemed acceptable in order to better organise roadworks. However, realistic additional funding to the authority would go a long way to ameliorating the effects of the increase and to ensure that the proposals do not fail by virtue of Authorities being unable to commit sufficient resources to the task. Increased costs to be borne by the utilities can be recovered through charges. This method of recouping costs is not available to Roads Authorities.

Detailed Comment on Proposals

Section 14: I am not convinced as to the need for a Commissioner. I believe the responsibility could rest with the Roads Authorities working both severally and in conjunction at a national level through RAUC(S). I fear this appointment could result in an overly top-heavy control and could lead to measures and decisions aimed more at aggrandising the post and ensuring domination of the ‘industry’ rather than promoting willing co-operation and harmony.

Section 15: Nevertheless, by whatever means, the functions set out in this section require to be delivered. Correctly, compliance with the Act and the Codes of Practice is identified as been essential. Not mentioned, however, is the need for obtaining compliance with, as far as reasonably practical, non-statutory guides for best practice developed by the industry itself e.g. RAUC(S) and HAUC Advice Notes such as may not be incorporated in the new Codes of Practice.

Section 16: Delivering the information detailed in this section will impact adversely on the resources of a Roads Authority and its ability to carry out front line duties in respect of the Act especially at a time of reducing budgets and with no additional provision being made by the Scottish Ministers. While it is accepted that details of notices, co-ordination and such like require to be passed on, details of the network, other than is contained in existing submissions to the Scottish Executive and/or are contained in the Associated Data files of the Street Gazetteer would require
considerable resources and the value is doubtful other than building bureaucracy. Information as to training levels of staff are likewise pointless unless a power exists to enforce standards and/or to remove accreditation on default from standards etc.

Dispute resolution procedures already exist and are deemed satisfactory.

Section 17: See Paragraph 2.6 relating to Section 21 of the Bill. A duty must be placed on all parties other than utilities to provide notices and co-operate otherwise the Roads Authority will find it impossible to carry out its duty under the Act. This duty would, inter alia, be on ‘users’ of Section 109 of the 1991 Act and on ‘users’ of the Road (Scotland) Act 1984 Sections 56, 58 and 59.

Section 113(1) of the 1991 Act or subordinate Regulations require to redefine ‘planned works’. Currently utilities almost universally avoid giving the proper notice by alleging works which are patently planned are not of this category because they are held on some internal list or database conveniently titled to avoid this nomenclature or attached to a budget provision not absolutely authorised or are being promoted by some subsidiary or arms-length branch of the utility. It must be made clear that all works in the pipeline be given proper notice. The Roads Authorities must be aware of all these to allow them to fulfil their obligations of co-ordination under the Act. The Roads Authorities would prefer a few ‘possibles’ and ‘probables’ rather than be unable to co-ordinate properly.

If the Commissioner is placed in post, he/she must have staff and powers sufficient to deal with incorrect notices, penalising where appropriate.

Section 20: While the power is welcome, it is questionable how effective it will be in reality when emergency works and works required by Utility licensing arrangements imposed by the regulator are taken into account.

Section 21: Data to be entered into the SRWR are now to include, skips, scaffolds, Section 109 apparatus. It is impossible for a Roads Authority to be aware of all these things going on in their roads. A duty has to be imposed on contractors, non-utility apparatus installers, persons responsible for skips, scaffolds etc and anyone occupying or opening the road to notify the roads authority and accept rulings as to co-ordination matters just as is imposed on an undertaker. And to notify all as per utility including ‘closure’ notices. Electronic noticing to the SRWR to be imposed on companies or bodies corporate.

Inspection regimes and reinstatement requirements to be identical for all parties as for utilities.

Although not specifically a matter for Roads Authorities, some improvement in respect of private roads could usefully be included. For example, for works in private roads all parties should require to demonstrate in advance to the Commissioner (with a notice?) that they have the permission of the road manager.

Section 24: What remedy is there if the notified person is not present; had only attended for a specific part of the works or, indeed, had presided over a breach of guidelines? In addition, rather than supply names per job which is difficult in reality at the noticing stage, it may be better to hold each body’s relevant personnel list and their qualifications centrally. Random checks on jobs as to whom is in attendance could then be checked with the central database. Card identification and training certificate would be required to be provided on request on site as is part of the requirements of this section and ideally the central database would hold photographs to help reduce forgery. A lifetime reference number could perhaps assist in movements of personnel in and out of the industry and transfers between relevant bodies. A task for the Commissioner?

Section 29: It may be appropriate in this section to deal with the case of a multi-utility installer (normally not a utility itself) placing different types of apparatus for the benefit of, say, a developer. These different types of apparatus may or may not be in one trench. The different items of apparatus may or may not be subsequently adopted each by the appropriate utility. The responsibility for the trench, particularly in the long term when the contractor or multi-utility company has been paid and gone away requires to be determined.
Section 32: The reference to the culpability of directors, managers etc is welcomed as it is patently obvious that these utility officers, particularly the former, take no cognisance of their companies duties under the Act being driven entirely by the profit motive.

Other Matters Not Directly Addressed in the Bill as Drafted

Section 136 of the 1991 Act requires to be amended to give Transport Authorities, where they are paying for transport services, the power to recover increased costs for transport provision in consequence of the unavailability of a regular transport route and the need to re-route buses and or increase provision or any similar circumstance.

The Act or subordinate regulations must resolve the dilemma facing Roads Authorities as to whom to deal with in respect of works under the Act and who is responsible for a problem therein. The situation whereby the Authority is played off between Utility, their Contractor and/or their Agent is totally unsatisfactory, time consuming and frustrating. As the ‘prime mover’ in every case, the utility must be made be the one to interface with the roads authority in, and act on, all cases since no other arrangement has proved satisfactory.

Similarly, the Act or regulations must provide for adequate site supervision by the utilities of their own works and those of contractors or agents on their behalf. All utility manning levels have been reduced to such an extent that this task cannot be undertaken. Nominally supervision duties are placed on contractors and agents for self-control but largely for reasons of cost cutting and the desire not to find defects, this does not work. Largely all supervision has, by default, been done by roads personnel and, of course, this suits the utility. To ensure this new duty is complied with suitable returns or performance data will require to be made to the Commissioner or other relevant body.

Not only is supervision by the parent utility personnel paramount but so is a programme of physical checking such as coring or material sampling. Results of such must be shared with the Roads Authority. It is nor unknown for an Authority to test a reinstatement, report it defective and to be advised that the utility was aware of this through its own testing but had not advised the Authority or otherwise made arrangements for remedial works.

The Act or Regulations must address the incidence of unavoidable new or additional road openings which become necessary during the progress of any job but must not permit ‘mission creep’ through careless or deliberate lack of attention at planning stage.

Robert Ewen  
Head of Roads & Design  
Falkirk Council

SUBMISSION FROM FIFE COUNCIL

Fife Council welcomes the opportunity to comment on the Transport (Scotland) Bill. As you will be aware the consultation document on the Regional Transport Partnerships is also currently out for comments and there are clearly common issues between the Bill and the consultation.

PART 1 – REGIONAL TRANSPORT
Regional Transport Partnerships (RTP), Chapter 1 – Section 1 to 10 of Bill

Boundaries  
The proposals in the consultation document are for Fife (in its entirety) to become a member of the South East Scotland RTP. This is preferable to any suggestion that Fife could be “split” between the City Regions of Edinburgh and Dundee, since research has shown that more cross boundary travel to work movements would be created by “splitting Fife”, than by having the boundary along the River Tay.

Constitution
The Local Authority members of the statutory RTP’s should not be limited to 1 Councillor per Authority, since this is insufficient to effectively represent the political make-up of Fife. Currently in SESTRAN there are 2 elected members per Council and this works extremely well.

Furthermore it is unclear whether the third of external members means a third of the total membership (including the 8 Councils) offering 4 external representatives, or a third of the weighted voting rights which might result in possibly 8 external representatives. Clarification is required on this key democratic issue. Indeed it is questionable whether external members should have voting rights.

It is preferable that external members should be appointed for their local government/transport knowledge and expertise or perhaps from wider Community Planning interest groups, which are directly impacted by transport. (eg business, health and education)

**Functions**

Although it is somewhat difficult to be absolutely clear what each of the 3 models entails for the functions of the RTP’s, Fife Council supports the most strategic functions being dealt with by the RTP’s. In view of the relative size of Fife, the Council is well placed to deliver all other Local Authority Transportation functions.

**Funding**

Fife Council has serious concerns about the funding section of the consultation document. The Scottish Executive currently funds half of the current voluntary SESTRAN's administration and the Partnership has made several successful bids to the Executive for PTF schemes and Preparatory Pool feasibility studies. Once the RTP’s become statutory, there is a strong argument that the Executive should not only fund their full administration costs to ensure a stable and secure source of funding, but also continue to be a funding partner in the development of projects and initiatives to ensure their delivery. Delivery is, after all, the Executive’s key objective for the restructuring of Scotland’s Transport.

Requisition of funding from Councils by the RTP will almost inevitably lead to difficulties, particularly when Local Authorities’ transport budgets are already declining in key areas such as essential maintenance. Clearly a process needs to be established for the Executive to award grant for significant transport projects and also for the revenue costs associated with them.

Statutory RTP’s should therefore be funded directly from the Scottish Executive and they should have a clear indication of the amount and profile of funding available for at least a 3 year horizon, at any point in time. This would significantly help the RTP’s to gain financial commitment from other funding partners, but must be achieved without detriment to Local Authority budgets. If the Scottish Executive is serious about improving the delivery of transport projects in Scotland, then it must provide additional overall funds for those charged with delivery.

**PART 2 – ROAD WORKS**

**Road Works**

**General**

The proposals to tackle poor road works, with a new Scottish Road Works Commissioner and stiffer penalties for delays and low quality resurfacing are welcomed. More important than collecting fines is the ability to ensure that roads are closed for the least possible time and reinstated to the best standard.

**Scottish Road Works Register (SRWR)**

Fife welcomes the proposal to the 1991 Act to tighten and adjust the current requirements covering registers of road works by establishing SRWR (Scottish Road Works Register) as a national and statutory register for Scotland. This will place duties on Statutory Undertakers and Roads Authorities to manage and maintain the SRWR as the ‘central tool’ for daily and longer term planning of road works.

*The Scottish Road Works Commissioner*
In principle, Fife supports appointment of a Scottish Road Works Commissioner (SRWC) to monitor works on roads, promote compliance and good practice under the Act. Appointment of SRWC may prove a better framework to address and resolve the ongoing issues with regard to road works in general at a national level.

It is important that SRWC remains impartial throughout his / her duties and not to favour one side against another i.e. from the side of RAs and SUs.

There are major concerns with regard to the use of the system on the notification of works in that SUs do not always comply with notice periods prior to commencing works on site, nor notify through the Moleseye system that works are being carried out on site.

Major SUs repeatedly fail to close off notices once the works are complete causing difficulties for RAs to carry out sample inspections and generate inspection units for the forthcoming financial year. The SRWC under his / her control will have the statutory power to manage the register to ensure that these are achieved nationally in a proper and systematic way.

The RAs and SUs must provide SRWC with information on performance on a regular basis. It must be borne in mind that this will create extra workload for both RAs and SUs, which may imply that additional resources may be required in the longer term.

**Timing of Works, Placing of Apparatus in Roads and Restrictions on Follow-up Works**

This is welcomed. There should be appropriate legislation that will give RAs more power to direct timing of road works on certain days and times on certain days. Where practicable, stricter penalties should be imposed to SUs who overrun the works without proper justification.

With regard to imposing restrictions on works for 3-year period, the extension is good for RAs and to tighten existing requirements on SUs when reinstating the roads after road works have been carried out.

**Enforcement**

General agreement to the principle of fixed penalty offences. The SRWC must have powers to issue enforcement notices. Fixed penalties should be passed on to SUs for just more than noticing offences. SUs also to incur penalties for health and safety offences – leaving excavations open unnecessarily without proper signing and guarding which is a common occurrence in Fife and is proving a serious hazard to the community.

Difficulties may arise in the assessment of the actual offence in that some offences may be too vague for fixed penalties to be issued and that it would require further investigation and proof.

**Training**

Fife fully support any form of training, which will enable people (supervisors and operatives) to gain the right experience and qualifications to do the job safely and to the required standards.

**PART 3 – Miscellaneous**

**Transport Scotland Act 2001, Chapter 3 – Section 43 of Bill**

There is an opportunity, should Ministers be minded, to amend the 2001 Act to allow RTP’s to bring in their own Road User Charging schemes. The 2001 Act would need to be amended in at least two ways,

- Amend section 49(1) of the 2001 to include RTP’s in the definition of charging Authorities
- Section 49(3) of Act amend to include Regional Transport Strategy (RTS) as well as Local Transport Strategy (LTS).

Section 43(6) of Bill (Section 82(1) of Act), it would be more beneficial if all LTS were prepared under statutory guidance.

Section 43(7) of Bill, (Schedule 1, Paragraph 5 of Act), part b) of Schedule 1, paragraph 5 (1)(b) needs to remain to facilitate a combined Local Authority Road User Charging scheme as this is a specific set of circumstances to do with a joint scheme.
We agree that the proposed (1A) needs to go in to clarify matters.

Whether or not it is accepted that RTP’s can make their own charging schemes we think 5(1)(a) of the Act should be amended to allow money to be spent facilitating policies with the RTS as well as their own LTS.

SUBMISSION FROM GREAT NORTH EASTERN RAILWAYS

I am writing to you on behalf of GNER in response to the call for evidence on the Transport (Scotland) Bill. Rather than address specific questions raised within the consultation, this letter constitutes a general response to the proposals within the Bill regarding the establishment of Regional Transport Partnerships and the issue of concessionary travel schemes.

I can confirm GNER very much welcomes the Scottish Executive’s commitment to public transport, and to rail services and rail passengers in particular, demonstrated by the Executive’s commitment to making a record investment in Scotland’s rail network.

GNER acknowledges the need to address the issue of a strategic approach to the delivery of transport initiatives and strategies at both a national and a regional level, and is in agreement with the broad principal of the proposals for the establishment of Scottish Regional Transport Partnerships, as outlined in the consultation document.

I am pleased to place on record GNER’s commitment to working closely with the Scottish Executive in order to ensure the delivery of an optimum service for all rail passengers, and that this commitment will be extended to the proposed Regional Transport Partnerships in so far as their function and powers. I am also pleased to place on record our commitment to working with any relevant authority on the introduction and implementation of concessionary travel schemes, in so far they apply to GNER operations.

Yours faithfully

Andy Naylor
Public Affairs Manager, Scotland

SUBMISSION FROM LIVING STREETS SCOTLAND

Road Works

Living Streets Scotland strongly supports the intentions of the provisions in Part 2 of the Transport (Scotland) Bill to strengthen controls over the implementation of road works. Works affecting pavements and crossings present severe obstructions for pedestrians, and especially for the most vulnerable disabled groups of pedestrians including wheelchair users. They are often badly managed and co-ordinated, leaving the obstructions in place for excessive periods. Poor quality works also often result in further road works that should not be necessary.

Living Streets Scotland is also convinced that the provisions made in Part 2 of the Bill do not go far enough. The mechanisms introduced for the establishment and intervention of the Scottish Road Works Commissioner appear to add to the bureaucracy involved without guaranteeing a commensurate increase in efficiency. The most effective measures, across the multiplicity of agencies now entitled to dig up the roads, are likely to be those with the potential to affect their bottom line if improvements are not forthcoming. Powers allowing local authorities to introduce ‘lane rental’ and overstaying charges are required; and these powers need to be extended to cover other items placed in the street such as skips, scaffolding and those associated with building works. The Traffic Management Act 2004 for England and Wales provides for this extension of powers, and it is hard to understand why similar provision is not being made in Scotland.
Civil Enforcement of Parking and other Offences

The Traffic Management Act 2004 for England and Wales extends the powers of local authorities to deal with parking and some moving traffic offenses. It includes the creation of specific offenses to deal with double parking, and with parking at dropped footways or raised crossings, the latter being of particular importance for pedestrians.

Living Streets Scotland proposes that similar provisions should be added to the Transport (Scotland) Bill. It is again very difficult to understand why Scotland is trailing behind England in introducing these simple, common sense additions to local authority enforcement powers. They will be of benefit to all road users.

Living Streets Scotland also proposes the introduction of an additional power to allow local authorities to control pavement parking. A draft additional section to this effect is appended below.

At present pavement parking as such is not illegal. Although offenders could be charged with obstruction this requires action by the police and the procurator fiscal that simply does not normally happen. Vehicle owners and drivers are allowed to block pavements with impunity, except where the straddling of yellow lines is involved. It also seems clear that the incidence of pavement parking is increasing as car ownership and car parking levels rise. Indeed drivers of traders’ vehicles often now seem to prefer to park on the pavement, even where there is no pressure whatsoever to do so.

There are exceptional situations in which local authorities may wish to authorise some pavement parking, for example where the pavement is exceptionally wide and there is pressure on carriageway space. The draft section below allows for this possibility.

Prohibition of Pavement Parking – Draft Additional Section

In a special parking area a vehicle must not be parked on the footway.

This is subject to the following exceptions.

The first exception is where the local authority has specifically authorised footway parking, on the carriageway side of a white line dividing the available footway space. Such footway parking will not be authorised where to do so would narrow the useable footway width for pedestrians to less than 2 metres.

The second exception is where the vehicle is being used for fire brigade, ambulance or police purposes.

The third exception is where –

- the vehicle is being used for the purposes of delivering goods to, or collecting goods from, any premises, or is being loaded from or unloaded to any premises,
- the delivery, collection, loading or unloading cannot reasonably be carried out in relation to those premises without the vehicle being parked as mentioned in subsection (1), and
- the vehicle is so parked for no longer than is necessary and for no more than 20 minutes.

The fourth exception is where-

- The vehicle is being used in connection with any of the following-
  - undertaking any building operation, demolition, or excavation,
  - the collection of waste by a local authority,
  - removing an obstruction to traffic,
  - undertaking works in relation to a road, a traffic sign, or road lighting, or
  - undertaking works in relation to a sewer or water main or in relation to
  - the supply of gas, electricity, water, or communications services
It cannot be so used without being parked as mentioned in subsection (1).

It is so parked for no longer than is necessary.

References in this section to parking include waiting.

**SUBMISSION FROM NATIONAL GRID TRANSCO**

**Introduction**

National Grid Transco plc (NGT) is a leading international energy infrastructure business. It is the largest utility in the UK. Through National Grid, the group owns and operates the electricity transmission network in England and Wales, and through Transco, it owns and operates Britain's gas transportation and distribution network. Our gas networks currently deliver gas to some 21 million homes, offices and factories in Britain. NGT also has a number of businesses operating in related areas such as communications infrastructure, metering and interconnectors.

NGT are members of The National Joint Utilities Group (NJUG) and The Road Authorities Committee (Scotland). While we have contributed to the submissions of these organisations we have had to accept a consensus view. This submission reflects the impact the Transport (Scotland) Bill will have on National Grid Transco operations. As a major energy utility we play a major role in providing essential infrastructure to ensure Scotland can develop and be maintained as a vibrant successful economic force.

There are numerous aspects of the Bill that we welcome, such as the new Road Works Commissioner and the enhanced use of the Scottish Road Works Register (SRWR). The later which, if implemented properly, we believe will further assist in improving coordination of road works. However, we have a number of serious reservations with other aspects of this new legislation and its implications on our ability to operate. It will impact on how we serve our customers needs and meet Standards of Service agreed with our regulator Ofgem.

We support measures that improve traffic flow and assist us in efficiently co-ordinating our essential works. Scotland’s roads provide a thoroughfare for vehicles and pedestrians but they also act as conduits for many essential services including electricity and gas. We believe the importance of these services is not adequately recognised in the Bill, and are concerned that if this is not addressed, costs for undertaking our essential works will rise, and have to be passed onto the consumer.

We are very disappointed with the skeletal nature of the Bill. It proposes some significant changes to the way our industry will operate but lacks detailed explanation as to how the legislation will work in practice. This prevents us from accurately assessing the true implications and costs of the Executive's proposals.

**Key Issues for National Grid Transco (NGT)**

**Inclusion of local authority works**

Given that utilities and local authorities are equally responsible for unavoidable road works, NGT believes that they should both be subject to the same rules. For Scotland to fully benefit from the enhanced co-ordination that these proposals aim to deliver, it is important that all major works and activities carried out in the road are included. However exemption could be made for short term minor work and emergencies.

We are pleased that the Scottish Executive recognises that the key to minimising inconvenience caused by road works is better coordination by all undertakers – including local authorities. NGT has a record of working together, where possible, in partnership with other undertakers. We have already invested significant resources and were at the forefront in developing the industry initiative Susiephone, which is the premier system used to register utility road works. NGT fully supports the obligatory use of the Scottish Road Work Register (SRWR) by all those who undertake road works. In addition to improving coordination, this will bring about the additional benefit of providing a true
picture of what percentage of road works are caused by utilities and what percentage are caused by local authorities.

NGT looks forward to working with the new Road Works Commissioner on the basis that he/she is independent, has sufficient resources to perform his/her duties effectively, does not duplicate the existing duties of local authorities, and applies the new rules equitably to all those who excavate, or occupy, the roads.

Given, that utilities and local authorities are equally responsible for causing only 10% of congestion, NGT believes it is vital for all works to be subject to the same rules for this legislation to have any impact on congestion. We would also strongly encourage the Executive to carry out detailed research into the causes of congestion before bringing forward further legislation.

Directions as to timings of works and placement of apparatus in road

NGT's work is concerned with replacing, maintaining or connecting to existing networks already in the ground. Allowing local authorities to dictate where apparatus may be placed in the road will, in all likelihood increase costs and duration of works, by potentially increasing the distance required between new apparatus and existing networks, or the distance to connect new customers. NGT carefully plan the gas network in Scotland in the most efficient manner possible to minimise costs and the price ultimately the customer has to pay. We already work closely with local authorities in the planning of major works, and accommodate requests to alter timings and reschedule wherever possible. This proposal will do little to reduce congestion, whilst increasing the cost to customers and in turn all energy consumers.

NGT is concerned that granting local authorities the power to change the timing of work, and direct the placement of apparatus in the road, could have serious implications for the cost of services, the timely delivery of services, and the quality of the local environment. Working at night or only at weekends would increase the costs by, on average, an estimated 40%. These additional costs would be required to be passed on to the customer. Works undertaken at unsociable hours would have serious safety implications for the operatives and equally serious environmental noise implications for local residents.

It is vital that reasonable exemptions are written into the legislation allowing an essential energy company like NGT to undertake unforeseen emergency works, works to restore severed services and to provide new customer connections. Gas escapes, and electricity faults are dangerous and therefore need to be addressed as quickly as possible. Loss of gas or electricity supplies, or services can be devastating to the community.

Not only can delaying emergency and restoration works threaten national safety, delays can also harm the economy, businesses and communities that all rely on energy services.

Powers to restrict works

NGT has serious concerns regarding a power in the Bill that would enable local authorities to restrict all digging in a street for up to three years following substantial road works. There appears to be no accompanying explanation as to why the duration has increased by 300%. As a major energy company it is essential that we are allowed to undertake unforeseen emergency works, works to restore severed services and to provide new customer connections. Works to rectify gas escapes will have to be carried out for safety reasons to protect life limb and property.

We need to provide new customer connections when required under our “Licence to Operate” and meet strict “Standards of Service” agreed with Ofgem on the length of time in which customers should be supplied. In addition increased energy demands from existing customers can result in the existing system requiring to be reinforced or upgraded to ensure security of supply. NGT also has a very important national gas mains replacement programme agreed with the Health and Safety Executive and Ofgem, which requires the replacement of every metallic gas pipe within thirty metres of a property. This programme, which is already underway, has strict time limits and
legislation such as this could jeopardise the successful completion of a critical safety target for the gas industry.

Rather than extending the time when utilities cannot excavate the road, we would like to see greater notice given by local authorities when they are planning to resurface the road in order to allow utilities the facility to bring forward works and thereby avoid the road being dug up for some time afterwards.

Furthermore, restricting works for a long period can result in a relatively minor maintenance work escalating to major maintenance or replacement works of a larger scale requiring lengthier occupation of the road.

It is imperative that exemptions are written into the text of the legislation for emergency, urgent and customer connections. It is simply not acceptable to expect a major energy company and their customers to predict their repairs and required services up to three years in advance.

Road Work Offences

NGT works and trains its operators to a high standard but accepts that punitive action should be taken when the company fails to perform to an acceptable standard. However, we would ask that the Scottish Executive give serious consideration to measures that encourage good performance, rather than simply punishing poor performance.

NGT is also concerned that the fixed penalty notice system will be used by authorities to generate revenue rather than to reduce congestion. NGT therefore suggests that the power to issue fixed penalty notices should be vested in an independent authority like the Road Works Commissioner and the rules applied to all those who undertake road works including most importantly utilities and local authorities.

NGT recommends a sliding scale of penalties be introduced based on the disruption or inconvenience caused by certain offences. NGT would encourage the Executive to provide guidance for both local authorities and all utilities indicating the type of offences likely to incur the highest level of fixed penalty notice and would urge that the fixed penalty only cover the administrative costs of issuing the notice to ensure that it is not used by authorities as a means of raising revenue.

To avoid misuse of the system and ensure that bureaucracy is kept under control, NGT recommends that fixed penalties must be proportionate to the offence committed, and take into account the level of congestion caused, and thereby the seriousness of the offence.

Resurfacing

NGT agrees that utilities should be required to reinstate roads to an acceptable standard following works. However full resurfacing of roads over and above the area where works have taken place, will, in all likelihood, increase congestion and disruption with the duration of the works lengthening. Ongoing investigations in England have failed to prove that utility works damage roads, provided that they are carried out to the correct standard.

The quality of the road surface is dependent on the volume and type of vehicle movements, the original structure of both the road surface and sub-structure, the level and quality of maintenance undertaken by the local authority over the years, as well as the local authority’s own road works. Additionally utility works will vary in size and depth, and so any formula seeking to identify the contribution towards the costs of resurfacing from all parties, will be extremely complex.

NGT has made significant investment to plant, training, and development of new pipelaying techniques specifically designed to minimise the amount of excavations. These include thrustbore, a technique that pulls a pipe, underground, between two excavations, insertion techniques, which utilise redundant pipework, and narrow trench excavations. NGT were at the forefront of promoting
first time permanent reinstatement designed to improve road quality after excavations and minimise disruption.

There is also a potentially negative impact upon the reputation of companies who may be required to resurface roads on behalf of the local authority but still appear to the public to be responsible for the disruption of traffic flow for an extended period. NGT is concerned that those road authorities that have failed to budget for their own necessary road resurfacing schemes could misuse this power. There is also concern over the legal ownership of the reinstatement and resurfacing works before and after the use of the new powers.

Due to the unavoidable duplication of reinstatements, the requirement to resurface will also have a detrimental effect on the efforts of all utilities, and roads authorities, to increase efficiencies and minimise the environmental effect of our works.

The proposals in this Bill are more extensive than those in the Traffic Management Act since they would lead to a perpetual contingent liability on utilities when they dig anywhere in a street, thus increasing regulatory and balance sheet uncertainty. This would force NGT to make financial provision for the possibility of being required to resurface any part of a street (not even necessarily the part where they had dug) for all time. Even assuming the difficulty of calculating what provision would be prudent (which as is now being discovered in England, is fraught with difficulty) this provision has the potential to severely restrict the degree of investment, which can be made in Scotland’s national infrastructure in the future.

Indeed, the proposals in this area are vague; and we are concerned that it will be difficult for Parliament to accurately assess their likely impact on length of disruption and impact on road users.

The requirements as they stand will increase costs enormously for all utilities that may well have to be passed onto the consumer. It is therefore essential to fully consider the implications and costs of any new measures that may be proposed and take them into account when considering the possible benefits of the Bill.

Conclusion

NGT is extremely concerned that if the Transport (Scotland) Bill fails to recognise that roads act as essential conduits for many services that are often taken for granted especially gas and electricity. It might also have a negative impact on a number of key Executive policy priorities:

- Ensuring the security of energy supply of the Scotland’s Critical National Infrastructure
- Protecting the environment
- Encouraging urban regeneration programmes through the provision of new energy services
- Tackling fuel poverty by providing new gas supplies to pensioners entitled to the central heating programme
- NGT encourages the Scottish Executive to review the Bill to ensure that it balances the needs of consumers, residents, utility providers and transport authorities. At present, NGT believes the importance of our essential energy services is not adequately recognised in the Bill, and is concerned that if this is not addressed, costs for undertaking our essential works will rise, and have to be passed onto the consumer. For the Bill to be comprehensively effective all works carried out in the road must be equally accountable.

National Grid Transco would like to thank the committee for the opportunity to submit this written evidence.

SUBMISSION FROM NESTRANS

NESTRANS welcomes the opportunity to contribute to the Local Government and Transport Committee’s evidence gathering on the general principles of the Transport (Scotland) Bill.
As a voluntary Regional Transport Partnership NESTRANS is comprised of four partner organisations - the two north east local authorities, Aberdeen City and Aberdeenshire, Scottish Enterprise Grampian, and representing the local business community Aberdeen and Grampian Chamber of Commerce. Building upon informal working between the four partners since 1997, NESTRANS was formally constituted in summer 2001. It operates through a Board (presently chaired by the leader of Aberdeen City Council), a Management Team of officials from the four partners, and a small full time office. The NESTRANS office comprises a Co-ordinator (secondment at Director level), a PA/Administrator, and soon to commence work a Transport Policy Officer (also on secondment).

Funding and staffing are presently on a year-to-year basis. NESTRANS’ current operational budget is £750,000, this being funded by the two local authorities, Scottish Enterprise Grampian and the Scottish Executive. Funding contributions in 2004/2005 are: Aberdeen City Council £162,500, Aberdeenshire Council £162,500, Scottish Enterprise Grampian £100,000, and Scottish Executive £325,000 (matching local authority contributions). The Scottish Enterprise Grampian contribution is particularly tied to projects/activities, which support economic development. Most of the £750,000 budget is spent on project development and appraisal.

Through voluntary cooperation much has already been achieved by NESTRANS and the other voluntary Regional Transport Partnerships in providing an essential regional dimension to the planning and delivery of transportation. In particular NESTRANS has:

- focussed national attention on the transport needs of the north east,
- brought together the public and private sectors in jointly addressing the north east’s transport issues,
- developed a coherent regional transport strategy, appraised through STAG and endorsed by the Scottish Executive,
- acted as the catalyst for the development, appraisal and implementation of key strategic projects to implement that strategy including the Aberdeen Western Peripheral Route, Aberdeen Crossrail and rail freight enhancements,
- helped to secure funding to implement key projects in an integrated manner,
- been a pathfinder for new approaches and initiatives, notably a travel awareness programme being developed jointly with businesses in the region,
- linked transport, planning and economic development at the regional scale, and
- established a broadly based stakeholder forum, the North East Transport Consultative Forum to discuss strategic transport issues in the north east.

Notwithstanding these achievements NESTRANS acknowledges that it is reaching the limits of its potential contribution as a voluntary Regional Transport Partnership. In its response to the Scottish Executive’s 2003 consultation Proposals for a New Approach to Transport in Scotland NESTRANS supported the case for more formalised Regional Transport Partnerships with a statutory base, clear powers, permanent staff and secured long term funding.

NESTRANS therefore welcomes the Scottish Executive’s intention to establish a network of statutory Regional Transport Partnerships across Scotland and the enabling powers for this set out in the Transport (Scotland) Bill.

The following comments address the broad issues set out in the Committee’s Call for Evidence namely: consultative processes undertaken prior to the Bill’s introduction; reasoning behind the Bill; key issues raised; and consequences of the Bill’s enactment. NESTRANS is only commenting on the proposals for Regional Transport Partnerships, not the Bill’s other provisions.

Consultative Processes Prior to the Bill

The proposals for the establishment of statutory Regional Transport Partnerships set out in the Transport (Scotland) Bill have been based on extensive earlier consultation by the Scottish Executive, particularly through their September 2003 consultation paper Scotland’s Transport: Proposals for a New Approach to Transport in Scotland, the June 2004 White Paper Scotland’s
transport future and Scottish Executive meetings with the voluntary Regional Transport Partnerships and other appropriate organisations prior to the Bill’s introduction.

NESTRANS welcomes the extent to which the Bill’s proposals reflect the comments made during earlier consultations, particularly in respect of allowing flexibility in arrangements across Scotland to reflect different circumstances. The resource issues raised in the prior consultation related essentially to the method of funding Regional Transport Partnerships (requisition from local authorities, direct funding from Scottish Executive, etc), rather than their likely establishment and running costs on which NESTRANS has expressed views in evidence submitted to the Finance Committee.

Reasoning Behind the Bill

NESTRANS supports the intention behind the Bill to strengthen the regional approach to transport infrastructure and services through the establishment of statutory Regional Transport Partnerships. With the Scottish Executive’s commitment to increased and sustained funding for transport it is essential that clear and coordinated transport strategies are in place and funding to fulfil these strategies is deployed effectively and efficiently. NESTRANS endorses this reasoning and supports the Executive’s commitment to establish a national transport agency and strategy as well as strengthened regional planning and delivery structures.

Key Issues Raised by the Legislation

Most of the particular issues of interest/concern to NESTRANS and its constituent members are currently the subject of Scottish Executive consultation in their report Proposals for Statutory Regional Transport Partnerships. It is understood that based upon their analysis of the responses the Executive will be introducing illustrative draft orders at the end of the Parliament’s Stage 1 consideration of the Bill.

NESTRANS has already prepared a draft response to the consultation, which has been endorsed by constituent Councils, and the North east Transport Consultative Forum. The NESTRANS position on the main questions raised in the consultation is likely to be:

**Boundaries**
- north east boundaries agreed

**Constitution**
- concern at Council representation restricted to a single councillor
- voting on funding must be restricted to councillors, and be unanimous

**Functions**
- preference in north east for Model 1 (regional strategy + limited transport powers), but with a mind to expand powers over time

**Funding**
- need to limit requisitioning to core funding
- need for continuing Scottish Executive funding for new statutory burden of preparing and maintaining a regional transport strategy

One issue not fully addressed in the Bill or the consultation is the relationship between the proposed national transport strategy, the new statutory regional transport strategies, and the existing Council produced local transport strategies. It will be essential for the national transport strategy to set parameters and guidance for regional transport strategies, and for the scope of local transport strategies to reflect its regional transport strategy, possibly acting as the transport implementation plan for the strategy in that council area. It is equally important that in the preparation of the national strategy the new national transport agency is required to have regard to the issues and priorities set out in local and regional transport strategies.
In respect of the proposed timeline for the establishment of statutory Regional Transport Partnerships and submission of statutory regional transport strategies, NESTRANS would question whether the existing proposals adequately take account of the necessary transition arrangements in establishing the new Transport Partnerships, and the processes for preparation, consultation, and approval of a statutory regional transport strategy.

**Consequences of the Bill’s Enactment**

The Bill should result in a clearer focus to regional transport priorities through the preparation of statutory regional transport strategies, and a greater focus on the delivery of those priorities through the Regional Transport Partnerships themselves and their coordination of delivery by constituent Councils and other agencies. Essential to achieving these benefits will be appropriate resourcing (finance and skills), and a clear relationship between strategy and implementation at the national, regional and local level.

**SUBMISSION FROM NTL**

Please see comments from NTL regarding the above Bill. Where appropriate, the comments relate to Part, Chapter and Clause for clarity.

**Introduction:**

NTL welcomes the many aspects of the Bill that will enhance the coordination of road works in Scotland. However, there are some aspects of the Bill that may adversely affect utility working in Scotland and subsequently affect the level of service giving to our customers.

**Key Issues:**

_**Part 1 - Chapter 1 - Clause 10 Other transport functions of RTPs**_

(1) Will the Regional Transport Partnerships be involved with creating and implementing policy? Regional variations in road works policies will be extremely difficult to manage.

_**Part 2 – The Scottish Road Works Commissioner**_

**Clause 14**

The creation of the Scottish Road Works Commissioner is welcomed, but there are concerns that the influence of the Road Authorities and Utility Committee (Scotland) (RAUC(S)) may be diminished. RAUC(S) is currently the major voice of the road works authorities and utilities in Scotland and has a proven track record of cooperation between the authorities and industry. The role of the Commissioner appears to mirror much of the current role of RAUC(S) which may have to be reassessed.

**Clause 17 – The Scottish Road Works Register**

Utilities already use Susiephone currently managed by Moleseye to register works on the Scottish Road Works Register (SRWR). The expansive use of the SRWR by authorities and utilities is welcomed as it will enhance the coordination process.

(4) (b) Proposed works registered on the SRWR fulfil the requirement to issue separate notices as the details are available to all SRWR users.

**Clause 18 – Directions as to timing of road works**

(3) The benefits of closing down works already in progress are negligible as congestion could be increased. It is assumed that the road works authority will only use this power in unforeseen extreme circumstances as the coordination process will have already have approved the commencement of the works.

**Clause 19 – Directions as to placing of apparatus in roads**

There are few alternatives available to utilities as to where they can place apparatus required to supply service to customers. The right to refuse an undertaker to place its apparatus in a particular road will directly conflict with the requirements of the industry regulators for utilities to provide service.
Clause 20 Restrictions on works following substantial road works
(1) (a) there needs to be a justification for increasing the restriction period from 12 months to 3 years. A 300% increase is excessive and is not related to the engineering life of a road or the standard maintenance period of 2 years for the majority of utility works. Utilities must also be allowed to provide customer service as mentioned in clause 19 above as well as attend emergencies and repair service failures.

Clause 22 Duty of undertakers to co-operate with authorities and other undertakers
This is already a requirement of NRSWA where the information is available on the SRWR and is current practice. Its mandatory use by all users is applauded.

Clause 23 Enforcement of section 119 of 1991 Act
The use of penalties as opposed to fines for digressions may encourage road works authorities to seek revenue enhancement over and above the severity of the digression. The penalties should apply to all road users.

Clause 24 Qualifications of supervisors and operatives
Contract terms and conditions where contractors are required to programme their own start dates with their available resources in order to complete jobs by given end dates means that undertakers will not be able to provide details in advance of works but will be able to provide the information once works have commenced, as currently required by NRSWA.

Clause 25 Duty of authorities, undertakers etc. to ensure competence of employees etc.
Best endeavours are not acceptable it must be mandatory for all persons to be competent to perform a duty. The current accreditation system required by undertakers under NRSWA should be expanded to include road works authorities and road authorities.

Clause 27 Notices requiring remedial works relating to reinstatements
The prescribed period for undertaking remedial works should be introduced into the HAUC(UK) Inspections code of practice which requires reviewing and could be made statutory.

Clause 28 Power of road works authority to require undertaker to resurface road
Utilities must reinstate roads to the required standards, but any area increase in the requirement to resurface roads will invariably increase the duration of the works along with any associated congestion or disruption. Utility contracts and expertise do not include full carriageway resurfacing which is currently undertaken by road works authority contractors.

Any deviation from an individual undertaker’s own works requiring the resurfacing of a different undertaker’s works will require legal intervention as the age, depth, materials and condition due to wear of existing trenches all have to be taken into consideration. The legal ownership of the resurfacing works will conflict with the legal ownership of the trenches as well as the road itself. The power will increase customer costs and will have to be referred to the industry regulators. It is feared that the road works authorities will decrease their road maintenance programmes and use this power to pay for their resurfacing works effectively transferring the financial responsibility to consumers especially where authorities’ budgets are stretched.

The costs to utilities and customers will be potentially enormous and the associated requirement for utilities to budget for this power, possible years in advance must be considered.

Studies undertaken in England by the Department for Transport have so far failed to prove that utility openings in roads cause long term damage over and above that suffered by the impact of rolling loads caused by traffic. The approved standards for reinstatement are laid out in the NRSWA code of practice, “Specification for the Reinstatement of Openings in Roads” and allow for trenches to be part of the road structure. It is therefore assumed that this power is cosmetic only and of no long term benefit to the longevity of the road.

Clause 32 Fixed penalty offences
Fixed penalty offences should apply to all users of the SRWR as the use and integrity of the register affects all users. It is important that the degree of severity of the offences are directly...
related to the impact upon congestion and that minor mistakes such as grammatical errors are not equated with instances such as the failure to notice a works.

Conclusion:

The Bill can only be truly effective if applied in full to road works authorities and local authorities who both undertake extensive works in the road from road maintenance to refuse collection. The gas, water, electricity and telecommunication utilities have to use roads as conduits for the essential services demanded by government, industry and the public. Any enhanced coordination of utility, road works authorities and roads authorities activities will be to the benefit of all road users and is welcomed.

Mark Ostheimer
Senior National NRSWA Advisor

SUBMISSION FROM SCOTTISH AND SOUTHERN ENERGY

Scottish and Southern Energy (SSE) is grateful to the Local Government and Transport Committee for providing this opportunity to submit written evidence in respect of the Transport (Scotland) Bill.

SSE is Scotland’s fourth largest FT-SE 100 company. It is involved in the generation, transmission, distribution and supply of electricity and in the storage and supply of gas. Its transmission and distribution businesses are responsible for the electricity networks covering around 70% of Scotland. In addition, a consortium in which SSE holds 50% of the equity has entered into an agreement to acquire the Scotland and the South of England gas distribution networks from National Grid Transco during 2005.

In summary, SSE believes it is vital that the essential nature of Scotland’s gas and electricity networks, which are often aligned to the country’s roads network, is fully reflected in the Bill and that the Bill’s provisions do not give rise to undue costs which will eventually be borne by the networks companies’ customers. In line with this, Part 2 of the Bill, relating to roadworks, needs to reflect the following key points.

Utilities-related works cause just 5% of road congestion

Data featured in England’s Highways Agency Business Plan for 2002-03 provided information about the causes of congestion which can be applied throughout the United Kingdom. It showed that: 65% of road congestion is caused by the volume of traffic; 25% is causes by traffic incidents; and 10% by roadworks. This 10% is generally split equally between roads authority-related works and utilities-related works. In other words, just 5% of congestion is the result of utilities-related works – and these works are essential in order to maintain the country’s energy infrastructure and the reliability of energy supply.

The perception that utilities-related works are a major causes of congestion is, therefore, misplaced. Part 2 of the Bill, therefore, needs to guard against a disproportionate focus on them. This means, for example, that the Scottish Road Works Commissioner, proposed under Section 14 of the Bill, should clearly be independent and have the same powers over both the Roads Authority and its contractors as it does over utilities and their contractors. There also has to be a general recognition of the fact that there will always have to be a balance struck between minimising disruption to traffic and maintaining and improving essential services.

The timing of road works can be improved but…….

The intent behind Section 18 of the Bill – to improve the timing of road works – is reasonable in principle. In practice, the issue is that electricity and gas distribution companies have certain licence obligations, which they are required to discharge in an economic and efficient manner in order to protect the interests of customers. One result of being directed to time works in a particular way is that utilities companies may incur additional costs or fail to meet regulatory-imposed performance standards.
This means that if regulated utilities’ ability to carry out works is subject to restrictions imposed by the establishment of new powers to direct the timing of works, they should not be exposed to any regulatory risks (in other words, failing to meet standards of performance). The Committee may wish to obtain clarification from Ofgem to ensure that this is the case.

**The power of direction could be mis-placed**

The focus of Section 19 of the Bill is to allow the provision of directions as to the placing of apparatus in roads. Again, this seems fine in theory. In practice, however, it could be interpreted as disregarding the fact that disruption to traffic is a short-term problem, which is far outweighed by the benefits which the country as a whole derives from having a safe and reliable supply of electricity and gas. This, in turn, could translate into a position where electricity and gas network companies may be directed *not* to place essential apparatus in any particular road.

In addition to exposing communities to the risk of less safe and more unreliable supplies of energy, this Section has the same fundamental problem as Section 18: if regulated utilities’ ability to carry out works is restricted by the establishment of new powers to direct the timing of works, they should not be exposed to any regulatory risks in respect of their various duties.

**A reinstatement too far?**

As with so much in this Bill, Sections 28 to 30 have been designed with the best of intentions: to reinforce the obligations on those carrying out works on the roads to satisfactorily finish the job. To this end, Section 29 allows the issue of a so-called ‘resurfacing notice’ which can be issued before, during or even after utilities-related works are undertaken on roads. These notices can specify the timing, materials, workmanship and standard of resurfacing. Breaches of these requirements would be liable to fines.

In practice, this part of the Bill would allow the Roads Authority to issue a resurfacing notice which could require an electricity or gas network company not only to reinstate the road affected by the work they are carrying out but to also to dig up and reinstate other parts of the road which may have been the subject of works carried out by other organisations.

The concern for utilities is that their roads-related works are carried out in response to customers’ requirements. Under the long-standing regulatory arrangements, electricity and gas network companies recover their costs via charges on users of their networks. These customers could find themselves bearing significant extra costs associated with additional road reinstatement works which have nothing to do with the particular piece of gas or electricity infrastructure work. This is fundamentally unfair.

On the face of it, the Bill allows for the cost of reinstatement works to be charged back to other undertakers. But this begs fundamental questions: who would manage this arrangement?; how would the charge-backs be calculated; and how would they be enforced? At the very least, there would be a bureaucratic nightmare and at worst there could be a fundamental breakdown in the relationships between the various organisations carrying out works on the roads.

**Summary**

One Scottish local authority recently stated that: “The utility companies must be encouraged to plan and finish their works in the shortest possible timeframe and the only way to make this work is by a financial penalty for excess time spent working on the road. This action would reduce disruption considerably.”

This summarises the mis-perceptions that surround this issue. As already stated, works carried out by electricity and gas network companies are not major causes of road congestion. The companies themselves already have a range of incentives to ‘finish their works in the shortest possible timeframe’ and avoid ‘excess time’ being spent working on the road. They are strictly governed by a regulatory framework which is in place to protect the interests of gas and electricity customers.
While practical steps and initiatives to improve the co-ordination of road works, such as the creation of a properly empowered Road Works Commissioner, will be generally welcomed, the Bill needs to be adapted to ensure that the safe and reliable distribution of electricity and gas to people and communities throughout Scotland is not seriously jeopardised.

Stuart Hogarth
Head of Operations in Scotland

SUBMISSION FROM SCOTTISH WATER

Scottish Water welcomes the opportunity to give evidence on the Transport (Scotland) Bill.

Transport (Scotland) Bill – Part 1 Regional Transport Partnership

Scottish Water has concerns over the current proposals to split the responsibilities for overseeing road works between a number of different bodies. Should such proposals be adopted Scottish Water believes that there would be a need for clarity as to which authority had responsibility for what function.

Transport (Scotland) Bill – Part 2 Roadworks

The Scottish Road Works Commissioner

Section 14: Creation, etc of the Scottish Road Works Commissioner
Scottish Water had previously supported the call for an independent arbitrator, however there are concerns that the role of the Commissioner is not clearly defined in this respect. Indeed the creation of a Scottish Road Works Commissioner would appear to replicate many of the current remits of the Roads and Utilities Committee Scotland (RAUC’S).

Section 15: Functions of Commissioner
Scottish Water would have liked to see the role of the Commissioner include that of training. It is Scottish Water’s belief that this matter is fundamental to improving both the quality of work on the road network and the quality of information being supplied in the notification process.

Section 16: Duty of Road Works Authority and Undertakers to Provide Commissioner with Information
Scottish Water will endeavor to provide any information requested by the Commissioner, but wish to point out that this resource is currently not funded and would be seen as a new operating cost.

The Scottish Road Works Register

Section 17: The Scottish Road Works Register
Scottish Water believes that the Scottish Road Works Register (SRWR) runs well in Scotland under the auspice of Susiephone Ltd and RAUC’s. However, Scottish Water would appreciate further clarification as to how this system will operate in the future with the Commissioner acting as keeper of the SRWR.

Section 17: 112B of the New Roads and Street Works Act 1991 (NRSWA91)
Scottish Water welcomes this initiative to include all road works within the SRWR, although it is noted that some omissions have been made to relevant parts which are included in the Road Scotland Act.

Miscellaneous

Section 18: Directions as to Timing of Road Works
Allowing local authorities to determine timing of work could result in additional costs. Such costs are currently not funded and would be seen as new operating costs for Scottish Water.

Section 19: Directions as to Placing of Apparatus in Roads
Scottish Water believes that Section 19, as currently drafted, does not take into consideration the fact that disruption is inherently short-term, however, the benefits from laying apparatus are normally long-term and can have significant economic benefits. As in Section 18, additional costs could result. Such costs are currently not funded and would be seen as new operating costs for Scottish Water.

**Section 20: Restriction on Works Following Substantial Road Works**
Scottish Water broadly supports this section.

**Section 21: Duty of Road Works Authority to Co-ordinate Road Works etc.**
Scottish Water believes that any work which will improve co-ordination is to be welcomed.

**Section 22: Duty of Undertakers to Co-operate with Authorities and Other Undertakers**
As outlined above anything that improves co-ordination and co-operation is to be welcomed, however, it will be extremely difficult to implement effectively until new (GIS) developments are introduced to the SRWR.

Scottish Water must also point out that it believes that additional resources may be required for this function within the business.

**Section 24: Qualifications of Supervisors and Operatives**
Scottish Water supports the reinforcement of this section, and would suggest that mandatory refresher training is introduced as part of this Bill. This should address the issue of the quality of the road repairs currently carried out in Scotland.

**Section 25: Duty of Authorities, Undertakers etc. to Ensure Competence of Employees etc.**
Scottish Water believes that this section appears to be weak. Scottish Water would suggest that as this can result in incorrect information being recorded within the SRWR. This is a second area of quality that should be addressed at this time.

Scottish Water believes that by providing a recognised course such as an SVQ qualification would improve the current position within the SRWR.

**Section 28: Power of Road Works Authority to Require Undertakers to Resurface Roads**
Scottish Water has some concerns as to the actual working of this section and would suggest that clearly defined procedure is prepared.

**Section 29: Resurfacing: Regulations and Guidance**
See Section 28 comments.

**Section 30: Contributions to Costs of Resurfacing by Undertaker**
Scottish Water has some concerns in relation to the formulas to be used for working out costs involved and again would suggest that clearly defined procedures are prepared.

**Enforcement of the 1991 Act**

**Section 31: Increase in Penalties for Summary Offences Under 1991 Act**
Schedule 3: Increase in maximum fines for certain summary offences under the 1991 Act. Scottish Water has no comment on this section.

**Section 32: Fixed Penalty Offences**
Scottish Water agrees that the introduction of fixed penalties should improve the administration side of the NRSWA. Any such costs which arise for Scottish Water are not currently funded.

Scottish Water believes that these fixed penalties should be on a sliding scale to reflect the percentage of work carried out as opposed to the individual fines.

**Section 34: Method of Settlement of Certain Disputes Under 1991 Act**
RAUC(S) currently has a successful arbitration scheme that has worked well for many years.
Section 35: Fixed penalty offences under the Roads (Scotland) Act 1984 & Section 36: Civil penalties for certain offences under the Roads (Scotland) Act 1984.
Scottish Water has no comment on these sections.

Schedule 5: Schedule 6B to the New Roads and Street Works Act 1991
Scottish Water is concerned that this could cause a blockage of disputes and that a streamlined process requires to be considered.

Financial Implications of the Transport (Scotland) Bill
Scottish Water believes that there will be significant financial implications from the Transport (Scotland) Bill. However, as Scottish Water has indicated in its response to the Financial Committee on the Transport (Scotland) Bill in November 2004, there are insufficient details at the consultation stage to provide any meaningful detailed budgetary costs.

It is the belief of Scottish Water that financial implications will arise from:

- the need for further training of staff;
- the additional resources required to manage the proposed changes to the current legislation, i.e. extra administrative duties; and
- the number of fixed penalty fines incurred.

Scottish Water’s investment programme, Quality & Standards III (Q&SIII), which covers the period 2006 until 2014, has made no allowance at this stage of planning for the impact that the Transport (Scotland) Bill will have on Scottish Water business. Scottish Water is therefore concerned that funding is not currently available or planned for the additional financial costs associated with the Bill and compliance with the additional regulations.

In addition to this the Water Industry Commissioner’s (WIC) Strategic Review of Charges for the period 2006-2010 is currently underway, of which the Q&SIII process feeds into. Currently Scottish Water is not aware that the WIC is making any provision within that regulatory settlement for the costs and duties highlighted within the Bill.

Scottish Water has further concerns that financing some of the additional costs associated with the Bill will only be possible by passing those costs, which are not directly related to quality and efficiency, directly onto Scottish Water customers. As such these issues will be required to be discussed with urgency with Scottish Water’s regulator, the WIC.

The WIC is due to make his draft determination on the funding required for Scottish Water and the costs to customers in June 2005.

SUBMISSION FROM SESTRANS

INTRODUCTION
The South East of Scotland Transport Partnership (SESTRAN) welcomes the opportunity to contribute to the Local Government and Transport Committee’s evidence gathering on the general principles of the Transport (Scotland) Bill.

SESTRAN was set up by seven Central and South East Scotland local authorities in March 1998. The partnership has since grown to include the following organisations:

City of Edinburgh Council
Falkirk Council
Fife Council
West Lothian Council
Stirling Council
Clackmannanshire Council
East Lothian Council
Midlothian Council
Scottish Borders Council
Forth Estuary Transport Authority (FETA)
Perth & Kinross Council

SESTAN is governed by a steering group which comprises of two elected members and two officers from each Council [plus representation from FETA].

PARTNERSHIP

SESTRAN welcomes the commitment for a national, integrated, properly resourced, long-term transport strategy for all Scotland which will assist delivery at the national, regional and local levels.

SESTRAN believes the national strategy must be developed by the Scottish Executive in partnership with Regional Transport Partnerships, Local Government, business and other key stakeholders. The development of a proper national strategy should take place alongside that of consistent regional transport strategies and Local Transport Strategies. Work to bring these strategies to life can commence now, but guidance to assist consistency in preparation of these strategies would be welcome. This will mean clear priorities for delivery being identified and agreed at national, regional and local levels.

SESTRAN as an existing voluntary partnership has already:

- delivered on many bus/rail Park & Ride schemes
- delivered integrated ticketing in conjunction with tie (One-Ticket)
- delivered effective project management in execution of projects

The proposals for creating new statutory Regional Transport Partnerships, which build on this good work, are extremely important and will be the subject of detailed comments from SESTRAN to the relevant consultation paper in early January 2005.

SESTRAN has a number of comments to make on the establishment, administration and functions of Regional Transport Partnerships. SESTRAN will also comment briefly on certain other miscellaneous transport related issues contained within the bill.

PART 1 - ESTABLISHMENT OF REGIONAL TRANSPORT PARTNERSHIPS

SESTRAN is content with its current operating boundaries including 10 Councils and FETA. It is however, possible that Councils at the outer edges of the partnership area may be pulled in a number of geographical directions.

The Bill (Section 1(1)) is non-specific about the geography of transport regions relying on Scottish Ministers to determine same, by Order. It is considered that boundaries might be better contained within the Bill itself. However, SESTRAN would wish to record that its existing configuration or a future configuration smaller or larger will continue to deliver on transport issues. The Bill (Section 1(2)) promotes an RTP constitution of a single councillor for each Council with the area of an RTP. This will in many instances be insufficient to effectively represent the political make-up of a particular Council area and might lead to ineffective decision making with the single member requiring to seek views of their Council to convey their Council's position to SESTRAN. SESTRAN currently operates on a 2 Councillor representation basis which works exceptionally well in representing Council views.

Representation of external members should be based on non-weighted councillor votes, otherwise the constitution of SESTRAN might become imbalanced.

ADMINISTRATION

The Scottish Executive currently fund 50% of SESTRAN's administrative costs. Once more formal and statutory RTPs are introduced there are strong arguments for 100% funding from the Scottish
Executive based on an agreed structure for transport delivery. The new RTPs are additional to existing transport delivery structures and only when staff/functions move from Local to Regional level can a case be made for commensurate transfer of funding from the local to regional level. The new and additional costs of a core policy team should therefore be funded on a continuous basis directly by the Scottish Executive.

Clear guidance will need to be developed by the Scottish Executive in conjunction with existing RTPs and Local Authorities on the whole issue of revenue and capital budgets for RTPs. For example, the revenue implications of Capital/prudential borrowing needs to be clearly thought out in advance. Similarly, the levels/procedures associated with requisition need to be transparent in advance. SESTRAN would welcome the opportunity to work with the Scottish Executive on working up a mutually acceptable way forward.

REGIONAL TRANSPORT FUNCTIONS

SESTRAN is content with proposals in the Bill associated with the development of RTSs. However, guidance on the required statutory format of RTSs, would be helpful to assist in meeting timescales put forward in the Bill. SESTRAN is committed to developing an RTS and delivery against it within the envisaged timescales given.

At this stage SESTRAN strongly believes that it can continue to successfully deliver regionally significant transport projects in a more formal structure with the added advantage of the opportunity to work in partnership with the Scottish Executive.

PART 2 - ROAD WORKS

General

The proposals to tackle poor road works, with a new Scottish Road Works Commissioner and stiffer penalties for delays and low quality resurfacing are welcomed. More important than collecting fines is the ability to ensure that roads are closed for the least possible time and reinstated to the best standard.

Scottish Road Works Register (SRWR)

SESTRAN welcomes the proposal to the 1991 Act to tighten and adjust the current requirements covering registers of road works by establishing SRWR (Scottish Roadworks Register) as a national and statutory register for Scotland. This will place duties on Statutory Undertakers and Roads Authorities to manage and maintain the SRWR as the ‘central tool’ for daily and longer term planning of road works.

The Scottish Road Works Commissioner

In principle, SESTRAN supports appointment of a Scottish Road Works Commissioner (SRWC) to monitor works on roads, promote compliance and good practice under the Act. Appointment of SRWC may prove a better framework to address and resolve the ongoing issues with regard to road works in general at a national level.

Major SUs repeatedly fail to close off notices once the works are complete causing difficulties for RAs to carry out sample inspections and generate inspection units for the forthcoming financial year. The SRWC under his / her control will have the statutory power to manage the register to ensure that these are achieved nationally in a proper and systematic way.

The RAs and SUs must provide SRWC with information on performance on a regular basis. It must be borne in mind that this will create extra workload for both RAs and SUs, which may imply that additional resources may be required in the longer term.
Timing of Works, Placing of Apparatus in Roads and Restrictions on Follow-up Works

This is welcomed. There should be appropriate legislation that will give RAs more power to direct timing of road works on certain days and times on certain days. Where practicable, stricter penalties should be imposed to SUs who overrun the works without proper justification.

With regard to imposing restrictions on works for 3-year period, the extension is good for RAs and to tighten existing requirements on SUs when reinstating the roads after road works have been carried out.

Enforcement

General agreement to the principle of fixed penalty offences. The SRWC must have powers to issue enforcement notices. Fixed penalties should be passed on to SUs for just more than noticing offences. SUs also to incur penalties for health and safety offences – leaving excavations open unnecessarily without proper signing and guarding which is a common occurrence in SESTRAN and is proving a serious hazard to the community.

Training

SESTRAN fully support any form of training, which will enable people (supervisors and operatives) to gain the right experience and qualifications to do the job safely and to the required standards.

SOLACE (Scotland) accepts the case for a more strategic approach to the planning of transport since travel to work areas, in many cases, transcend the boundaries of individual Councils. Thus, the proposal to establish Regional Transport Partnerships.

However, we have two concerns about this proposal. Firstly, it cannot be seen in isolation from other initiatives by Ministers to regionalise a range of local government functions, for example, the proposed Regional Criminal Justice Partnerships; City/Region Planning and the possibility of Housing Market Area Boards. Our understanding of the Executive’s position is that Ministers have no appetite for a further reform of the boundaries of local government but, at the same time, they do not believe that the present model of 32 Councils is the most appropriate one for the planning and delivery of all local government services. But that position, in turn, raises a series of important questions.

- If services continue to be regionalised - at what point is the legitimacy of the present system called into question? Where is the tipping point?
- Single tier local government has the significant advantage of direct and transparent accountability. Regional Partnerships/Joint Boards diffuse and confuse accountability for the public. They offer accountability one step removed, in effect, second hand accountability.
- Many commentators believe that Scotland is already an institutional mess, notwithstanding it is a small country with 32 Councils, 15 Health Boards and 23 Local Enterprise Companies. The Executive’s proposals will add to this institutional porridge.

SOLACE believes it is important for the Committee not to consider the Bill in isolation but in the context of its implications for the present structure, not simply of local government but of local governance in Scotland.

In addition, it is proposed that Regional Transport Partnerships would be a designated public body in respect of Community Planning. But Community Planning is about joining up services based on the boundaries of each of the 32 Councils as the building block. The more we undermine the building block by the transfer of functions outwith local government through the creation of Regional Partnerships/Joint Boards, etc. the more complicated do we make Community Planning.
That is already a challenge for many Councils, for example, in terms of the boundaries of Health Boards and Enterprise Companies. The agenda of regionalisation will add to that difficulty and serve to weaken rather than strengthen Community Planning.

Our second concern relates to the extent of power the Bill provides to Ministers. Section 10 provides that “The Scottish Ministers may, by Order, provide for any functions relating to transport …… to be carried out by that Transport Partnership”. Before making such an Order the Scottish Ministers must consult with the constituent Councils of the Partnership but this is the only precondition imposed. The constituent Councils have no right of veto if they do not like what is proposed. The Bill, as drafted, gives Ministers the power to transfer any of the Council’s transport functions to the new Partnership and Ministers will be free to do this having completed a consultation exercise even if one or more constituent Councils has objected. We have serious concerns about the appropriateness or wisdom of giving Ministers – however well intentioned – such sweeping powers. In addition, under Section 11, a Transport Partnership in carrying out its functions, so as to fulfil its transport strategy, must comply with any Directions in that respect given to it, or to Transport Partnerships generally, by Scottish Ministers. The accountability chain will be upward to Ministers not downwards to local communities.

SUBMISSION FROM SUSIEPHONE LTD

Introduction

Susiephone Ltd is the appointed Keeper of the Scottish Road Works Register and welcomes the opportunity to discuss the Transport (Scotland) Bill. We are pleased to comment on the proposed legislation introduced to the Scottish Parliament Oct 2004.

Susiephone Ltd

Established over twenty years ago for the protection of underground apparatus and for the safety of those excavating roads, the Susiephone service continues with the sharing of Utilities buried services information and the operation of a helpdesk and freephone facility to assist callers. In addition Susiephone Ltd was appointed Keeper of the Scottish Road Works Register in March 2000, helping to coordinate the works of all Roads Authorities, 16 Statutory Undertakers, Trunk Road Operators and now most recently the work of Network Rail. This successful cooperative process has been funded over the last 4 years through participants voluntary contributions derived from an annually agreed formula used for apportioning costs.

The Scottish Road Work Register (The Electronic Notification System)

Now internet based, this electronic whole of life notification system is the Scottish Road Works Register, provided by a supplier under the terms of a five year contract let by Susiephone Ltd on behalf of the user community. Notified work on the system is followed by reinstatement notices, both temporary and permanent. The system also generates and provides management of an inspection process, together with warranty notices to cover extended guarantee periods of up to three years if a reinstatement defect should arise.

The delivery of this cost effective and well coordinated electronic notification system is supported by the work of the Scottish Road Works Register (SRWR), Management Group, the System Assurance Team (SAT), the Scottish Gazetteer Group, and by the Scottish Joint Utilities Group (SCOTJUG). In addition the Roads Authorities and Utilities Committee Scotland (RAUCS) and the four Area RAUCs and local coordination groups, together with the Coring group all work to produce a successful Scottish Road Works Register.
(See Communication Links Appendix A Part 1).

Training

Susiephone Ltd funds training on the New Roads and Street Works Act (NRSWA), and System training has been developed with accreditation proposals under consideration by vocational qualification awarding bodies. A series of successful User forums have been arranged each year in cooperation with the Susiephone Contract and Liaison Manager. This brings together people from
many backgrounds and disciplines, encouraging the adoption of best practice through discussion and debate.

**Proposed Scottish Road Work Commissioner**

The role of a Scottish Road Works Commissioner in relation to Susiephone Ltd, the current Keeper of the Scottish Road Works Register, is unclear and the Susiephone Board welcomes further advice and discussion on the likely role and responsibilities of this new post, and also clarification on the remit for the office of Commissioner.

**Transport (Scotland) Bill Part 1. Regional Transport Partnerships (RTPs)**

**Consistent Approach**

As RTPs may adopt different roles and responsibilities under this legislation, it may prove difficult to coordinate the Register's work and maintain consistent contact with all parties involved in the operation of the Register. It may be necessary for RTPs to become involved with Area RAUCS and Local RAUCS coordination meetings.

**Access Requirements**

RTPs will almost certainly require access to the system used for the Register even if only to monitor its operations. Any added access requirements has to relate to the current systems capacity to expand. Additional capacity may have to be purchased from the application software provider for the Register.

**Regional work**

The debate on RTP powers should involve all parties connected with the Register operations, including Statutory Undertakers and organisations such as Network Rail. There may be added difficulties for the management of Trunk Road Operations which currently cross the boundaries of various Roads Authorities. This may be addressed however by one of the suggested models for RTPs where two or more Transport Partnerships may work together and draw up a joint strategy for transport within their combined regions. This would require careful management to ensure a single Register for Road Works in Scotland is maintained.

**Transport (Scotland) Bill Part 2. Scottish Road Works Commissioner**

**Existing Scottish Minister’s Agreement with Susiephone Ltd**

Clarification from the Scottish Executive is required to explain the impact on the current agreement between the Scottish Ministers and Susiephone Limited.

This was an initial ten year arrangement effective 1st March 2000, for the appointment of Susiephone Ltd as the Keeper of the Scottish Road Works Register. The Scottish Minister's agreement states. (Page 3, Para 2.2)

"The Appointment shall be on an exclusive basis and the Scottish Ministers shall not, whilst the Appointment remains in effect, appoint any other person or individual or authorise any other person to appoint any other person or individual to act as the keeper of the SRWR."

**Funding Operations**

Annual collections from the Scottish Road Works Register's user community currently fund the operation of the Register's electronic notification system. The Bill has no reference to this funding arrangement and does not identify where the responsibility for continued collection rests.

**Duty to enter**

The Bill's proposed ‘Duty to enter all road works on the statutory Scottish Road Works Register in the prescribed manner’ is a welcome development. Although the prescribed manner is not yet defined this does appear to oblige all those who would notify intended road works to do so by direct access to the central Register. Their financial contribution to the operation of the
Register is not covered by the Bill. This requirement to enter directly onto the register and the source of funds to allow this needs to be explained by the Scottish Executive.

**Operation of the Scottish Road Works Register**

To ensure effective management of the Scottish Road Works Register, Susiephone Ltd has appointed a Contract Manager who also carries out liaison duties relating to the functions of the Register. Consideration must be given to what arrangements will in future be in place to ensure continued management of Register operations.

**Continuing the operation of the Scottish Road Works Register**

Susiephone Ltd, through members of the Susiephone Board, RAUCS and the SRWR Management group, have progressed elements of a new service agreement for the Scottish Road Works Register. A Contract Notice, has been published in the European Journal (OJEC). It is envisaged that invitations to tender must be issued early 2005 to ensure continued operation of the Register after March 2006. Scottish Executive advice here is urgently required to allow progress. (Timetable, Appendix A Part 2)

**System Data**

The functions of the Commissioner may require the use of information and data from the Register such as Key Performance Indicators, possibly for evaluation purpose in an arbitration role. This may lead to additional workload so it is important that the Scottish Executive explain the intended role of the staff who would form the office of commissioner.

**Digital Mapping**

The Bill’s funding provision for improvements such as digital mapping and additional funding to upgrade local systems is most welcome. Along with funding to communicate changes in legislation through regional seminars, agreement must be reached on when the funding becomes available. Hopefully the funds can be made available to the user community ahead of the Bill’s implementation date in 2006.

**Accredited Training**

Susiephone Ltd supports the Bill’s desire to have qualified supervisors and operatives. This is welcomed and is important if reinstatements are not being done correctly. The user community through Susiephone Ltd, RAUCS and the SRWR Management group have been progressing NRSWA training funded via the annual contributions received for operation of the Register. Susiephone Ltd recognises the ongoing requirement to deliver NRSWA training. Accreditation of system training is also being examined and this could lead to a nationally recognised qualification such as SVQ. Some training modules have already been development in conjunction with our Application Software provider.

**Increased Penalties**

The increase in fixed penalties may help to improve the execution of road works.

**Summary**

The Directors of Susiephone Limited, who are drawn from Road Authorities and Statutory Undertakers represented on RAUCS, recognise their responsibilities in relation to the delivery of an efficient Scottish Road Works Register. They view the success of this voluntary arrangement as testimony to a process which they have helped develop from a system of locally held databases, and now migrated to a more reliable internet based system. Susiephone Ltd welcomes clarification of its role in the Transport (Scotland) Bill to ensure the continued operation of a unique and successful Scottish Road Works Register.

Signed On behalf of the Directors of Susiephone Limited

Robert Scotson  
Contract and Liaison Manager, Susiephone Limited
Appendix A

Part 1: Susiephone Ltd. Communication links

Part 2. The Scottish Road Works Register. Timetable for Tendering

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SUBMISSION FROM TRANSFORM SCOTLAND

General comments on Scottish Executive policy

TRANSform Scotland welcomes proposals aimed at improving the sustainability of Scottish transport. The policy objectives set out in chapter one of the Scottish Executive's June 2004 white paper 'Scotland's Transport Future' give a welcome basis for the future development of Scottish transport, in particular:
We agree with the Executive that there is a need to "build organisational capacity" in delivering sustainable transport (policy memorandum, hereafter PM, §15). As such, we have welcomed the strong commitment for the forthcoming National Transport Agency to have sustainable development and social justice as guiding principles ('Scotland's Transport Future', hereafter STF, 5.4) and look forward to seeing the creation of the Agency.

**General comments on Voluntary, and Statutory, Regional Transport Partnerships**

We agree with the Executive that the delivery record of local authorities on a regional basis has been poor (PM §13). We cannot however agree with the Executive that the existing Voluntary Regional Transport Partnerships (hereafter VRTPs) have had any discernable benefits in the delivery of sustainable transport (PM §14, §25). We broadly accept the arguments behind the Executive's promotion of a set of Statutory Regional Transport Partnerships (SRTPs) but retain serious reservations as to whether they will be any more effective than the existing structures.

We have seen little evidence that the voluntary partnership approach to transport planning has worked: a lack of budgetary responsibility and reliance on voluntary agreements has limited the effectiveness of these arrangements. Their unstable nature has tended to lead to controversial issues being avoided, with the lowest common denominator becoming the norm in decision-making.

The sole achievement of SESTRAN appears to have been delivery of a public transport cross-ticketing scheme (One-Ticket) that is, from our experience, incomplete and poorly used. More importantly, SESTRAN has entirely failed to achieve any political consensus across South-East Scotland local authorities that action needs to be taken to implement road traffic demand management measures in order to control rising levels of congestion and pollution. The very public, and ongoing, spat between Fife, Midlothian and West Lothian Councils on one side, and the City of Edinburgh Council on the other, over the implementation of a sustainable transport strategy for the City of Edinburgh should be ample evidence of the failure of reasonable regional transport planning for that area.

We have long held the position that the current voluntary arrangements for regional delivery should be replaced with some form of statutory arrangement. To this extent, we broadly welcome the Executive's commitment to move towards such a structure. However, we are very concerned with one element of the proposals. While the white paper set out a clear, and sustainable, basis for policy delivery at the national level, this material went missing when talking about the proposed SRTPs. The Executive, in its white paper, "anticipated that the regional partnerships would have around a third of their voting membership from the business sector and other organisations in their region" (STF §5.16). The evidence from the VRTPs has been one of only business sector involvement in their policy-setting structures (in the cases of HITRANS & NESTRANS). It is our experience that business sector involvement in policy-setting has in these instances skewed policy decisions towards the business sector's own ends.

The only significant activity of NESTRANS appears to have been the coordination of political lobbying for the Scottish Executive to divert national transport expenditure to an entirely unsustainable set of policies. Furthermore, and in the case of NESTRANS and HITRANS, the involvement of business lobby organisations in policy-setting has, in our view, entirely discredited the political accountability of these bodies. We regard this as unacceptably bad practice in terms of local public accountability.

Regarding the powers of SRTPs, we regard it as essential that local service provision (e.g. local roads, walking/cycling provision, local traffic management, local bus services) should, in general, remain with local authorities. It would be inappropriate for all transport provision to be exercised by organisations that would exist on a geographical scale that would not reflect the essentially local nature of the vast majority of journeys. Half of all journeys are less than two miles in length, and 70% less than five miles. As such, transport provision must focus, and be seen to focus, on local transport provision. Reducing the need to travel is an essential element of the Executive's transport and planning policies: as such, transport planning structures that reflect locality rather than long-distance are, and will continue to be, most appropriate.
Specific comments on Transport Bill proposals

Our comments are limited to Part 1 of the Bill, and in particular the sections pertaining to the proposed creation of SRTPs.

General comment: In the absence of other proposals for improving regional delivery of transport, we broadly welcome the provisions for creation of SRTPs.

However, we find these legislative proposals as premature when there is no clarity on what the membership and extent of the SRTPs will be.

We are also unsure what these provisions can achieve that could not be met through the existing powers contained with §1 of the Transport (Scotland) Act 2001 to "require" local authorities to create Joint Transport Strategies: these powers remain unused. On the other hand, the creation of SRTPs will certainly introduce delay into implementation. We would question whether everything that the Executive seeks to achieve through this part of the Bill could be achieved through the existing legislation.

Boundary issues: We are not clear why the Bill attempts to force all local authorities into a SRTP. There may well be local authority areas that are not appropriate for the existing boundaries as proposed in the ongoing consultation. Until such issues are clarified, we find the proposal that all local authorities be included within a SRTP as premature.

Membership: We are not convinced that one Elected Member from each local authority will be able to represent all interests of that local authority area. This will be especially pertinent after 2007 (when the SRTPs are due to become fully operational) due to the likely changes in local authority representation following the use of proportional representation at the 2007 local elections.

External members: We strongly object to the proposal that there should be external representation on SRTPs. We do not agree with the Executive that a local authority majority will guarantee democratic accountability of SRTPs (PM §100).

We note, with concern, Scottish Executive proposals that up to a third of the membership of the regional transport partnerships could be made up of business sector appointees. We consider that this could lead to transport policy being distorted to favour the private interests of companies rather than the public interest.

We note that the business sector is specifically singled out in the policy memorandum accompanying the Bill (PM §104):

"The establishment of Transport Partnerships with external members representing the business community should ensure that transport strategies are better allied to the needs of economic development taking into account the transport needs in particular of business employees and business related journeys."

We find this deliberate, and preferential, treatment of the business sector unacceptable. This is especially so when its own policy framework for the National Transport Agency, in the white paper, makes such clear reference to sustainable development and social justice as key policy objectives. We note that the Executive talks about sustainable development in the preceding paragraph of the policy memorandum (PM §103) yet makes no specific comments about representation of sustainable development interests within SRTPs.

We request that the legislation be amended to remove the provision for third parties to be represented within the decision-making structures of statutory regional transport partnerships. In the event of the legislation not being so amended, we request that SRTPs be required to provide for at least equal levels of civic society representation to business interests, and that adequate resources are provided to allow the former to participate fully.

Regional Transport Strategies: We welcome the proposal that SRTPs be tasked with preparing regional transport strategies, that these be on a statutory footing, and that they be approved by the
Scottish Executive. We hope that these Regional Transport Strategies prove to be of more value than those created by the existing VRTPs.

**Suggested further amendments/additions to Transport Bill**

**Statutory Local Transport Strategies**

We suggest that the Transport Bill be amended so that Local Transport Strategies (i.e. not just Regional Transport Strategies) are made statutory requirements. This will allow such plans to be subject to environmental assessment (including Strategic Environmental Assessment) and meet minimum requirements for public participation.

We would regard it as a major inconsistency for Regional Transport Strategies to be put on a statutory footing when Local Transport Strategies, which will remain of higher importance for the majority of transport trips, remain voluntary.

We do not regard this proposal as an onerous responsibility for local authorities as all 32 local authorities (plus SPT) have already produced Local Transport Strategies. It should be a normal responsibility for local authorities to produce and update a Local Transport Strategy; indeed, we consider that it should be a precondition for the receipt of Scottish Executive transport funding. It should further be noted that the equivalent instrument in England, Local Transport Plans, are a statutory requirement.

**Changes to private legislation procedures for railways**

In its late 2003 consultation paper, the Executive questioned whether the proposed National Transport Agency should have powers to promote new railways or tramways. This issue appears not to have been picked up at all within these legislative proposals.

We have long considered it a significant anomaly that new roads projects can be procured through Road Orders while rail projects need to acquire Parliamentary legislation. While the latter process may give some extra benefit to the promoters of any such project, we do feel that the process for procuring roads schemes is substantially less onerous, both for the promoter and on Parliamentary resources.

We would suggest that the Bill should provide for the replacement of the current, and unwieldy, Private Bill procedures for the promotion of railways with public inquiry procedures. We understand that one of our member organisations, the Scottish Association for Public Transport (SAPT), intends to make representations on this topic.

**Westminster Traffic Management Act 2004**

There are useful measures contained in this Act that could be incorporated into the Scottish transport bill. We understand that one of our member organisations, Living Streets Scotland, intends to make representations on this topic.

**Statutory targets for road traffic stabilisation**

The Bill, as currently set out, misses an opportunity for strategising the Scottish transport sector to deliver on targets for climate change emission reduction. The Scottish transport sector must begin to contribute to reducing Scottish climate change emissions if we are to make an "equitable contribution" to the UK Climate Change Strategy. A first step should be for the Executive to set national, and then sector-by-sector, climate change targets.

The Executive has made a start by setting a road traffic stabilisation target (to return traffic levels to 2001 levels by 2021) - but this target is weak, long-term, has no interim targets and has no credible implementation programme. It is imperative that the Executive set out a credible implementation programme for road traffic reduction, with targets and timescales, to reduce the volume of traffic on the roads.

There is no guarantee, however, that SRTPs will take such measures seriously. Recent experience of local authority priorities suggests little interest in addressing such matters. We consider that the Bill could be usefully amended to charge SRTPs with meeting such road traffic reduction targets that the Executive sets out. Without local and regional action, it is difficult to see how the Executive
will be able to meet its long-term aspirations towards road traffic reduction and climate change emission reduction.

SUBMISSION FROM WEST LOTHIAN COUNCIL

Introduction

West Lothian Council welcomes the opportunity to submit written evidence to the Local Government and Transport Committee on the Transport (Scotland) Bill (SP Bill 28) Stage 1.

The council's written evidence covers the three main parts of the Bill: Regional Transport, Road Works and Miscellaneous.

Regional Transport – Statutory Regional Transport Partnerships

There seems to be an emerging theme in terms of regionalisation of certain functions traditionally carried out by local authorities, or partnerships established by local authorities. This process may be seen to be diluting democratic accountability.

The main concern of this council is whether there is an actual need for the formation of SRTPs in the first place. The council has worked closely with neighbouring authorities as part of the SESTRAN voluntary partnership since its establishment and is of the opinion that SESTRAN has a good record of delivering regional transport projects and initiatives within a voluntary committee structure. This is done by working together and pooling skills and expertise in transport.

The council is therefore unconvinced of the need to establish SRTPs and would favour the establishment of joint committees. These committees could be supported on a day-to-day basis by a core management/support team. The arrangements for city region planning, which is closely aligned to, if not inseparable from transport, are still under consideration. Current indications are that unlike SRTPs, joint committees are the preferred option for managing city region planning and this should continue to allow for local democratic control.

The proposed SRTP is a new type of legal creature. It is not a joint committee, it is not a board, and it is not a voluntary association of local authorities. Since it is a new creation it will only have the powers and duties which are conferred on it by Act and Regulations. For instance, provisions in the Local Government (Scotland) Act 1973 regarding committees and boards will not apply to the RTP.

Although the creation of these bodies is compulsory it is strange that the extent of each body’s powers and duties is supposed to be a decision for that body to make.

The rules about the constitution and procedures of the SRTPs are not set out in any great detail in the Act, but will come in regulations to be made by the Scottish Executive. It would have been useful to have some “skeleton” orders and regulations at this time to aid decision making on the requirements of the partnerships.

In broad terms, the STRPs are to be given the same status as local authorities in that they will be subject to the same rules such as freedom of information, complaint procedures to the ombudsman, code of conduct for councillors etc. What they will not have is the benefit of statutory provisions designed to give local authorities a bit of leeway in working out what they can and cannot lawfully do (e.g. s69 of the 1973 Act (facilities/conducive) and s20 of the 2003 Act (well-being)).

Although STRPs are supposed to have regional powers and the ability to make regional and strategic decisions for themselves, there are inevitably restrictions imposed on those powers. The executive is given powers to make a national transport strategy, and SRTPs have then to try to follow that. Until there is more of a “skeleton structure” in place for the national transport strategy it is difficult to make clear judgements on the roles and function of either the new agency or the SRTPs. The formal tie-up between national transport strategy, regional transport strategies and local transport strategies needs to be clearer in the Bill.
If partnerships are to be taken forward in-line with the executive’s current consultation, the council is of the opinion that non-councillor members of proposed STRPs are not given voting rights on financial matters.

The council can see the benefits of inviting appropriate external members (academics, business, user groups etc.) but there is no provision in the Bill for who can be appointed as non-councillor members. It must also be stressed that these members should never have more than one vote and no weighting. It is suggested that this issue should be stated expressly in clause 1(2)(d)(iii). It would also be helpful if the word “vote” were to be substituted for the word “participate” in clause 1 (2)(g).

In terms of functions, the council is unconvinced of the need to form a SRTP solely to undertake the production of a regional transport strategy, the only statutory function. The other suggested optional functions (e.g. promotion of quality bus corridors and travel information) to be consider to be undertaken by the SRTP are unclear in term of the benefits they would deliver. The council would argue that local authorities in many cases do currently undertake these types of functions and deliver them well.

The council is opposed to the proposal that funding for both revenue and capital expenditure will be mainly through requisition. There is surely a case for the refinement of voluntary partnerships' currently discretionary funding arrangements. It should also be noted that not all authorities will be able to use prudential borrowing to fund partnerships as they will have already maximised the prudential opportunity elsewhere to deliver other important services.

Road Works

The Scottish Road Works Commissioner (SRWC)

Section 14 Creation, appointment, status and funding of Scottish Road Works Commissioner
The appointment of a SRWC did not form part of the initial consultation process and this gives concern. RAUC(s) could operate as the Road Works Commissioner with statutory powers and this arrangement would be a preferred option.

Section 15: Functions of Commissioner
On face value it would appear that the (SRWC) ‘mirrors’ the function and terms of reference of the RAUC(s) group. However, the RAUC system is currently administrative not statutory. Clarification is needed to establish if there is a need for both bodies in order to eliminate any duplication.

Section 16: Duty of road works authority and undertakers to provide Commissioner with information
The council is happy to comply with data requests. However, resource consequences may be an issue.

The Scottish Road Works Register (SRWR)

Section 17: The Scottish Road Works Register (SRWR)
The council welcomes the mandatory requirement to enter information into the SRWR. It is considered a natural progression to enhance the existing information by including all operations on the road to provide a full picture for co-ordination. Susiephone Ltd has successfully managed the SRWR for many years. Is it the intention to replace Susiephone Ltd with the SRWC, and if so, what real benefits would that bring? Again duplication must be avoided.

Miscellaneous

Section 18: Directions as to timing of works
These amendments are welcome as clarification is now given.

Section 19: Directions as to placing apparatus in roads
In principle, these additional directions are welcome. However, the fine detail must be further developed, and perhaps, included within a code of practice.
Section 20: Restriction on Works following substantial road works
The extension to three years is welcome, however care will be required in the use of the existing exemptions to ensure compliance with these procedures.

Section 21: Duty of Road Works Authority to co-ordinate road works
The council welcome the requirements to co-ordinate fully all road works, however, there may be resource implications in complying with this duty.

Section 22: Duty of Undertakers to co-operate with Authorities and other Undertakers
These amendments are welcome as they will improve co-ordination. To ensure that the SRWR operates as a complete planning tool the enhancement of a geographical information system (GIS) would be of benefit and development should be encouraged at an early date.

Section 23: Enforcement of Section 119 of the 1991 Act
Financial penalties for non compliance is a positive step however, the powers should extend to the SRWC to issue fixed penalties to ensure a quick response.

Section 24: Qualifications of Supervisors and Operatives
The SRWC should have established powers to ensure compliance with training and qualifications. This should be extended to all operatives and supervisors working on the road. Non-compliance should be subject to a financial fixed penalty.

Section 25: Duty of Authorities, Undertakers etc to ensure competence of employees etc
This duty is accepted and regular training and monitoring would ensure consistency.

Section 26: Duty of undertaker to notify completion of road works and Section 27; and Notices requiring remedial works relating to reinstatements
This clarification is helpful.

Resurfacing

Section 28: Power of road works authority to require undertaker to resurface road.  Section 29: Resurfacing: regulations and guidance, and Section 30: Contributions to costs of resurfacing by undertaker
Good in principle however, there may be potential conflict in agreeing rates and work methods.

Enforcement of the 1991 Act

Councils find it difficult to take legal action under the 1991 Act, therefore there would be no direct benefit in increasing the level of fine. Perhaps the Procurator Fiscal needs to be encouraged and assisted to take action.

The introduction of fixed penalties is welcome.

Resolution of Disputes under 1991 Act

Section 34: Method of settlement of certain disputes under 1991 Act
RAUC(s) is currently the body which resolves disputes through arbitration and duplication should be avoided. Under Section 157A and relative regulations – RAUCs may not have any part to play.

Enforcement of certain offences under the Roads Scotland Act 1984

Section 35: Fixed penalty offences under the Roads (Scotland) Act 1984.  Section 36: Civil penalties for certain offences under the Roads (Scotland) Act 1984
This section provides useful additional powers.
Miscellaneous

The council wishes to comment on only two sections contained within part 3 of the Bill.

Concessionary travel

The council is supportive of a national concessionary travel scheme and welcome the opportunity to reduce the 16 local concessionary schemes currently run down to a single scheme. However, the following are considered essential ingredients in achieving a successful scheme:- (1) It must be a truly national scheme (every cardholder should have the same benefits), for all local bus services. (2) It must have a nationally agreed reimbursement criteria (including all additional costs). (3) Concessionary passengers must be treated equally with fare paying passengers. (4) All existing expenditure on local bus service support must be protected. (5)Existing support on local dial-a-ride, rail taxi card, DRT schemes should be protected and enhanced. (6) The scheme must operate all day in order not to disadvantage rural areas.

The council’s preferred delivery mechanism is to have Ministers taking responsibility for managing concessionary travel at a national level (via the new transport agency).

The introduction of free local travel concession schemes has been more costly than expected in urban areas and the Scottish Executive has had to assist. Therefore the national scheme must not look at financial implications in isolation of local bus service funding. If GAE for concessionary travel is taken out of local authority control then this will undermine tendered local bus service provision, especially outwith the cities.

Pedestrian crossings

The council is supportive of the changes to remove the now draconian requirement to inform the Scottish Ministers in writing before establishing, altering or removing a pedestrian crossing.

Minor Amendments of Transport (Scotland) Act 2001

The "minor" amendments proposed in respect to road user charging are welcomed in that they clarify important aspects which the council has sought opinion / clarification on through the promotion of the Edinburgh congestion charging scheme. In particular, the effect of the amendments contained in Clause 43(7) are welcomed, as they will remove any doubt that there was about Edinburgh’s power to distribute money to neighbouring authorities.

Conclusions

The Bill itself is largely enabling and therefore much of it will be implemented by Order. The council would therefore suggest that draft Statutory Instruments are prepared and issued for consultation as soon as possible.

The council will be submitting a formal response to the executive’s consultation on regional partnerships and this may be of interest to the committee.

SUBMISSION FROM WESTRANS

WESTRANS is a local authority Joint Committee whose membership comprises the following councils:
Argyll and Bute;
West Dunbartonshire;
East Dunbartonshire;
North Lanarkshire;
South Lanarkshire;
Glasgow;
East Renfrewshire;
Renfrewshire;
Inverclyde; North Ayrshire; East Ayrshire; South Ayrshire; and Dumfries and Galloway.

The Chair of Strathclyde Passenger Transport is a co-opted member of the Joint Committee

The remit of the Joint Committee is:

- to advise the councils on matters of common interest, such as consultation documents relating to transport insofar as they relate to their respective functions, and to co-ordinate submissions and responses on such matters;
- to work with Strathclyde Passenger Transport Authority (SPTA) and other relevant bodies to prepare, recommend and keep under review a Joint Transport Strategy for the WESTRANS area; and
- to recommend and prepare bids for funding for projects which affect more than one council area, and which are not the statutory responsibility of SPTA, to the Scottish Executive’s Public Transport Fund, Integrated Transport Fund, or such other relevant funds as there may be.

WESTRANS is empowered to do anything that is calculated to facilitate, or is conducive or incidental to the discharge to any of the aforesaid functions.

The Joint Committee has had no detailed involvement with the issues covered in parts 2(Road Works) and 3(Miscellaneous) of the Bill and will restrict its comments to Part 1 of the Bill—Regional Transport.

WESTRANS welcomes the proposal to create strong regional partnerships that have responsibility for strategic transport planning, including the formulation of regional transport strategies. Any meaningful regional transport strategy for the west of Scotland will have to cover the development of the public transport system in tandem with the development of other aspects of the transport system that are the responsibility of local authorities, the Scottish Executive and other bodies. The new Partnerships will enable the transport and traffic authorities to undertake integrated regional planning for strategic transport issues, however that can only be done with the support of local authorities who will remain responsible for all of the transport functions that they currently undertake. These functions must not be removed from local authority control without the express consent of local authorities.

In December 2003, WESTRANS responded to the Executive’s consultation on “Proposals for a New Approach to Transport in Scotland” which had been issued in September of that year. Our response set out our position on the organization of transport management in the west of Scotland with regard to the boundaries, constitution, functions and funding of the partnership area. Our position is largely unaltered since that time.

**Boundaries:** WESTRANS currently comprises 13 full council areas from Argyll & Bute in the north to Dumfries and Galloway in the south. SPT covers 8 full council areas and 4 part-council areas, but acts as agent for public transport services in the area outwith its boundary for three of the four councils. Each individual council must make its own decision on which of the new regional partnership(s) that is appropriate to it. WESTRANS would welcome the involvement of Dumfries and Galloway in the new west of Scotland partnership but recognizes that there are few transport issues that link it and the conurbation. Arran, the Cumbraes, Bute and the Cowal peninsula have been included in the Highlands and Islands area in the Executive’s consultation paper, but each of these areas has strong transport links with mainland ferry terminals and railheads. Parts of west Stirlingshire have strong economic, social and transport links with the Glasgow conurbation. Each of the four councils involved (Dumfries and Galloway, Argyll and Bute, North Ayrshire and Stirling) must decide on which partnership to be a member of, and WESTRANS will respect their wishes.

**Constitution:** The current Executive proposal for membership of the proposed new regional body is for there to be one member from each constituent local authority plus external members, with
local authority representatives having weighted voting rights. If that model is chosen, it is possible that every authority would choose a representative from the same political party, resulting in a lack of political balance in the governing body. Also, the low number of members would cause difficulties in populating the necessary sub-committees to oversee the financial, staffing and many transport operations for the new body which will serve almost half the population of Scotland. It is suggested instead that a local authority Joint Board be set up as the governing body, with the number of representatives from each council reflecting the population of the council. This is a tried and tested type of arrangement, which works well for police and fire services and has the necessary powers to control the regional transport functions that are assigned to it. It was the type of constitution suggested by both WESTRANS and the leaders of the west of Scotland councils in response to consultations in late 2003. The Joint Committee does not object to the new regional body having external members, but would be concerned if they were involved in making decisions on funding requisitions.

**Functions:** The basic principle which should be adopted in considering options for transport delivery is that services should be delivered at the lowest appropriate level. The proposed new national transport agency for Scotland is to be welcomed, as is the production of a national transport strategy. Whilst that agency will have responsibility for promoting national transport projects, there is no reason why delivery on any aspect should not be devolved to regional partnerships or local authorities, where appropriate. The initial functions to be undertaken by the new west of Scotland body should be those that are currently carried out by Strathclyde Passenger Transport together with the production of a regional integrated transport strategy including setting priorities for, and procuring, projects included in the strategy, where appropriate.

**Funding:** One of the first tasks of the new regional bodies will be to prepare a transport strategy that promotes projects that not only support regional economic growth and social justice, but benefit the country as a whole. Indeed the strategy will need to be approved by Ministers and the national agency before being implemented. Under these circumstances, it could be argued that the running costs of the new organization should be met by equal contributions from, on the one hand, the constituent local authorities and, on the other hand, the Executive. However, in the interest of local democratic accountability, the Joint Committee sees no alternative to all of the running costs of the new organization being funded by requisitions from constituent authorities. The new regional strategies will set out a prioritized programme of strategic regional projects to be undertaken, with each individual project having to meet current national appraisal criteria. It will be unnecessary for the Executive to appraise individual projects and we therefore contend that capital support from the Executive for these partnership projects should be provided by means of a block grant to the partnership, and not by individual project grants. National and local projects will, of course, remain the responsibility of Executive and local authorities and continue to be funded as at present.
Introduction

CBI Scotland supports the objectives of the Bill and many of the measures to achieve them. We think congestion is a major threat to our quality of life and competitiveness and the Bill should be effective to some extent in tackling this.

Our support is qualified, however, because we feel that the parts of the bill which deal with regulation of street works are much too heavy handed and insensitive in their impact and will have serious unintended consequences unless we are very careful.

We need to strike the right balance between the critical need to tackle congestion and the equally critical need to preserve and enhance the competitiveness of the customers of Scotland's utility sectors. Including in the age of broadband, e-business and other telecom services, on which we all agree the future of business in Scotland is vitally dependent. It is not only IT links that are important there are a whole demanding series of targets in water, gas etc, which have to be met, and which are essential for the wider Scottish economy.

We are concerned that the measures in the Bill currently threaten to tip the balance against the utilities for little if any gain in congestion relief and this can not make sense. We are certainly not saying that the utilities are perfect. They and their contractors will need to tighten up their act, and continue to explore innovative ways of working and continue to focus on the promotion of best practice.

The Causes of Congestion

Congestion is caused by a multiplicity of factors including too much traffic, insufficient road capacity, vehicle breakdown, accidents and other incidents, road works, and even bad weather. It is worth noting that in the UK utilities are only responsible for around 5% of congestion on the inter urban network in total. 65% of congestion is due to too much traffic and 25% due to traffic incidents.

It is also important to remember the impact greater use for IT can have on congestion BT have estimated that greater use of broadband could take three years of increased car traffic off the roads. Any changes to the treatment of the utilities should not hinder this activity.
We welcome the creation of Scotland wide Commissioner to co-ordinate road works to ensure consistency of approach, provided that they co-ordinate all works in Scotland in particular local authorities, and that this organisation is independent.

KEY ASPECTS OF THE BILL

Scottish Road Works Register

Is a key-planning tool - we welcome this approach and indeed already comply, having created Suzie phone as an industry initiative - and we would very much welcome its use to cover all works including all local authorities, which is not currently the case.

Reinstatement of Road Works

We have concerns regarding Potential Reinstatement of a whole street following partial workings. Any provisions, which require utilities to resurface a whole street, rather than just reinstate the area where their works have taken place or to contribute to the cost of resurfacing, will increase congestion due to increased duration of works. This will be very complex in terms of identifying who should pay what and give no opportunity for forward financial planning for utilities.

Road Work Offences

We are concerned that the decriminalisation of Road Work Offences could lead to an increase in the number of charges levied on business as this could be seen as a means of raising extra revenue from trivial breeches of legislation. There is currently no detail of how penalties would be handled because of the skeletal nature of the Bill. We do support the full use of the law where severe breeches and negligent work has been carried out.

Timing of Works / Placement of Apparatus

The Bill currently makes provision for local authorities to dictate timing of works and where they might take place. Our concerns are that there is a danger that this could obviously have a negative impact on trying to ensure the installation of customer connections, and also tackling emergencies, and security of supply if severe delays were imposed. If this were allowed to happen this would also run completely against the aspiration of the Scottish Executive to increase the uptake of and usage of broadband technology for example and run contrary to the number one priority of growing the Scottish Economy.

It is of course vital that any legislation should ensure the security of Scotland’s critical national infrastructure including energy, telecommunications and water supplies.
We look forward to giving oral evidence on the afternoon of 14th December and exploring these and other issues with members of the Committee.

WRITTEN EVIDENCE FROM THE NATIONAL JOINT UTILITIES GROUP (NJUG)

Introduction

The National Joint Utilities Group (NJUG) represents utilities from the gas, electricity, water and telecommunications sectors. The National Joint Utilities Group (NJUG) and its member organisations support measures that improve traffic flow and assist us in efficiently co-ordinating our essential works.

There are numerous aspects of the Bill that we welcome, such as the new Road Works Commissioner and the enhanced use of the Scottish Road Works Register (SRWR), which we agree, that if implemented properly, will further assist in improving coordination of road works. However, we have a number of serious reservations with other aspects of this new legislation and its implications for our industries and customers.

Scotland’s roads provide a thoroughfare for vehicles and pedestrians but they also act as conduits for many essential services that are often taken for granted – electricity, gas, water, sewers and telecommunications. We believe the importance of these services is not adequately recognised in the Bill, and are concerned that if this is not addressed, costs for undertaking our essential works will rise, and have to be passed onto the consumer.

We are deeply concerned to learn from a recent parliamentary answer that the Executive has no plans to apply the new rules to local authority road works. It is NJUG’s view that the only way to achieve the benefits from this new legislation that the Executive is seeking, is to apply the rules to all those who carry out road works. To treat them differently, will disrupt the good relationships that have built up between local authorities and utilities over a number of years.

We are very disappointed with the skeletal nature of the Bill. It proposes some significant changes to the way our industries will operate, but lacks detailed explanation as to how the legislation will work in practice. This prevents us from accurately assessing the true implications and costs of the Executive’s proposals.

Our Key Issues

- Inclusion of local authority works

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1 National Grid Transco, THUS plc, BT, Water UK, Telewest Broadband, Energy Networks Association, NTL, Cable and Wireless
2 Written Answer Number S2W-12212 to Bruce Crawford MSP from Nicol Stephen, 26 November 2004.
Given that utilities and local authorities are equally responsible for unavoidable road works, NJUG has always argued that they should both be subject to the same rules.

For Scotland to fully benefit from the enhanced co-ordination that these proposals aim to deliver, works must be treated in an equitable fashion.

NJUG has always sought to work, where possible, in partnership with other undertakers and has already invested significant resources in the industry initiative - Susiephone, a system that registers utility road works. NJUG therefore supports the obligatory use of the SRWR by all those who undertake road works. In addition to improving coordination, this will bring about the additional benefit of providing a true picture of what percentage of road works are caused by utilities and what percentage are caused by local authorities or others.

NJUG also look forward to working with the new Road Works Commissioner on the basis that he is independent, has sufficient resources to perform his duties effectively, does not duplicate the existing duties of local authorities, and applies the new rules equitably to all those who dig up the roads.

*Given, that utilities and local authorities are equally responsible for causing 10% of congestion*, NJUG believes it is vital for all works to be subject to the same rules for this legislation to have any impact on congestion. We would also strongly encourage the Executive to carry out detailed research into the causes of congestion before bringing forward further legislation based on anecdotal evidence.

- Directions as to timings of works and placement of apparatus in road

Much of NJUG members work is concerned with replacing, maintaining or connecting to existing networks already in the ground. Allowing local authorities to dictate where apparatus may be placed in the road will, in all likelihood increase costs and duration of works, by potentially increasing the distance required between new apparatus and utilities’ existing networks, or the distance to connect new customers. Utilities plan their networks in the most efficient manner possible to minimise their own costs / the price the customer has to pay. They already work closely with local authorities in the planning of major works, and accommodate requests to flex timings etc. wherever possible. This proposal will do little to reduce congestion, whilst increasing the cost to customers / consumers.

Additionally, NJUG is concerned that the use of this section by two adjacent road works authorities (e.g. Scottish Executive and Council) could prevent apparatus being laid at all by prohibiting its placement in adjacent roads.

NJUG is also concerned that granting local authorities the power to change

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4 Ibid, (Column Numbers 1414)
the timing of work, and direct the placement of apparatus in the road, could have serious implications for the cost of services, the timely delivery of services, and the quality of the local environment. For example, forcing utilities to undertake road works at night would increase the cost of the work by an average of 37-42%, ultimately to the detriment of the customer, and have serious safety implications for the operatives and equally serious environmental noise implications for local residents.

It is vital that reasonable exemptions are written into the legislation allowing utilities to undertake unforeseen emergency works, works to restore severed services and to provide new customer connections. Gas and water escapes, and electricity faults are dangerous and therefore need to be addressed as quickly as possible. Loss of gas, water, electricity supplies, or telecommunications services can be devastating to the community. Equally, computer systems not working can be commercially catastrophic.

*Not only can delaying emergency and restoration works threaten national safety, delays can also harm the economy, businesses and communities that all rely on utility services.*

- Powers to restrict works

NJUG has serious concerns regarding a power in the Bill that would enable local authorities to restrict all digging in a street for up to three years following substantial road works. There appears to be no accompanying explanation as to why the duration has increased by 300%. Utilities must be allowed to undertake unforeseen emergency works, works to restore severed services and to provide new customer connections. Works to rectify, for example gas and water escapes, will have to be carried out for safety reasons, and the need to provide new customer connections will continue to have to be met. In addition to this, gas and water mains replacement programme agreed by industry regulators is already underway and the electricity networks are also at the beginning of a major asset replacement programme as much of it was built in the 50s and 60s.

Additionally, rather than extending the time when utilities cannot dig up the road, we would like to see greater notice given by local authorities when they are planning to resurface the road and following which the moratorium is to be implemented, in order to allow utilities to bring forward works and thereby necessitate the road not being dug up for some time afterwards.

Furthermore, restricting works for a long period can result in a relatively minor job escalating to cause larger scale problems requiring lengthier occupation of the road.

*It is imperative that exemptions are written into the text of the legislation for emergency, urgent and customer connections. It is simply not commonsense to expect utilities companies and their customers to predict their repairs and required services up to three years in advance.*
• Road Work Offences

NJUG works towards ensuring all member companies carry out works to a high standard and accepts that punitive action should be taken when companies fail to perform to an acceptable standard. However, we ask that the Scottish Executive give serious consideration to measures that encourage good performance, rather than simply punishing poor performance.

NJUG is also concerned that the fixed penalty notice system will be used by authorities to generate revenue rather than to reduce congestion.

NJUG therefore suggests that the power to issue fixed penalty notices should be vested in an independent authority (possibly the Road Works Commissioner) and the rules applied to all those who undertake road works (utilities and local authorities).

NJUG recommends a sliding scale of penalties be introduced based on the disruption or inconvenience caused by certain offences. NJUG would encourage the Executive to provide guidance for both local authorities and utilities indicating the type of offences likely to incur the highest level of fixed penalty notice and would urge that the fixed penalty only cover the administrative costs of issuing the notice to ensure that it is not used by authorities as a means of raising revenue.

To avoid misuse of the system and ensure that bureaucracy is kept under control, NJUG recommends that fixed penalties must be proportionate to the offence committed, and take into account the level of congestion caused, and thereby the seriousness of the offence.

• Resurfacing

Whilst NJUG agrees that utilities should be required to reinstate roads to an acceptable standard following works, full resurfacing of roads, over and above the area where works have taken place, will, in all likelihood, increase congestion and disruption with the duration of the works lengthening. Ongoing investigations in England have failed to prove that utility works damage roads, provided that they are carried out to the correct standard.

The quality of the road surface is dependent on the volume and type of vehicle movements, the original structure of both the road surface and substructure, the level and quality of maintenance undertaken by the local authority over the years, as well as the local authority’s own road works. Additionally utility works will vary in size and depth, and so any formula seeking to identify the contribution towards the costs of resurfacing from all parties, will be extremely complex.

There is also a potentially negative impact upon the reputation of companies who may be required to resurface roads on behalf of the local authority but still appear to the public to be responsible for the disruption of traffic flow for an extended period. NJUG is concerned that those road authorities that have
failed to budget for their own necessary road resurfacing schemes could misuse this power. There is also concern over the legal ownership of the reinstatement and resurfacing works before and after the use of the new powers.

The proposals in this Bill are more extensive than those in the Traffic Management Act since they would lead to a perpetual contingent liability on utilities when they dig anywhere in a street, thus increasing regulatory and balance sheet uncertainty. This would force all utility companies to make financial provision for the possibility of being required to resurface any part of a street (not even necessarily the part where they had dug) for all time. Even assuming the difficulty of calculating what provision would be prudent (which as is now being discovered in England, is fraught with difficulty) this provision has the potential to severely restrict the degree of investment which can be made in Scotland’s national infrastructure in the future.

Indeed, the proposals in this area are vague; and we are concerned that it will be difficult for Parliament to accurately assess their likely impact on length of disruption and impact on road users.

*The requirements as they stand will increases costs enormously for all utilities that may well have to be passed onto the consumer. It is therefore essential to fully consider the implications and costs of any new measures that may be proposed and take them into account when considering the possible benefits of the Bill.*

Conclusion

NJUG is extremely concerned that if the Transport (Scotland) Bill fails to recognise that roads act as essential conduits for many services that are often taken for granted – electricity, gas, water, sewers and telecommunications. It might also have a negative impact on a number of key Executive policy priorities:

- Ensuring the security of the Scotland’s Critical National Infrastructure (energy, telecommunications and water supplies);
- Protecting the environment (e.g. conserving water supplies by reducing leakage from water networks, minimising flooding from sewers, reducing the number of vehicle movements (likely to increase for spoil removal in respect of full street resurfacing);
- Encouraging urban regeneration programmes through the provision of new or enhanced energy, water and communication services; and the
- Promotion of network rollout to deliver broadband across Scotland and combat social exclusion (both urban and rural).

NJUG encourages the Scottish Executive to review the Bill to ensure that it balances the needs of consumers, residents, utility providers and transport authorities. At present, NJUG believes the importance of our essential services is not adequately recognised in the Bill, and are concerned that if this is not addressed, costs for undertaking our essential works will rise, and have
to be passed onto the consumer. For the Bill to be comprehensively effective all works carried out in the road must be equally accountable.

WRITTEN EVIDENCE FROM THE UK COMPETITIVE TELECOMMUNICATIONS ASSOCIATION (UKCTA)

UKCTA is the trade association representing fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the views of its members to Ofcom, the communications regulator, the Government and the Scottish Executive.

UKCTA’s primary objective is to ensure the UK communications market becomes genuinely competitive, an environment that maximises investment and innovation by all competitors and one that is free from discrimination in favour of monopoly incumbents. Through effective representation on issues that promote competition, UKCTA aims to ensure that consumers will continue to enjoy the full benefits of competition in voice and data services.

OVERALL VIEW

UKCTA members recognise that traffic congestion is a key issue for the Executive, the public and Scottish industry but is concerned that the Executive in seeking to tackle congestion, may:

1. Unduly penalise Scotland’s utility companies
2. Increase utility bills
3. Inhibit the roll out of next generation broadband networks.

UKCTA has campaigned against proposals that were ultimately enacted in the Traffic Management Act in England and Wales, measures that will do little to solve the problem of congestion and instead increase the cost of providing consumers with access to modern utility services. It is therefore disappointing to see that some, though not all, of the most damaging measures from the Act in England and Wales, have appeared in the Transport (Scotland) Bill.

We are concerned that the Executive has failed to take account of the essential nature of modern utility services and, in particular, the benefits which competition has delivered in the communications market.

This paper attempts to broadly outline the concerns of UKCTA arising from the Bill introduced at Stage 1 on 26th October 2004. These concerns are necessarily high level since the Bill itself is skeletal in nature, setting out in broad terms, some wide ranging powers for local authorities. Until detailed regulation or regulatory impact assessments are available, it is difficult to provide in depth analysis of the impact on industry of the legislation.
DETAILED CONCERNS

Co-Ordination of Works

While proposals to require greater degrees of co-operation are initially attractive and appear to be plain common sense, in practice there are limits on what can be achieved, particularly in the telecoms sector. UKCTA members often share and co-ordinate network construction, co-operation driven not by regulation but by sound economic sense and market forces. Where possible, it is in the commercial best interests of companies to share trenches, since this allows costs to be shared. Indeed, a number of UKCTA member companies have won awards from local authorities across the UK for coordinating works, including trench sharing.

Under current market conditions, there is limited investment in backhaul networks; indeed, arguably there exists over capacity in the backhaul market. Most telecommunication companies generally have a national network in place and therefore now conduct street work activities for only two reasons

1) To connect customers in response to their demand for advanced services, or
2) to repair equipment already delivering service to customers.

Network is not installed on a speculative basis so the opportunities to schedule work at times to coincide with other utilities or local authorities are inevitably limited. Coordination is, of course possible in some cases, however it must be recognised that there are limits on what can be achieved that are not always immediately apparent to the layman.

It is often impractical for a telecommunications operator to share ducts and trenches with water or gas companies. This is due to the differences in infrastructure to be installed: a telecoms fibre occupies a very narrow trench, typically dug and filled in within a day. Were a telecoms company required to share with another utility providing natural resources, which typically requires a larger and deeper trench, then there exists potential to cause severe delays and additional cost in providing a customer with a broadband service. Moreover, such trench sharing is likely to make congestion worse as street work activities would take longer to complete.

For communications providers, the sharing of ducts raises further issues of network security, integrity and quality of service, factors that potentially compromise levels of service increasingly being demanded by customers such as banks and government departments.

UKCTA does not maintain that co-ordination is impossible, quite the contrary, as demonstrated by the number of co-operative projects that took place when the UK’s backbone networks were being rolled out. Rather we caution against many of the naïve assumptions about what can be achieved.
Finally, it should be pointed out that in the current uncertain economic climate, telecoms companies are already under huge commercial pressure to complete works as quickly as possible. This is a far greater driver to reduce the size and duration of works than any amount of red tape and legislation. We therefore question whether there is in fact a need for additional regulation in the telecoms industry.

Level Playing Field between Public and Private Sectors
Scotland has a head start over England & Wales, due to the existence of a national system (www.susiephone.co.uk) to record utility works. We welcome the Executive’s decision to extend this to include all public sector works thereby allowing more effective co-ordination of public as well as private sector works. Requiring all public sector works to be recorded will not only aid the public and private sectors when co-ordinating works but will provide a complete picture of road works across Scotland. UKCTA suggests that the Executive in fact go further in levelling the playing field by extending the various provisions that penalise private sector companies that infringe the Act to those in the public sector. Only by imposing the same penalties to both the private and public sectors when the Act is breached, can any degree of accountability be delivered.

Powers to Direct timing and Location of Works
UKCTA is concerned that proposals to give local authorities power to direct utilities as to where and when they may install their infrastructure may have the effect of distorting competition in the telecoms market. The Executive has in the past complained about the comparative lack of competition in Scotland when compared with England, but these powers have the potential to damage what competition has taken hold in Scotland. Telecoms companies need to dig to their customers’ premises in order to connect them to the network if companies are barred from digging in a particular street outright or are delayed in so doing, customers are likely to cancel their orders and move to the company with ubiquitous network coverage, BT, thereby undermining the effectiveness of the market and reinforcing the market dominance of the former monopoly provider.

Powers to ban works
The Bill contains a measure enabling local authorities to ban all digging in a street for up to three years following major resurfacing. While there are exemptions that would allow emergencies to be dealt with, the Bill ignores the need to meet customers’ demands for service. The reality is that Scottish business customers do not forecast their orders three years in advance. UKCTA suggests therefore that there be an additional exemption in cases where digging is required to meet customer orders or where works are minor and have little impact on traffic. An amendment suggesting exemptions where work lasted one day or less and did not involve temporary traffic lights and did not obstruct the flow of traffic was advanced at Westminster in the face of a similar proposal and a similar amendment could be used in Scotland.
Power to require resurfacing of entire streets
The Bill also introduces outline provisions which would allow councils to require utilities to completely resurface a road in which they have installed infrastructure. Similar provisions were introduced in England and Wales and are causing widespread concern. It is difficult to calculate the impact of such a move but best estimates have suggested that a full width reinstatement of a road would increase the cost of a telecoms installation by some 385% - costs which would be passed on to the customer. Given that the order to reinstate would only be made after the service had been sold and installed, telecoms companies will be unable to provide customers with certainty in advance as to what services will cost. This is highly undesirable for supplier and for customer alike.

The proposals in this Bill are more extensive than those in the Traffic Management Act since they would lead to a perpetual contingent liability on utilities when they dig anywhere in a street. This would force all utility companies to make financial provision for the possibility of being required to resurface any part of a street (not even necessarily the part where they had dug) for all time. Even assuming the difficulty of calculating what provision would be prudent (which as is now being discovered in England, is fraught with difficulty) this provision has the potential to severely restrict the degree of investment which can be made in Scotland’s national infrastructure in the future.

Telecoms as part of the solution
It is widely recognised that communication services play a vital role as part of the solution to our congestion problems. These services make it possible for increasing numbers of people to work remotely and to make informed choices about when to travel. This contributes to more flexible traffic patterns that make better use of the road network. A recent report by BT plc concluded that more widespread use of broadband to enable flexible working could eliminate 14.5 billion miles of journeys per year throughout the UK – equal to some three years’ of growth in car usage. UKCTA believes that the Executive has failed to take account of the role that communications companies have as part of the solution, and the relatively minimal impact their works have on congestion.

UKCTA believes the Executive should provide evidence of the extent to which telecommunications companies impact on congestion, and how they intend to measure any decrease as a result of new regulations which may be introduced under the Bill. The Executive should also explain to what extent they have taken account of the potential for the Bill to produce anti-competitive effects in the market.

It is essential that the Executive produce Regulatory Impact Assessments, which consider the contribution of telecommunication companies to reducing congestion and explain in detail how the impact of these changes will be measured.
CONCLUDING COMMENTS

It is widely recognised that communication services are a vital part of the solution to our congestion problems. **Telecoms services make it possible for increasing numbers of people to work remotely and to make informed choices about when to travel, contributing to more flexible traffic patterns that make better use of the road network.** A recent report by BT plc concluded that more widespread use of broadband to enable flexible working could eliminate 14.5 billion miles of journeys per year throughout the UK – equal to some three years’ of growth in car usage. UKCTA believes that the Executive has failed to take account of the role that communications companies play in the solution to congestion, as well as the relatively minimal impact their works have on congestion.

In accordance with good government and law making, UKCTA suggests that the precise impact telecommunications street work activities have on congestion ought to be measured and demonstrated. In addition, the Executive needs to demonstrate how it intends to measure any decrease in congestion as a result of new regulations which may be introduced under the Bill. The Executive should also explain to what extent they have taken account of the potential for the Bill to produce anti-competitive effects in the market. This evidence needs to be brought forward in a Regulatory Impact Assessment.

Road works, whether carried out by utilities or road authorities, are only ever carried out when unavoidable, to deliver essential services. They are both expensive to the companies that undertake them and contribute to problems for other road users. In order to resolve these conflicts, a balanced approach is needed.

UKCTA members are encouraged by some of the proposals in the Bill. It appears that the Executive has taken on board the need to adopt a holistic approach, however, there are some measures in the Bill which are potentially very damaging to the telecoms industry and therefore for the long term competitive position of Scotland.

WRITTEN EVIDENCE FROM CIVIL ENGINEERING CONTRACTORS ASSOCIATION (CECA) SCOTLAND

CIVIL ENGINEERING IN SCOTLAND

CECA (Scotland) represents over 80% of Scotland’s civil engineering contractors in an industry that sustains an annual outturn of £1.4bn and a permanent workforce of over 20,000 with many more in its supply chain. Our membership includes the majority of the contractors carrying out infrastructure work on behalf of the utility companies. CECA therefore feels qualified to comment on behalf of the industry. A membership list is below.
The Committee should note that utilities provision and maintenance is a highly competitive market with profit margins normally ranging between 2 – 4%.

**ARE UTILITY ROADWORKS A MAJOR CAUSE OF CONGESTION?**

In principle, CECA supports the aims of reducing congestion and increasing the quality of reinstatement on Scotland’s roads.

However, we have genuine concerns that these problems cannot be solved until there is a broader focus on where the real issues lie. In CECA’s view the title of the consultation document, *The Regulation of Utility Company Roadworks - A Consultation*, illustrated the limited scope of the consultation process. If the Bill is trying to address the problem of congestion caused by road works then all sources of congestion should be considered, including work carried out by Local Authorities and the Scottish Executive. The view that the proposed legislation should be applied to both Local Authorities and utility works is supported by data from a report in 1999 by the Transport Research Laboratory which was used in the Highways Agency Business Plan 2002 – 2003, and advised that congestion is caused by 65% traffic volume, 25% incidents/accidents and 10% road works, of which 5% relates to utility works and 5% from Local Authority works. Therefore, it is of note that legislation aimed solely at utility works is in essence only addressing 5% of the congestion problem.

**WHY ARE THERE UTILITY ROADWORKS?**

The Committee will recognise that the principal cause of increased roadworks in Scotland is the huge increase in investment in Scotland’s infrastructure by the Scottish Executive, its agencies, its utilities and Scotland’s Local Authorities. Basically, there have to be roadworks in order to carry out long overdue investment in Scotland’s transport, water, sewerage, gas, electricity and telecommunications infrastructure. Roadworks are not an inconvenience per se, they are a means of improving our infrastructure and thereby our quality of life.

**THE ROLE OF THE LOCAL AUTHORITY**

In the consultation document, The Scottish Roadworks Register was used to produce statistics relating to the number of road works carried out in certain periods. CECA would suggest that this data only provides part of the story because the Scottish Roadworks Register does not record Local Authority works and therefore any comparisons between utility and Local Authority works are not possible. In the proposed legislation, the Local Authorities do not seem to be obliged to use the Scottish Roadworks Register to record their own works. However, the Local Authorities will be responsible for maintaining the accuracy of the records. CECA believes that consideration should be given to the balance that may or may not prevail given the role of Local Authority officers within the legislation and any potential for a conflict of
interest. CECA believes that in order to achieve an “accessible Scotland…” the Bill should be applicable to all organisations that are engaged in road works but we are concerned that where Local Authorities enforce the various aspects of this Bill, there is the potential for the Local Authority officers to interpret the Bill differently for works carried out by utility contractors when compared to their own appointed contractors and their own Direct Labour Organisation.

On page 5 of consultation document reference was made to statistics from the 3rd national coring exercise. This involved a random sample of utilities road works reinstatements, completed between September 2001 and March 2002, and with reinstatement defects resulting in inspection fees being levied by the Local Authorities. No reference was made in the consultation document or in the Bill to Local Authority works being subject to similar quality standards. It is CECA’s understanding that Local Authority works are not cored and it is therefore unclear what quality checks are carried out. We can understand that through the use of fixed penalties, as stated in Schedules 3, 4, 5, 6 & 7 of the proposed legislation, there is a mechanism for the Local Authorities to penalise roadworks that do not comply with the process but we would question what incentive shall exist for the Local Authorities to comply with the process themselves?

CECA welcomed the Local Government & Transport Committee’s deliberations on this key issue on 16th November 2004 when it focused on whether Local Authorities road works and reinstatements would be subject to the same level of independent scrutiny and enforcement measures as other roadworks. If so, it follows that clear guidelines would be required.

The Bill proposes to introduce, through sections 27 to 30, the facility to for a Local Authority to instruct an undertaker to reinstate an area to either half or the full width of the carriageway, if the road has deteriorated as a result of utility works and reinstatements. CECA has serious concerns about the potential for wide ranging interpretation of this type of facility unless, again, clear guidelines and very prescriptive instructions are introduced to ensure consistency.

QUALITY ASSURANCE AND SKILLS QUALIFICATIONS

All reputable utility contractors have their own externally audited Quality Assurance systems, which include rigorous drivers for client satisfaction and delivery improvement. The Committee will appreciate that there is absolutely no benefit to contractors in being forced into over-runs or additional remedial works. Quite the reverse, remedial works cost contractors money, jeopardise their prospects of further work from the client and make no commercial sense.

As part of their quality assurance contractors engaged in utility works train and certify their supervisory and operational personnel to a level that affords recognition with the Street Works Qualification Register. This training and the renewal of registration are carried out at a cost to the contractor. CECA therefore welcomes the proposed legislation whereby the Local Authority can
issue a notice requiring evidence of such qualifications which will help to ensure that only qualified personnel will work on Scotland’s roads, provided this is applied in a uniform fashion across all personnel engaged in road works.

CECA AS A STAKEHOLDER

Finally, CECA Members feel that they are major stakeholders in this subject and would welcome the opportunity to discuss it further with other stakeholders. The proposals in the Bill could have a dramatic effect on contractors’ businesses and we hope that the industry will be given the opportunity to engage at the highest level to ensure a balanced, workable outcome.

CECA (SCOTLAND) - MEMBERSHIP 2004

Aggregate Industries Ltd.
Amalgamated Construction Ltd.
AMEC Group
Balfour Beatty Civil Engineering Limited
Balfour Beatty Utilities Ltd.
Biwater Treatment Limited
Black Isle Civil Engineering
Henry Boot Scotland Ltd.
Charles Brand Limited
I.& H. Brown Limited
Byzak Ltd.
Carillion Rail
Chap Construction (Aberdeen) Ltd.
Cheetham Hill Construction Ltd.
Clachan Construction Ltd.
Clancy Docwra Ltd.
A.J. Clark Construction Ltd.
CPS Ltd. (through CECA N East)
Crummock (Scotland) Ltd.
Donarm (Construction) Limited
Ennstone Thistle Ltd.
The ERDC Group Ltd.
Farrans (Construction) Limited
Galliford Scotland Ltd.
M.J. Gleeson Group PLC
Glendinning Groundworks Ltd.
John Gunn & Sons Ltd.
Hanson Construction Projects
W.J. Harte Construction
Hunter Construction (Aberdeen) Ltd.
Interserve Project Services Ltd.
J. & J.E. (Contractors) Limited
Kamscot Construction Ltd.
Kelburne Construction Ltd.
D.A. Kennedy (Construction) Ltd.
King Contractors (Perth) Ltd.
Land Engineering Ltd.
Leiths (Scotland) Ltd.
George Leslie Ltd.
Luddon Construction Ltd.
Harry Lynch & Co. Ltd.
D. & E. MacKay (Contractors) Ltd.
Mackenzie Construction Limited
Maclean-Ardgay Ltd.
Alfred McAlpine Infrastructure Services Ltd.
Alfred McAlpine Capital Projects
Sir Robert McAlpine Ltd.
McGarvey Construction Ltd.
McKean & Company (Glasgow) Ltd.
R.J. McLeod (Contractors) Ltd.
The Malcolm Group – Construction Services
Markon Limited
Marshall Construction Ltd.
May Gurney Ltd. (through CECA Southern)
Meiklem Drainage Contractors Ltd.
Morgan Est
Morrison Construction Services Ltd.
Mowlem PLC
Mowlem Energy Ltd.
Mowlem Johnston Ltd.
MTM Construction Limited
Pat Munro (Alness) Ltd.
J. Murphy & Sons Ltd.
New Country Road Surf. Ltd. (through CECA N East)
NorPower & Telecoms Ltd.
Northern Construction Services Ltd.
Norwest Holst
Edmund Nuttall Ltd.
Pirie Contracts
PLPC Ltd.
Raynesway Construction Services Ltd.
Ritchie Brothers (Scotland) Limited
Ritchies
RMC Surfacing Limited
Rocklift Limited
Rodger (Builders) Limited
C Spencer Ltd.
Storie (Argyll) Limited
James Strang Ltd.
Tarmac Ltd.
Les Taylor Contractors
Torith Ltd.
Tulloch Civil Engineering Ltd.
These comments on the Transport (Scotland) Bill are made on behalf of SIAPRA, a trade organisation representing Park and Ride Operators throughout Scotland. The comments are also made on behalf of IAPRA (the UK organisation), by GAPA (Glasgow Airport Parking Association) and by the members thereof, which include Airlink Group (together in this submission referred to as "SIAPRA").

SIAPRA note the statements made by the Executive to promote greater use of public transport, lessen road congestion and improve the environment for commuters and travellers in Scotland and welcomes these initiatives.

SIAPRA members operate facilities offering tens of thousands of parking spaces, primarily outwith congested areas of Scottish towns and cities. Usually these facilities are located close to public transport hubs such as railway stations, airports and harbours. Passengers are then conveyed on public transport either by direct transfer or by bus transfer to the transport hub.

Over the last 25 years the development of the transport sector in Scotland has been characterised by the privatisation of once public transport facilities and the placing of these in private or quasi private hands (e.g. Network Rail for railway stations; BAA plc for Airports and Caledonian Macbrayne for many harbours). A perhaps overlooked consequence of this privatisation has been to place in private hands the control of these essential facilities but with the hitherto powers of a quasi public nature remaining extant and being exercised, actually or potentially, by organisations whose interests are less concerned with the public good as with the maximisation of profit for shareholders. The Scottish Executive has recently recognised the essential role of democratic public control in its recently announced plans to take more direct control of the railway network in Scotland.

SIAPRA notes that the effect of their operations is to reduce vehicular transport on roads, particularly to and from essential transport facilities by replacing a myriad of private cars with a small number of buses, so lessening congestion. Additionally a substantial number of leisure travellers drive some distance from across Scotland to fly out of the major Scottish hub airports. SIAPRA, and its members, are concerned that there should therefore be consumer choice/price competition and no restrictions on access for park & ride operators as that would restrict the rights/freedom of movement of millions of Scots who have no other way of getting to an airport other than by car, given their home location and hours of travel.

In its submission to the Executive5, TRANSform Scotland emphasised the need to expand park and ride facilities for rail, bus and air travel.

Recent transport studies indicate that a significant proportion of private cars are occupied by a single person; the services of SIAPRA members minimise this situation. According to a Scottish Executive 2004 study reported on

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5 [http://www.transformscotland.org.uk/info/docs/info001.html](http://www.transformscotland.org.uk/info/docs/info001.html)
http://www.chooseanotherway.com, "86% of all journeys by car to work have just the driver in the car."

SIAPRA and its members are concerned that the actions, and threatened actions, of the private owners of airports, railway stations and harbours could frustrate the acknowledged benefits of vehicle sharing. This matter is, SIAPRA is aware, the subject of a Petition presently being considered by the Petitions Committee of the Parliament. Separately, a number of West of Scotland SIAPRA members have approached SPTE with a view to their making their Park and Ride sites available to SPTE for use in encouraging rail transport in the west of Scotland. Earlier this year, Transport Minister Nicol Stephen stated, "We have already made significant investment in park and ride schemes", so demonstrating the continued commitment of the Executive to this important alternative to private car travel.

Park and Ride initiatives have been created and supported by the Executive throughout Scotland as is shown on the chooseanotherway.com website. A search on the Scottish Executive website discloses over 450 documents relating to park and ride facilities, demonstrating the important role played in an integrated transport policy by this option.

The Scottish Executive’s Proposals for the Integrated Transport Bill (February 2000) recognised (on pages 7 and 17) the importance of park and ride facilities. A 2002 Report from the UK Commission for Integrated Transport recommended the roll out of more park and ride schemes. According to the statistics given, "Based on this analysis to size the potential prize, full roll-out in all towns in England could generate around 1.6% extra bus passengers from modal shift and 2.8% extra bus passengers in total.

As MSPs may be aware, regulation within Scotland's main airports by means of bye-laws, is a delegated matter in terms of the Scotland Act. However, the enabling powers in the Airports Act 1986 are a carry forward from earlier legislation at a time at which all airports were owned by the state. This is particularly the case in relation to Edinburgh, Aberdeen, Glasgow and Prestwick airports, all of which are now in private hands.

MSPs will know that all transport hubs, be they stations, airports or harbours have both a public side – across which the public routinely pass for access and egress – and a private side, access to which is restricted for reasons of security or safety. SIAPRA does not wish to see any change made in relation to the access to this private side.

However, SIAPRA has become aware through the comments of its members and also of members of the public, of attempts by the operators of these essential facilities to prevent access on the public side of many essential transport facilities, other than on payment of an amount to the facility operator by way of tithe. As far as SIAPRA has been able to ascertain, the justification for these payments has not been that some service or facility is being afforded to those who pay the charge over and above other users who do not. Hence a man driving his spouse to / from an airport by car would be able to do so

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6 (http://www.scotland.gov.uk/library2/doc11/itb.pdf)
7 (http://www.cfit.gov.uk/research/psbi/lek/conclusions/08.htm)
freely (and free of charge) whereas a shuttle bus carrying 20 passengers would require permission (and likely pay a charge) to do exactly the same.

In many cases the operator will operate parking (within the environs of its essential transport facility) and may have an incentive to prevent third party members of the public operating competing facilities. A recent study by SIAPRA has indicated that similar facilities operated by or under concession from the essential transport facility are significantly more expensive than those operated by others.

In recent years, there have been attempts to introduce new bye-laws at at least one Scottish airport to facilitate access charging for competing operators, none of whom carry on business within the facility, confining their activities to the dropping and uplift of passengers (often in relation to families heading off on holiday), all of whom have pre-booked their transport to / from the airport.

In the case of Prestwick airport, the operator has been engaged in litigation against a SIAPRA member who has been endeavouring to provide families with such services by depositing them at the terminal building and collecting them again on their return. The operator has suggested that only its shuttle buses can do this and that third parties should deposit and collect passengers on the busy A77 road outside the airport. The operator has argued that as it owns the airport forecourt, it is able to prevent anyone it wishes from using the road; to date this power only appears to be directed against operators of competing facilities and, indeed, private cars wishing to access the airport car park have to travel across the very roads, access to which is to be denied to SIAPRA members.

SIAPRA and its members consider that roads access in relation to essential transport facilities should be a matter solely within the purview of democratically accountable authorities and not for private organisations whose interests may be very different.

SIAPRA have been advised by a passenger returning recently from Heathrow that he had noticed a "BAA box " on the taxi window; when he asked the driver about this he was advised that it was a little transponder that is triggered every time he passed a point at Heathrow and he was billed by BAA £3.16 per trip. SIAPRA are concerned that it is BAA's intention to impose a similar "stealth tax" on Scottish consumers and considers that this is something which the Scottish Parliament should seek to prevent.

SIAPRA considers that it is important that members of the public do not suffer any discrimination because they choose, collectively, to use an environmentally more friendly method of reaching an essential transport facility rather than continue and exacerbate the proliferation of single occupancy vehicles on our roads. A 1999 report by the Planning, Transportation and Environmental Committee of Bath & North East Somerset Council\(^8\) stated, "Park and ride allows people to switch from car to bus at the edge of the city and thereby reducing the environmental impact of traffic within the built up area." A 2000 Oxford transport study\(^9\) has shown a significant

\(^8\) [http://www.bathnes.gov.uk/committee_papers/PTandE/pt990715/15parkan.htm](http://www.bathnes.gov.uk/committee_papers/PTandE/pt990715/15parkan.htm)

increase in numbers of people going into the city centre but a decrease in car park usage attributable to out of town park and ride.

Finally, a study by WS Atkins\textsuperscript{10} noted that the sampled users of park and ride sites drove 4.2 km less than if they had driven to the respective town or city centres.

For these reasons, SIAPRA would urge the members of the Transport Committee to take this opportunity, as part of their scrutiny and approval of the Transport (Scotland) Bill to re-emphasise their support for an integrated publicly accountable transport infrastructure in Scotland; to make it clear that road charging, by whatever means, is a matter which should properly only be imposed by democratically accountable public authorities as part of an integrated transport plan; and that public access to essential transport facilities in Scotland should be and remain public.

For these reasons, SIAPRA would urge MSPs to make the appropriate amendments to the Transport (Scotland) Bill – possibly in a new subsection to clause 43 – to achieve the following:

\begin{itemize}
\item[a)] To provide that any byelaws made under section 63 of the Airports Act 1986 may not allow directly or indirectly for the imposition of any fee or charge on any person or vehicle in respect of their access to or from an airport, without prejudice to the right to impose a charge in respect of anyone touting for business or plying for hire at an airport;
\item[b)] To provide that all carriageways within the environs of a railway station, airport or port to which the public are granted or afforded or permitted access shall, for the purposes of the roads legislation, be deemed to be public rights of way.
\item[c)] To provide that no road user charging scheme may be imposed in relation to any transport facility other by reason of the fact that that facility is located within a larger area which is itself subject to a road user charging scheme.
\item[d)] To take further steps to encourage Park and Ride and out of town parking facilities as part of an integrated transport strategy.
\end{itemize}

\textbf{18 January 2005 (1\textsuperscript{st} Meeting, 2005 (Session 2)), Written evidence}

\textbf{WRITTEN EVIDENCE FROM BRITISH AIRPORTS AUTHORITY (BAA) PLC}

Having reviewed the official report of evidence given to the committee on 14th December 2004, BAA offers the following short response, on which our oral evidence to the committee will be based. This will be led by BAA Scotland’s director of communications, Alastair Smith, supported by Eddie Biber, group property solicitor, BAA plc.

\footnote{\textsuperscript{10} (WSAtkins (1998) \textit{The Travel Effects of Park and Ride}. WSAtkins Planning Consultants, Epsom for Department of Environment Transport and the Regions (Authors: C Harris, B Cooper & S Whitfield)}
It seems that the general thrust of the evidence on behalf of SIAPRA, the off-airport car park owners, centres around their belief, unsubstantiated as far as we can see, that there may be a charge levied in the future for access to Glasgow Airport.

BAA Scotland has no plans to introduce such a charge at any of its airports but will continue to charge for the high-quality facilities which are developed and built for the benefit of passengers and those who provide passenger services. We are heartened to note from Sir Michael Hirst’s evidence that his clients, the off-airport car park owners, do not object to this fairly routine arrangement between two commercial enterprises.

It must be stressed that Glasgow Airport has provided the off-airport car park owners with facilities which cost more than £100,000 to construct and which provide them with a valuable presence on the airport forecourt, directly adjacent to the terminal building. At Edinburgh Airport, our investment in the coach park, directly outside domestic arrivals, cost more than £250,000 to deliver.

That the car-park owners and other service providers are expected to contribute to these costs is inevitable. However, what should be made clear is that BAA, in many cases, does not recoup the entire cost and is therefore indirectly subsidising these operations.

That investment is over and above the considerable general infrastructure investments made by BAA on a daily basis at each of its Scottish airports. BAA’s current investment in Scotland stands at the equivalent of nearly £1 million a week, at no cost to the tax or rate-payer.

In terms of airport byelaws, these are in place simply to ensure that airport forecourts can be managed safely and securely, free of congestion. The importance of airport byelaws cannot be understated in terms of an airport operator’s responsibility to manage the airport forecourt and road system in the best interests of the travelling public.

To allow a “free-for-all”, which a lack of enforceable bylaws would promote, would not only be hugely detrimental to the service we seek to provide passengers but would also hinder the future development and growth of Scotland’s main airports through the constraints in capacity which would result from such congestion.

According to the Fraser of Allander Institute, BAA Scotland’s airports at Aberdeen, Edinburgh and Glasgow Airports contribute some £1.5 billion to the Scottish economy ever year.
Proposed by Scottish Independent Airport Park and Ride Association and others

1. Prestwick Airport, together with the surrounding land, is owned by PIK Facilities Limited. Their property includes the ground and the private roads between the terminal building and the public road, the A79, over which the public are allowed to take access. The airport is operated by Glasgow Prestwick International Airport Limited.

2. Prestwick opposes the second proposal by the Park and Ride Associations, that Part 3 of the Bill be amended to include provisions creating public rights of way, where they do not already exist, over all roads and accesses within any railway station, airport or port, which the public have previously been allowed to use for access. As a general principle, the Bill should make no such provision.

3. The Committee has indicated that, in this matter, enterprise issues are its main concern. In their submissions, the Park and Ride Associations asserted that their proposal “is unashamedly, about fair competition.” At no stage, however, did they draw the Committee’s attention to the existence of applicable competition law.

4. Their proposed measure would be, not only unnecessary, but also inappropriate, given that there already exists a well developed system of domestic competition law, which deals with the very issue of competitors’ access to essential facilities, including transport infrastructure. Where such issues are raised before competition authorities or the courts, competition law requires an economic analysis of the circumstances of the particular facility in question and the markets and competitors affected by its use. Where a case is established, competition law imposes duties on the facility owner that override its property rights. It provides effective remedies that enable the competitor to have access, sometimes on provision of some payment or other consideration to the owner at an objectively justified level. The blanket creation of public rights of way, providing free access, would, in the case of every transport facility in Scotland, both now and in the future, have the effect of foreclosing all the competition issues, without individual enquiry and analysis. In every case, those issues would, effectively, have been decided in favour of the competitor of the facility owner, by awarding it a perpetual right to make gratuitous use of the owner’s asset for the purpose of conducting its own business with a view to its own profits. In many instances, including Prestwick, the overall effect, across a number of markets involving the transport facility, would be anti-competitive. Accordingly, in cutting across competition law, any such measure would be unnecessary, unattuned to

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11 Proposal (b) on p.4 of their written submission to the Committee EC/S2/04/29/.
12 David Flint’s oral evidence to the Committee on 14.12.04, at Col.1465.
particular economic conditions and likely to distort competition in many cases.

5. In addition, any such measure would also be liable to be incompatible with the facility owners’ convention rights under Article 1 of the First Protocol to European Convention on Human Rights\textsuperscript{13}, given that competition law already exists to control the use of their property rights in the general interest in so far as arising out of enterprise concerns.

6. The most pertinent aspect of competition law, in this context, is the essential facilities doctrine. Section 18 of the Competition Act 1998 prohibits any undertaking, holding a dominant position in a market in any part of the UK, no matter how localised, from abusing that position in a manner that affects trade within the UK.\textsuperscript{14} It mirrors the prohibition against abuse of a dominant position affecting inter-state trade, now in article 82 (formerly article 86) of the EC Treaty. The prohibition has always been one of the main pillars of European competition law. Section 18 is to be applied in the UK in accordance with the principles laid down by the Treaty and the European courts.\textsuperscript{15} The essential facilities doctrine is an application of the prohibition. It has its origins in US antitrust law\textsuperscript{16} and has, over the last decade or so, undergone authoritative exposition by the European Court of Justice.\textsuperscript{17} It has also received domestic recognition in England.\textsuperscript{18}

7. According to the doctrine, an undertaking, that has a dominant position in the provision of a facility, which is essential for the supply of products or services on another market, on which that undertaking is also present, abuses that position where, without objective justification, it refuses access to the facility and thereby eliminates competition on that market. The facility can be the provision of a service, such as access to a place or a distribution system.

8. The doctrine has been applied to transport facilities in a number of cases. For example, in the Frankfurt Airport\textsuperscript{19} case it was decided that the airport owner had abused the dominant position it held on the market for airport facilities for landing and taking off at Frankfurt, by refusing competitors, on the related market for ground handling services, access to the apron of the airport in order to provide such services. It was recognised that the obligation on the airport owner, under competition law, to open up the

\textsuperscript{13} Sections 29 and 126(1) of the Scotland Act 1998, Section 1 of the Human Rights Act 1998.
\textsuperscript{14} Chapter II of Part I of the Competition Act 1998.
\textsuperscript{15} Section 60 of the Competition Act.
\textsuperscript{16} Section 2 of the Sherman Act 1890, US v St Louis Terminal Railroad Association 224 US 383 (1912).
\textsuperscript{17} Oscar Bronner GmbH & Co KG v Mediaprint Zeitungs & Zeitschriftenverlag GmbH & Co KG & others, Case C-7/97, 1998 ECR-I 7791, IMS Health GmbH & Co. OHG v NDC Health GmbH & Co. KG., Case C-418/01, 2004 4CMLR 1543.
\textsuperscript{18} See, for an example, Getmapping plc v Ordinance Survey, 2002 EWHC 1089 (Ch), 2003 ICR 1.
\textsuperscript{19} KLM Royal Dutch Airlines NV v Flughafen Frankfurt/Main AG, Case IV/34.801,1998 4CMLR 779.
ground handling market, restricted its right to determine the use to which its property was put.

9. In the leading case, Oscar Bronner\textsuperscript{20}, it was recognised that excessive application of the doctrine could have harmful economic effects. Not only because there is an element of expropriation involved in requiring an undertaking to grant access to its property to a competitor, but also because the prospect, that a third party might be able to demand a “free ride” on the fruits of its investment, may deter the undertaking from making the investment in the first place. Thus, as a generality, it was accepted that, while allowing access to such facilities may seem pro-competitive in the short term, it may turn out to be otherwise. That it is, usually, pro-competitive in the long term to allow an undertaking to retain for its own use the facilities it has developed for its business. Accordingly, even within the system of competition law, it is recognised that any incursion on an undertaking’s right, freely to use its own property, requires careful justification. That is especially so, where it operates in the private sector, without the benefit of public funding or monopoly rights conferred by the state.

10. Competitors may invoke competition law either by initiating a complaint to the competition authorities, most likely the Office of Fair Trading, or by relying on it in litigation directly with a facility owner. It may be relied upon as the basis for pursuing a case or as a defence.

11. In PIK Facilities Ltd v Watson’s Ayr-Park Ltd, the current Court of Session case between Prestwick and the Park and Ride Associations’ member, Section 18 and the essential facilities doctrine are founded upon as a defence to the interdict sought against member’s shuttle bus using the airport’s private roads. Prestwick does not assert that the doctrine has no application but that its requirements are not met. Part of its case is that use of the private roads is not essential, but merely advantageous, in the conduct of the member’s business. Its customers could be dropped off at the bus stop at the airport railway station, on the far side of the A79, from which there is easy pedestrian access via the station and overhead footbridge. Such access from the station, located 200 metres from the terminal is obviously suitable for the 38% of the Airport’s passengers who travel by rail. Alternatively, access could be taken from the bus stop on the near side, from which there is access via the footpaths over the airport ground.\textsuperscript{21} A judgement at first instance is still pending.

12. Prestwick is a unique Scottish success story. Having been run-down and discarded by BAA in 1992, the Airport will, in 2005, handle 2.6 million passengers, 650,000 of whom will be inbound, high-spending tourists, contributing some £140 million to the Scottish economy and providing jobs for 3,800 Scots\textsuperscript{22}. These journeys are generated by the provision of

\textsuperscript{20} See footnote 6, above, Advocate General Jacobs at §§56-60.

\textsuperscript{21} Contrast Mr Flint’s evidence on 14.12.04, at Col.1460.

\textsuperscript{22} Scottish Enterprise Study. Ryanair Economic Impact 2003 (Updated).
low-cost air services. To be successful, Prestwick has had to charge very competitively in the markets for its aircraft handling services. As a result, it is heavily dependent upon the associated non-aeronautical revenues e.g. retail, food and beverage, car parking, duty free etc. 40% of these revenues come from the provision of car parking at the Airport. Without that share of income, it could not attract the air services and passengers that it does or, indeed, be sustainable as a business.

13. Prestwick is an integrated transport facility and Scotland’s only airport currently served by rail. It has the only privately run railway station in the country, which was built with private investment and receives no public funding or subsidy for its operation. Rail access, obviously, has benefits for the Airport as a whole. It is also a vital part of an environmentally responsible surface access strategy for the Airport. The provision, however, of such a public service facility comes at a heavy direct cost to the Airport owners. Not only are the operation, maintenance and insurance of the station a considerable drain on resources but also it substantially reduces revenue from their car parks that would otherwise be enjoyed.

14. Large car parks close to airports do not have the environmental benefits claimed for them by the Park and Ride Associations. They are not genuine park and ride facilities, which typically reduce car use by enabling early transfer to public transport, usually from outskirts to urban centres. Extensive supplies of cheap airport parking promote car use over longer journeys, at the expense public transport. As such, they are probably counter-productive to the Scottish Executive’s proposals under the Integrated Transport Bill.

15. Indeed, in a recent planning appeal against the refusal of permission for a substantial off-site car park near Liverpool Airport, it was found that the facility would have been contrary to planning policy, in its ‘wider strategic objective of ensuring that access by public transport to airports is enhanced’. In particular, that the proliferation of cheap off-site car parking was contrary to the local surface access strategy for the airport.

16. Accordingly, this Bill should not be amended in terms of the proposal referred to at §2, above.

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23 See p2 and ps3-4 of their written submission to the Committee EC/S2/04/29/.
25 Appeal Ref:APP/Z4310/A/01/1075034 Land off Evans Road, Speke dated 2.5.02.
Other Written Evidence

WRITTEN EVIDENCE FROM THE SCOTTISH ASSOCIATION FOR PUBLIC TRANSPORT

Comments on Transport (Scotland) Bill 2004

December 2004

These comments were authorised at the SAPT National Committee Meeting in Perth on 6 December and will be followed by more detailed comments by the 19 January 2005 response date for the October 2004 Consultation Paper on specific issues relating to the proposals for Statutory Regional Transport Partnerships

GENERAL COMMENTS

SAPT welcomes proposals which will improve delivery of Scottish Executive objectives for integrated, sustainable and inclusive transport as part of strategies for strengthening the economy, society and the environment. SAPT supports the Executive’s view that these objectives will ensure an overall stabilisation of Scottish road traffic over the next 20 years with significant shifts to higher quality and higher capacity public transport and to improved conditions for walking and cycling.

The evidence already shows that traffic growth on major roads in Scotland has fallen from 8% a year in the early 1980s to 1.4% a year between 1998 and 2003 with overall traffic growth on all roads now around 1% a year (Scottish Transport Statistics, Vol 23, 2004, p 36). In the same period, strong growth in rail use became apparent in the 1990s while, after many years of reduction, bus use in Scotland has been rising since 2000. These are encouraging trends but the present Bill and other actions by the Executive and other public bodies must be judged on whether they deliver an acceleration of these changing trends as part of integrated and cost-effective programmes for transport, the economy and society.

SAPT recognises that the Bill is part of a wider package – including budget programmes and other regulatory/pricing and administrative measures - but wishes to draw attention to the need for:

- increased momentum and integration within the ‘other measure’ category and
- modifications of the Bill to improve plan preparation, delivery and monitoring

Priorities for Integrated Package Development

SAPT considers that there are six main priorities relating to transport and access.
These are:-
1) creation of **Transport Scotland** (initially as a shadow agency under administrative powers) to build expertise and clarity on strategic transport options for Scotland and to focus more sharply on strategic rail needs where the delivery record and project control has been poor.

2) creation (building on **STAG - Scottish Transport Appraisal Guidance** and easing the application of new EU requirements for **SEA – Strategic Environmental Assessment**) of acceptable procedures for strategic consultation within likely finance on:
   a) preferred options for delivery within 5 years
   b) selection of options for further study within 10 to 15 year rolling programmes

3) early introduction of **simplified and standardised procedures for dealing with road, rail, tram, port & airport schemes** by a streamlined Public Inquiry process (at present rail and tram private Bills are creating a serious logjam in the Scottish Parliament compared to road and busway schemes which do not involve special parliamentary committees)

4) creation of **cross-modal procedures for dealing more effectively with complaints, standards and their delivery** (the present Bill proposes a Roadworks Commissioner but still lacking powers to require local authorities to improve road maintenance within general funding from the Executive – no equivalent Public Transport Commissioner is proposed despite doubts about present enforcement activity by the Traffic Commissioner, more fragmented ferry procedures, criticisms of the weak powers of the Bus Users Complaints Tribunal Scotland and (under the UK Railways Bill) a substantial dilution (or abolition) of the RPC Rail/Ferry role in Scotland and potential simplified procedures for rail closures

5) introduction of a **transparent accounting, information provision and rolling five business plan requirements** for Regional Transport Bodies, local authorities, the Scottish Executive and other public bodies with respect to transport budgets (this is regarded as essential for improved consultation and monitoring)

6) closer integration of transport plans with land use plans and with social, health and economic strategies
ACTIONS sought, and recommended (independently of changes in present Bill)

1) seek clarification of plans to create and fund Transport Scotland within a welcome for a more centralised approach to strategic Scottish rail and airport issues

2) seek early statement by the Executive on the introduction of Strategic Consultation with a clear distinction between 5 year and longer timeframes for transport programmes (as a crucial element in reducing current and potential delays from SEA and existing rail/tram bill logjams). This proposal could also reduce delays on some road projects and would introduce structured consultation to firm-up priorities within available funding encouraging better responses from business and other interest groups. In reality, these groups often have shared concerns about the need for reduced congestion, better reliability, labour market access and improved efficiency in the use of resources also aiding the environment and better use of energy

3) seek an early publication of a consultation paper on proposals to introduce cross-modal procedures (with regional elements) for handling complaints and monitoring standards relating to transport and access, including powers for the Scottish Parliament to confirm or reject proposals for rail and ferry closures or substantial cuts in services (Note: While present plans for rail and ferry improvements in Scotland are welcomed, it is a matter for concern that the UK Railways Bill may eliminate any statutory rail and ferry consultative body in Scotland while facilitating potential rail and ferry closures. A new cross-modal statutory framework is required in Scotland)

SPECIFIC CHANGES to BILL

1) Regional Transport Bodies

Because many trips cross existing local authority boundaries and because of the scale advantages of planning delivery at regional level, SAPT agrees that there are strong arguments for the creation of Regional Transport Bodies. It accepts that the range of functions for such bodies will vary
within Scotland but considers that, around the four largest cities, there are powerful additional arguments for including strategic land use planning within the powers of regional bodies. The reason for this is that strategic land use planning, by promoting links between transport and planning, can be of considerable assistance in developing more sustainable patterns and corridors of development – with greater shifts over the next 20 years to public transport, walking and cycling.

The Association is less convinced of the case for statutory partnerships; a potential recipe for continued delay in delivery and weakness in strategic planning. The term Regional Transport Authority or Board is therefore favoured with membership of RTA's (able to take decisions on requisitions from local councils) drawn entirely from elected councillors but paralleled by:
- a separate Executive Board (on the PTE model but including a road pricing and traffic management role) and
- a statutory requirement for wider and earlier consultation on strategic options before decisions on rolling programmes (such consultation should include an important role for business and other groups in relation to assisting agreement on most immediate and longer-term priorities)

Similar requirements should be introduced for the transport strategies of the Scottish Executive. The Bill should include powers to allow Regional Transport Authorities to embrace strategic land use plans and there should also be a specific requirement to consult on transport crossing RTA boundaries.

These arrangements would not preclude, and could indeed assist, the extended use of partnership funding in some projects e.g. grants from the Scottish Executive and from Enterprise Companies and the private sector.

Suggested Amendments

Add new initial clauses and heading relating to provision for Statutory Strategic Consultation and related changes in present procedures affecting Rail and Tram Schemes. These are urgent priorities. The Bill should therefore require all public sector transport proposals and budgets, including those of the Scottish Executive, to be subject to requirements for strategic consultation at Scottish, Regional and Local Authority levels. The consultation framework should include direct representation from both business and other interested groups, indications of the likely total public sector finance available and an explicit division between 5 year programmes and longer-term options. At the same time transparency should be introduced in public sector transport budgets (including Network Rail Scotland as a de facto public sector body due to high funding from public sources).
In conjunction with Strategic Consultation, the Bill should also provide for the replacement of present Tram and Rail Bill procedures with streamlined public inquiries. This reform would also benefit delivery of road schemes with strong support at the strategic consultation stage. In cases of substantial dispute, the use of parliamentary committees (including use for road schemes) could continue but the net impact is expected to be considerable cost and time-savings in the delivery of schemes with agreed priority after strategic consultation embracing STAG and SEA evaluations.

Amend Clause 1 to refer to Regional Transport Authorities consisting of:-
   a) Political Boards with a wider range of councillors related to local electoral outcomes from 2007 (when proportional representation should apply)
   b) Executive Boards responsible for delivery, monitoring and the organisation of the consultation process

Delete all references to non-councillor members on Political Boards

Amend Clause 4 to include provision for RTAs to be given Strategic Land Use Planning powers (SAPT’s preference is for this to be exercised for the areas around the four largest cities, instead of having separate Regional Transport Bodies and Strategic Planning Joint Committees).

Amend Clause 5 to repeat specific obligation (in suggested new starting clauses) to distinguish between 5 year priorities and longer-term options in the context of available finance and other delivery issues – specific reference should also be made to sustainable development in view of the strong Scottish Executive emphasis on this area. Specific reference should be made to business and visitor needs (The reference to ‘persons there’ in 5 (2) (b) could be interpreted as referring only to residents unless visitors are also mentioned)

Amend Clause 6 to include specified bodies to be consulted (as indicated in new starting clauses) rather than give regional bodies discretion to consult as they think fit.

Amend Clause 7 to provide for rolling review with fuller review at, say, 4 year intervals.

Amend Clause 9 to include a requirement to consult on cross-boundary issues and to include this topic within Regional Transport Strategy documents.

2) Scottish Road Works Commissioner

This part of the Bill should be amended to extend the powers of the Commissioner to include general road maintenance standards by local authorities as well as supervision of works by utility undertakers. This should be linked with transparency in local authority transport funding (Note: With many local authorities being accused of spending much less on road maintenance and on public transport than notional allowances in general
funding received from the Scottish Executive, this change could be the first step towards an integrated approach to transport complaints and issues relating to delivery standards)

3) National Travel Concession Schemes

Clause 37 (1) should be amended to require Scottish Ministers to make National Concession Schemes, not to leave this as an option

Clause 37 (4) should be amended to make it explicit that schemes should apply to all modes of locally available public transport though with options to vary fares between modes for longer-distances after due consultation on draft schemes. ‘Local’ should be defined in secondary legislation, including a more generous interpretation in less populated areas

(Note: Present support for social concession fares is heavily concentrated on the recently introduced free travel (all day at weekends and after 9 am on workdays) on buses for pensioners and the disabled but social needs suggest that consideration be given to-

- a multi-modal approach to free or lower-fare travel for pensioners and the disabled but within distance limits for free travel

- greater priority for reduced fares for local family travel, travel by children, teenagers and students and other local travel by those adversely affected by low incomes.

The Bill as written does not prevent such changes but it would be helpful to have a clearer indication of Scottish Executive intentions and budget implications)

Scottish Association for Public Transport
December 2004
Present:

Mr Richard Baker
Susan Deacon
Michael Matheson
Alex Neil (Convener)
Mike Watson (Deputy Convener)

Chris Ballance
Murdo Fraser
Christine May
Mr Jamie Stone

Transport (Scotland) Bill: The Committee took evidence from:

Allan Hogarth, Head of Public Affairs, Confederation of British Industry (CBI) Scotland;

Tony Cox, Head of Public Policy, British Telecom;

Susan Love, Policy Office, Federation of Small Businesses (FSB) Scotland;

Niall Stuart, Deputy Press and Parliamentary Officer, Federation of Small Businesses (FSB) Scotland.

Transport (Scotland) Bill: The Committee took evidence from:

Harry Pendleton, Chair of the Management Committee, National Joint Utilities Group (NJUG);

Alex Rae, New Roads and Street Works Co-ordinator, Scottish Water;

Domhnall Dods, Director, UK Competitive Telecommunications Association (UKCTA).

Transport (Scotland) Bill: The Committee took evidence from:

Mr Alan Watt, Chief Executive, Civil Engineering Contractors Association (CECA) Scotland;

Sir Michael Hirst, Scottish Airports Park and Ride Association (SIAPRA).

David Flint, Partner, MacRoberts Solicitors (for SIAPRA)
Transport (Scotland) Bill: Stage 1

14:03

The Convener: We move to item 2 and the first of three evidence sessions on the Transport (Scotland) Bill. I welcome from the Confederation of British Industry Scotland Allan Hogarth, who, in a previous life, stood as a candidate in 1989 in Glasgow Central against Mr Watson and me.

Allan Hogarth (Confederation of British Industry Scotland): Who was it who won, again?

The Convener: And we gave you a hard time then, Allan.

Allan Hogarth: You look as young as you did then, Alex.

The Convener: Thank you. Tony Cox is head of public policy at British Telecommunications plc. John Downie is not here, but Niall Stuart is in his place from the Federation of Small Businesses Scotland, and Susan Love is from the policy office of the same organisation. Welcome to everybody. Allan Hogarth will lead off.

Allan Hogarth: Thank you for inviting me along this afternoon. As I stand between members and their Christmas parties, I will try to make the question of looking into holes in the roads as exciting as I can.

CBI Scotland wants to know how the bill will help to tackle congestion and improve traffic flow for everyone in Scotland, which everyone agrees are important matters. However, we also need to ensure that Scotland’s utilities, and therefore its competitiveness, are not threatened at the same time. Members are aware, through a variety of work in the Parliament, of the importance of utilities: broadband and communications, telecoms and water infrastructure. One of the major causes holding back development is the lack of quality water infrastructure throughout Scotland. Clearly, however, one way to improve congestion is to improve street works. By no means are we saying that all utility companies are perfect in the way that they carry out their work. When Tony Cox makes his comments, I think that he will accept that poor practice requires to be dealt with to ensure that the work is done properly.

The real causes of congestion, however, are too much traffic, insufficient road capacity and vehicle breakdown. It is worth noting from the statistics that no one has done any proper work to investigate the main factors involved in congestion. The only figures available are from the Transport Research Laboratory—they are United Kingdom figures because no Scottish figures are available—and show that UK utilities cause about 5 per cent of congestion; 65 per cent is caused by...
overload of traffic; and 25 per cent is caused by traffic incidents. Tony Cox’s company, BT, has estimated that the greater use of broadband could take three years’ worth of increased traffic off the roads.

We welcome the positive aspects of the bill, which include the creation of a Scotland-wide commissioner to help co-ordinate road works and to ensure consistency of approach. There is a concern that, although the private sector is using the Scottish road works register properly, not all local authorities are following that example. It is important that the proposed commissioner treats both sectors evenly.

The thorny question of the reinstatement of road works is addressed in the bill, but we still have concerns, which were covered in The Herald at the weekend following the submission of evidence. I give the example of a utility company that digs up 10 yards of the Royal Mile outside the Parliament. Under the bill as currently drafted, that company could in theory be liable to restore the whole of the Royal Mile in five years’ time. Another example is that companies that dug up the road 20 years ago could be asked to cover the costs of the restoration of the Royal Mile. How can a business do any forward planning on that basis? How does one decide which companies should share the costs? I hope that members will consider the impact that the bill would have on companies that operate within tight margins, such as the many Scottish utilities that are trying to maintain jobs and create economic growth in Scotland.

The bill proposes to decriminalise road works offences. One instinctively thinks that decriminalisation should be welcomed, but experience shows that if local authorities, which claim to be operating on a tight spending allocation, are given powers to levy charges, that income will be an incentive for those whose job it is to find ways to levy charges. For example, if a company has said that it will be digging at 100 Arcadia Avenue when in fact the company typist should have typed 110 Arcadia Avenue, the person whose job it is to impose the fine for the mistake would do so. There is a concern that unless the decriminalisation of road works offences is properly monitored by the new commissioner, the proposed measure could lead to local authorities using it as a means to increase revenue.

Local authorities having control over the timing of works is also of concern. In theory, it makes sense to say that road works will be allowed in certain months of the year, but the reality is that if a company wishes to expand its operations or needs to improve its technology, it might not be able to wait six months until the local authority says that the time is right to dig up the road. If emergency access is required for whatever reason, it might not be possible under those proposals.

The suggestion has been made to increase the amount of work that is done at night instead of during the day. Environmental problems arise from that, such as the noise endured by neighbours, as well as safety issues for contractors who carry out the work and other issues that come from that.

I hope that members will look closely at the bill alongside the other work that they are doing to grow the Scottish economy. I ask them to realise the link between improving technology and growing the economy in Scotland and introducing legislation that might make that more difficult and uncertain for the companies whose job it is to provide telecommunications, water, gas and electricity infrastructure.

I will now hand over to Tony Cox from BT because he can give more of an industry perspective.

**Tony Cox (British Telecommunications plc):** Allan Hogarth has covered most points in general and I will reiterate some of what he said. Roads are conduits for all types of essential infrastructure services. The fact that many of those services go underground should not blind us to the fact that they are as essential as those that travel above ground. I pick up Allan Hogarth’s point about the need to create a good balance of the interests of equally essential services, which sometimes conflict.

Benefits to the Scottish economy accrue not only from transport, but from other essential pieces of infrastructure. One way to encapsulate that is to say that if somebody who arrived home 20 seconds earlier because his route had no street works that evening but who had no electricity was asked where the benefit lay, he would say that he would much prefer to have the electricity supply to his premises.

Allan Hogarht drew attention to the contribution of utility street works to congestion per se. As he said, the best figures that we have are for the whole UK, but they are generally supported. Other, more specific, studies support the notion that about 5 per cent of congestion can be attributed to utilities street works. When that is put in the context of the congestion problem that Scotland and the rest of the UK face, we must consider carefully the measures that may be introduced and their cost, not only to utility companies, but to our customers, the economy as a whole and the ease with which we can all do business.

**The Convener:** Will you explain quickly how greater use of broadband could reduce the rate of increase in congestion over three years?
**Tony Cox:** I am happy to do that. Communications infrastructure already makes a big but hidden contribution to reducing congestion. The developments in broadband and its roll-out throughout the country have increased flexible working greatly. That can be seen most clearly in two respects. It enables people to do away completely with a journey, so they no longer have to travel to work every day and may choose to work from home for a proportion of the week, or the entire week.

The other contribution is almost equally important. Broadband gives people much more choice about when they need to travel. A home-based worker does not do away completely with the need to travel to meetings, but they have more choice about when to travel. The evidence is that people choose to travel outside peak periods. That gives rise to a smoothing effect so that people use transport infrastructure better by travelling outside peak times. The two benefits are an absolute reduction in travel and the smoothing effect.

We have evidence that suggests that about 7.5 per cent of the UK population enjoys flexible working practices. That does not compare badly with some countries, but it does compare badly with some of the best. In Scandinavian countries, about 15 per cent of people work flexibly. The UK has much to do to reach such a level. We estimate that an achievable target is to reduce travel by the equivalent of about three years’ growth on our current track of increasing road use.

**The Convener:** Those introductions were helpful. I emphasise that this is the first evidence that we have taken as a secondary committee on the bill. The lead committee is the Local Government and Transport Committee. We approach the bill from an enterprise point of view, so our questions will concentrate on that.

**14:15**

**Murdo Fraser:** Allan Hogarth expressed concerns about the timing of works and the powers of local authorities. Of course, there will not be any evidence, but has any feedback been received from local authorities or members of the Confederation of British Industry to the effect that allowing local authorities to dictate timing will be a problem?

**Allan Hogarth:** There is evidence. Some local authorities have tried to introduce moratoriums on street works and, ironically, one local authority had to break its own rule in order to improve its headquarters. The reality is that companies have met difficulties in situations in which local authorities have decided to impose a one-year moratorium on street works to prevent disruption. You can see the logic behind such a decision from the point of view of someone sitting behind a desk who has spent a lot of money on resurfacing or whatever. However, the marketplace does not operate in that sort of long-term, structured way. Customers want changes to their premises, accidents happen, new water supplies and gas mains are required and so on. The poor state of the water infrastructure in Scotland will mean that a great deal of work will be required in years ahead. It would therefore seem illogical to have moratoriums that would prevent that work being done.

**Murdo Fraser:** My understanding is that the requirements that the bill places on installers of infrastructure will not apply to local authorities. Would your members regard that as constituting a level playing field?

**Allan Hogarth:** As I said earlier, there is a concern that local authorities do not have the same rigour with regard to registration as that which is provided by an industry scheme called Susiephone. That is a strange name, but it allows the utilities to register their work. There is no evidence that the local authorities are doing anything like that.

There is some reassurance that there is a level playing field, but that does not get over the problems of moratoriums or delays.

**The Convener:** Before we continue, I should point out that I was under the impression that the opening statement that we heard was on behalf of both organisations. My apologies to the Federation of Small Businesses, which I understand also has an introductory statement to make.

**Susan Love (Federation of Small Businesses Scotland):** We wanted to say a couple of words about two of the main aspects of the bill, so our statement takes a slightly different tangent from that of Allan Hogarth.

We agree with the reasons that have been given for the setting up of the regional transport partnerships, which are that there is a need to ensure that investment is focused on better delivery, that there is better policy making behind investment decisions based on local economic needs and that there is better engagement at an earlier point with local partners and stakeholders, such as the business community.

However, we are slightly concerned that that could add another layer of decision making, which could be less accountable than local authorities and which might defeat those original objectives by creating more complex structures and moving consultation further from those who need to make their views known, such as the business community.
I will not go over the problems that road works cause businesses, because issues such as the loss of time and so on are self-evident. We have to accept that many of the developments that the business community is calling for, such as broadband, water infrastructure improvements and so on, are going to necessitate road works. The problems for businesses, however, arise from the fact that the road works do not seem to be co-ordinated particularly well, especially with regard to the businesses that will be affected.

Some of the proposals in the bill should help to achieve better co-ordination, but we have concerns about specific aspects that might be impractical for some contractors to introduce and which might, ultimately, pass on more costs to sub-contractors and consumers. Those costs could take the form, for example, of increased training and reporting requirements on the workers who will be carrying out the road works.

We think that the bill might help, but there are obvious concerns about increased costs that might have to be borne by the companies and which might be passed on to smaller sub-contractors and consumers.

Christine May (Central Fife) (Lab): Good afternoon. I apologise for being late and missing the beginning of Mr Hogarth’s statement. Forgive me if I ask about anything that you have already explained.

Some good and valid points were made in the various submissions, although I take issue with some of the terminology and language in which they were made. There is a sense of overkill in some of the material, which is very much saying, “Please don’t do any of this—none of it is a good idea because it might impact on business.” Do you accept that, and if not, why not?

The other point that I would like you to deal with is the idea that the bill is necessary because for many years the utilities have failed to get their house in order. I come to the matter from a local authority background, having been blamed by constituents for years for road works over which the local authority had no control whatsoever because they were being done under telecommunications legislation. Will you talk about how the voluntary arrangements have fallen down to the extent that the bill is necessary, which is what appears to have happened? I would also like you to say a bit more about the level playing field issue and the idea that some things do not seem to apply to local authorities. I support you on that point, in that there is a need for a level playing field.

As far as the economy is concerned, there is a need for infrastructure to be put in, but that has to be balanced with the increase in congestion that is caused by road works. You contend that that increase is small, but nevertheless it is an increase and I argue that it could be reduced if road works were better planned and that that would be of even greater benefit to the economy.

Allan Hogarth: First, I will deal with the question on overkill. I will pass the point about public utilities to Tony Cox and I will then address the point about the need for a level playing field.

The language that we used in the submissions was to generate your interest—

Christine May: It did.

Allan Hogarth: It seems to have succeeded in that endeavour. As I said earlier—I appreciate that you were not here—there are concerns about the bill. In theory, it seems laudable to avoid increases in the digging up of roads and to provide ways to reduce disruption. However, we must think through the consequences for small businesses that require improved access to technology and consider the points that were made about the poor state of Scottish Water’s infrastructure and the legislation that is required to upgrade gas mains, which require regular maintenance. We tried to make the point that in principle the intentions behind the bill are sensible, but you need to be made aware of the practicalities at an early stage. That is the reason for the language that we used.

Tony Cox will answer the point about the performance of utilities to date.

Tony Cox: We agree that when utilities fail in their duty to perform properly they should be held to account. However, the idea that legislation should be introduced to punish the utilities for past behaviour seems a little strange. I am not sure whether you were suggesting that. Perhaps more important is the point that the utilities have taken seriously the need to provide better co-ordination of road works. The point about lack of co-ordination comes through time and again, but it was the industry that set up the Susiephone system in Scotland to meet that need.

On your point about the negativity in the submissions, we welcome some aspects of the bill and the fact that the Scottish road works register, which is kept by Susiephone Ltd, is embraced by the bill as a method of providing better co-ordination. We see that as a positive step forward.

My other point is that we cannot consider the utilities in isolation. In complaints about road works, the public do not discriminate between road works that are carried out by utilities and those that are carried out by highways authorities. From where we are sitting, it seems that we tend to end up with the blame for all road works and we therefore think that it is important for the true causes of congestion to be identified. Only in that
way can we move forward and make a difference. The fact that only a relatively small amount of congestion is caused by road works points to the need to balance the cost of any additional requirements that are placed on utilities, and indeed on highways authorities, with the true causes of congestion.

Allan Hogarth: Tony Cox mentioned some of the concerns about the lack of a level playing field. At present, the road works register is open to the public and private sectors, but if one looks at it, it suggests that some local authorities carry out no road works at all. That is one reason behind our concern about the lack of a level playing field. We are heartened that the commissioner, once he or she is appointed, will ensure that that will not be the case in the future. Tony Cox and I are pleased that a commissioner will be appointed in Scotland even though there is not one in the rest of the UK. The concern is that the playing field is not level at present because the register appears to show that only utility companies cause disruption on the roads.

Christine May: The FSB made a point about the impact on small local business of road works, which sometimes happen one after the other on the same stretch of road. I ask the FSB representatives to elaborate a bit more on that.

Susan Love: Small businesses do not differentiate between utility company road works or local authority road works—it is all the same to them. The usual anecdote is that the same roads are dug up over and over again. I read a statistic that, a couple of years ago, Great Western Road in Glasgow was dug up 240 times. Businesses are concerned about what happens beyond the co-ordination. What really annoys businesses is that they do not know what is happening, when it is happening and what it is for. Nobody asks businesses beforehand whether another time of year might be better to carry out road works. The issue is about how local authorities use the centrally co-ordinated information to engage better with local business communities. In our view, the lack of engagement gives rise to many problems. We would like more focus on making information available to businesses much earlier and on consulting and forward planning with businesses.

The issue is not just about the loss of time or the extra fuel costs that result from drivers being stuck in congestion. One of the most common complaints comes from retailers, who complain about pavements being dug up. Businesses are not informed that there will be a loss of trade in the summer months, then a delay takes place, but the businesses do not know why. That is the kind of problem that we experience.

Niall Stuart (Federation of Small Businesses Scotland): Road transport is essential to all businesses, but it is particularly crucial to small and medium-sized enterprises, which do not have any alternative way of moving goods around because, given the scale of the movements that are involved, they can be done only by road transport. Although only a small amount of general congestion is caused by road works, specific local problems can have a huge impact on a handful of local businesses. Susan Love mentioned repeat road works, which can cause specific problems in a local area that have a massive effect on individual businesses.

Christine May: My final point is on the issue of restoration and the length of time for which a company might be held liable for difficulties. After a road is backfilled, a temporary dressing is often put in place to allow for settlement, and it is necessary to come back and redo the dressing once the settlement has taken place. Is it Allan Hogarth’s suggestion that, once the top dressing has been put on and the initial backfilling has been done, the utility company or other organisation should be absolved of any responsibility? If the period of liability should not be five years, what would be a reasonable time?

Allan Hogarth: I was simply trying to point out the situation under the bill as it stands. I hope that it is unlikely, but, as the bill is drafted, a company could be liable for the whole of a road, even though the work affected only 10yd of the road. That is a concern.

Another issue is how we apportion parts of the roads to companies. It may seem logical that all the cables should be put into one big trench, because that would save digging up the road lots of times, but the reality is not so simple: for health and safety and technological reasons, the cables must go into the road at different levels. If and when the Scottish economy continues to improve, more road works will take place as a consequence. We need clarity about the way ahead. The utilities operate with tight margins, so they will have to pass on extra costs to customers, who may not be keen to pick them up.

Tony Cox will pick up the issue of the time for which a company is to be held responsible for any restoration works that are required.

14:30

Tony Cox: We are certainly not saying that a utility company that digs up a road and then puts it back together should not be held responsible for any failure of restoration. However, the guarantee period must be reasonable, because the quality of a road surface can be affected not just by the digging of holes but by all sorts of factors, such as the amount of traffic that flows over it.

Our concern about the bill is less about the guarantee period for works that a utility company
It is absolutely right that utilities companies should pick up the cost of the service that they take up. However, the key question for us is what the bill envisages in relation to which we might be held liable for future restoration of a road surface, perhaps along with other utilities companies, would seem to create a never-ending obligation on us. How would we account for that in our books? It is one thing to talk about a single hole in a single road, but it is another thing to consider the whole country—the exercise would be massive and we are very worried by that. Allan Hogarth mentioned the practical issue about how costs would be appropriately apportioned between the different utilities companies and the highway authorities and I have heard no suggestion of how that could realistically be done. The proposal is a recipe for massive bureaucracy for very little benefit.

Tony Cox: It is absolutely right that utilities companies should pick up the cost of restoring a road surface that they have broken into to provide an essential service. Ultimately of course, that cost is passed on to our custom ers—it is part of the cost of the service that they take up. However, the general road surface is rightly and appropriately the responsibility of the highway authorities and it is appropriate that the public purse pick up such costs, as it currently does. The costs should be fairly apportioned and should lie where they arise.

Allan Hogarth: Local authority underspend on restoration of local roads is about £60 million—I think that that is the correct figure. The money is not ring fenced, so regardless of the role of the utilities companies there is concern that money that should be spent on local roads is not being spent and that roads are not maintained as well as they should be.

Christine May: I could debate local authority funding and budgeting with you all afternoon, but I suspect that no one else wants me to do that.

The Convener: I should point out that although we are half an hour into the meeting, we have yet to hear from two other panels of witnesses and at least four members want to ask questions now. I do not want to curtail debate, but I ask everyone to be aware of the time constraints. It would be helpful if Allan Hogarth could make his answers a wee bit shorter.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I will pick up on that point and preface my questions by saying that it is important that we remain focused on the bill’s role in addressing the areas that have been mentioned. I am conscious that we are raising hugely complex issues. There is a huge debate about congestion in Edinburgh and I recently sat through a briefing on local authority road repairs in the Audit Committee. I was very interested in what Tony Cox said about broadband and flexible working, which I would love to discuss all day. However, the key question for us is what the bill would do to aid—or otherwise—our progress on such matters.

My first question is about road works. Could you comment further on co-ordination? Susan Love effectively set out a scenario that many of us, as local members, recognise and about which we have heard from local small businesses. I cite my recent experience of Musselburgh High Street as an example. How will the bill aid co-ordination at the practical level as it impacts on local retailers?

I am particularly interested to know your views about the commissioner. I note that the CBI Scotland submission welcomes the creation of a commissioner. I understand that the commissioner’s role in seeking co-ordination will be strategic. How will that enhance and develop the micro co-ordination that is necessary to ensure that road works are carried out as timeously as possible?

Local examples are often cited to me, such as the co-ordination that is required between people who do the work underground and those who do the surfacing work, and the gaps that arise such that areas are dug up and coned off for longer than necessary. With specific reference to the bill, can you tell us how co-ordination at the strategic and micro levels will be improved?

The Convener: Will we start with the FSB?

Susan Love: Briefly, the bill probably will not achieve the local co-ordination that is so important to small businesses, but it should make co-ordination easier at strategic level. At the moment, there is no central co-ordination of information, so authorities cannot discuss matters with small businesses. The bill will enable that information to be gathered and will ensure that it is accurate and up to date. However, it will not change the interaction between local authorities and businesses, which would make a difference. The commissioner will have a role in encouraging best
practice; we would like that. How can the information be used to solve the problems? The short answer is that I am not sure that the bill will tackle the problems.

**Allan Hogarth:** The Scottish road works register should provide the mechanism for small businesses to contact the commissioner or the local authority to find out when works are planned, and with that information to plan forward. The commissioner will be appointed by the Executive and one of their tasks should be to provide a mechanism to liaise with local businesses. The register should provide the vehicle—if you will pardon the pun—for that. The commissioner should also ensure that local authorities liaise with small, medium and large businesses.

On the need for better co-ordination, as I said earlier, there is an advert that shows one trench that has lots of cables going into it and coming out the other side, but the reality is not as simple as there being one trench that takes all the domestic and business technologies that are required. Tony Cox’s company and other utilities companies will carry out research to reduce the workload, because they want to do as little work as possible in the shortest possible time in order to reduce their costs. There is no incentive for them to delay works, because it means they have to pay contractors for longer and, if the work is not done properly, they face charges.

**Tony Cox:** I will not repeat what has been said, in the interests of brevity, but I agree with Allan Hogarth, particularly on the street works register and the role of Susiephone Ltd, which we welcome.

Susan Deacon asked an important question about what the bill will do. We do not know; I am not sure that anybody knows. One of our big concerns is that there are no measurements of how much congestion is caused by road works and the other congestion sources that we talked about earlier. The only figures that we have to work on are the UK-wide figures. It is of concern to us that the bill does not spell out the magnitude of the problem from its different sources, how the measures will impact on that, the extent to which they will improve the situation, and how that improvement will be measured in the future. That is an important point when we are dealing with the possible imposition of considerable additional costs—not just direct costs, but administrative costs for utilities companies and costs for our customers.

**Susan Deacon:** That was a useful response.

In the interests of time, I will move on to my second area of questioning. When reading the CBI’s submission, I was surprised to see no reference to part 1 of the bill. The question of congestion, road works and so on is terribly important, but I presume that the proposals in the bill to create regional transport partnerships, and all that will flow from those, are of huge interest to business in Scotland. I would like to hear the panel’s views on that. I recognise that Susan Love has commented on the matter from the point of view of small businesses, but I would like to hear more about part 1 of the bill, which is germane to the committee.

**Allan Hogarth:** There is on-going consultation of our members, which we plan to finish by the start of next year. We will feed that into the committee. That is why we focused primarily on the provisions relating to road works. We must examine the success of Strathclyde Passenger Transport and how it can be replicated. We must also consider how regional transport partnerships fit in with the idea of a Scottish transport agency, which we hope will provide greater co-ordination of transport activities. As members know, the agency has not yet been established. There are many unknowns that require further work. However, we will submit further evidence on part 1 of the bill shortly.

**Susan Deacon:** I would like to probe this issue further, as it is important that the committee consider it. I realise that there is a real chicken-and-egg question. As I understand it, the bill asks us to approve the principle of RTPs. The consultation on the detail of that proposal is on-going. I recognise that the same is true of the CBI’s input. Does that concern you? As a parliamentarian, I recognise that there is a difference between approving something in principle—most of us would approve in principle the concept of greater partnership working, a more strategic approach at regional level and so on—and how that translates into detail. That will be the ultimate test of whether the proposal helps us to move forward effectively. Are you comfortable that you are being asked simply to approve a principle? Should we seek further detail in the bill?

**Allan Hogarth:** It would be beneficial for both sides of the desk if more detail were available so that we could investigate more fully what we are being asked to respond to. It is to be hoped that that would ensure that once the legislation had been passed the bodies that were created would be more successful in their endeavours. I agree that more detail on what is planned would help us in our response and it would help members in their decision-making process.

**Susan Deacon:** In two sentences, can you give us a flavour of the consultation on the detail of regional transport partnerships and how they will work? Can CBI Scotland or other members of the panel give their views on the substance of the
proposals and how they would like partnerships to work in practice?

Allan Hogarth: I am wary of jumping in before we have finished consulting our members, who have practical experience of existing agencies, and prejudging what they will say. Scotland is a small country and we do not want to have throughout Scotland small groups that lack co-ordination. We should be able to provide a strategic approach for the whole of Scotland without creating bodies that compete for resources and which have different levels of performance. We will provide a detailed response early in the new year.

Susan Love: The principles of regional transport partnerships and of encouraging more effective partnership working are fine. I refer to the achievements of local economic forums, which have brought local authorities and other agencies closer together. However, under the bill, many years down the line almost all of local authorities’ transport powers could be transferred to partnerships. How long is a piece of string? You could be looking at a completely different model to that of the LEFs. Our concern about that is that local issues tend to be the most important to local businesses. It can seem hard enough to influence a local authority’s transport policy, so a move to a more regional focus for transport might mean that concern about a parking bay outside a row of shops would be completely insignificant. The concern is that, if more and more powers go to the regional partnership, it will be harder for businesses to engage with the system.

14:45

Chris Ballance (South of Scotland) (Green): Like Christine May, I apologise for arriving late and missing the first part of your presentation.

Many witnesses, including yourselves, complain about the skeletal nature of the bill—that is the phrase that has been used by at least two witnesses. I would be interested in hearing about the flesh and blood that you would like to be added at stage 2.

Given that we all agree that excessive road works are a bad thing, how would you legislate to reduce road works if you were sitting on this side of the table?

Allan Hogarth: Briefly—[Laughter.] This is like “Just a Minute”.

The best example of the skeletal nature of the bill is the question of reinstatement. There is no meat in respect of how long a utility company will have to wait before getting a bill through the post, which might say, “Please pay for the work that you carried out 20 years ago.” As was said earlier, there is no detail given on who will assess which company should pay the bills.

Further, there is no meat in respect of how decriminalisation will work, how local authorities will deal with the new powers that they will be given and who will pound the beat, for want of a better phrase.

On how we would legislate to reduce the number of street works, as I said, economic growth and development are not always easy on the eye. Broadband connections and improvements in infrastructure will require road works to be carried out until technology finds another way. No doubt BT and other companies throughout the UK are thinking of ways to develop that technology, but it does not currently exist. Road works are here to stay and the real issue is to ensure that rogue companies who do not carry out work properly feel the full force of the law and do not inhibit companies that want to provide a good service for their customers.

Chris Ballance: Is it your overall position that what we are discussing is not relevant to the central problem of road works?

Allan Hogarth: As Tony Cox said, no real research has been carried out to show what the impact of road works is on congestion. The only available figures suggest that road works are responsible for only 5 per cent of congestion. If congestion is the problem that you are trying to solve, tackling road works is not the best way to go about doing that.

Tony Cox: Your question was to do with how we would legislate to reduce road works, but the more important question is about how we can reduce the volume of traffic on our roads, which is the principal cause of congestion. If you want an answer to that question, you will have to go elsewhere. I know that the Scottish Parliament is looking into that matter and that different views are being explored.

I want to stress that road works are carried out not for fun but to deliver services—we do not undertake voluntary exercises to hold up traffic. Rather, we attempt to provide essential services to our customers. That does not mean that we are not in favour of greater co-ordination. As I demonstrated earlier, the industry has worked towards that and we welcome what the bill contains in that regard.

Mike Watson (Glasgow Cathcart) (Lab): To some extent, the FSB is coming at the issue from a viewpoint that is different to that of the utilities companies, particularly on reinstatement work and the subsequent three-year restriction on further works. I understand why that might cause problems for the utilities companies, but the FSB must welcome that. The sort of disruption that you
talked about for your members—especially those that run high-street businesses—would be lessened considerably if the current restriction of one year were extended to three years.

Susan Love: By and large, the measures that will enforce quicker road works and lead to longer-term responsibilities will help small businesses. Our only concern is about the costs and uncertainties that will create for the utilities companies, which will be passed on to businesses as customers or as subcontractors.

Mike Watson: You are concerned about the indirect effect.

Susan Love: Yes.

Niall Stuart: The matter relates to Chris Ballance’s point about whether we can reduce the number of road works. I do not think that we can, but we have to reduce their impact. We can do that by ensuring that people know about road works and can work around them and that they are carried out as quickly as possible.

Mike Watson: In your opening remarks on part 1 of the bill, you commented on the regional transport partnerships. I did not note down what you said, but I seem to remember that you said that you were concerned that the partnerships would offer less public accountability than local authorities offer. Given that at least two thirds of the membership of an RTP will be local authority representatives, why are you concerned about public accountability?

Susan Love: At the moment, we know exactly who is responsible for all our transport—the local councillor is responsible. We know who our local councillors are. They are much easier to get to than RTPs will be. By and large, businesses will feel more distant from some regional organisation that has only one councillor from their council on it. When that representative reports back, they might only be able to say, “Well, I tried, but the rest of the members didn’t agree with our point of view; we were outvoted.” Our experience is that, although partnerships such as the LEFs are successful, businesses feel that they are remote and are more comfortable working with their local authorities.

Mike Watson: Surely you accept that the whole idea of the RTPs is to provide strategic planning for public transport. That cannot be done by a single local authority.

Susan Love: We said that we agree with the objectives in setting up RTPs, which should lead to better partnership working. We are just concerned that some of the highly localised issues that are important to businesses might be lost in the new process and that businesses might feel that they will get less attention from their local authorities on transport issues than they get under the existing set-up. That is not to say that the existing set-up is wonderful in the eyes of small businesses; we are just concerned about such matters being dealt with more remotely.

Mike Watson: I am sure that your kind remarks about councillors will be well received in that neck of the woods.

On congestion more generally, the freer flow of individuals must benefit your members—especially your high-street members, although I am aware that not all your members have high-street businesses. If the sort of strategic planning that we hope will result from the bill relieves congestion in cities by allowing greater access to public transport, surely the FSB would welcome that.

Niall Stuart: Yes, of course we would. As I said, small businesses are focused on road transport. If we improve public transport and give people a genuine alternative to taking the car by providing an effective, cheap and reliable public transport system, it is inevitable that that will have an impact on congestion.

Mike Watson: I have a few questions for Mr Cox. You talked about the contribution that effective use of broadband can make to relieving congestion through flexible travel patterns and so on. Your point was well made; that issue is perhaps not as widely understood as it needs to be. What are your fears about the effect of the three-year limit in restricting your company’s continuing to roll out broadband? Are there exceptions that will enable new connections to be made where necessary? Will not the making of such connections fall under the exceptions in the bill?

Tony Cox: That is the question. From what I have heard, I am not satisfied that the bill contains the necessary exemptions. If there were suitable exemptions that applied to the three-year embargo period governing road works, that would be acceptable. Our concern is how those exemptions will be implemented and exercised in the future. If there are sufficient safeguards, our fears could be allayed; I hope that they will be. To return to the points that the FSB representatives made, the supply of broadband services is as essential to their businesses as is provision of transport. Provided that the exemptions are sufficient, our fears will be allayed.

Mike Watson: I put to you a point that is made in the submission from the UK Competitive Telecommunications Association, representatives of which will be in the next panel of witnesses. It refers to connecting customers to the network, which is not only about broadband. The submission states:
I do not accept that—the telecoms
The commissioner will ensure
In addition, in respect of our
Roads and Street Works Act 1991 … offences prosecuted.”
would thus appear have the same difficulties in getting New
different powers than Roads Authori
ties currently have and "The Commissioner does not appear to have significantly
witnesses, but I ask Allan Hogarth to respond
because his submission welcomes the creation of
commissioner, We have been told that the
/create of a commissioner. We have been told that the
Society of Chief Officers of Transportation in
Scotland stated in evidence to the Local
Government and Transport Committee that
"The Commissioner does not appear to have significantly
different powers than Roads Authorities currently have and
would thus appear have the same difficulties in getting New Roads and Street Works Act 1991 … offences prosecuted."

As you welcome the appointment of the commissioner, what does CBI Scotland think the commissioner will bring that will be additional to the current powers of local authorities?

Allan Hogarth: The commissioner will ensure
that there is, as Christine May said, a level playing
field and will improve co-ordination.

There is concern that there is not currently a level playing field for the public and private sectors. The commissioner would be an independent person who would ensure that there was a level playing field. Secondly, it has been reiterated throughout the afternoon that one of the commissioner’s tasks should be to ensure that information is available on when work will take place.

Those are the reasons why we welcome the creation of the post of commissioner and those are the ways in which the situation will be different from the current position under the roads authorities.

Mike Watson: The advantage of having a commissioner is that the commissioner can provide co-ordinated information and a strategic overview.

Allan Hogarth: In addition, in respect of our concerns about decriminalisation, we would have further concerns if there was no one to act as arbiter. I hope that the commissioner could act as an arbiter. If there is a peak of prosecutions in a particular authority, the commissioner could investigate the reasons behind that.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): What Susan Love and Niall Stuart say is not exactly music to my ears—it is not a happy tune. When I was a councillor, I went to a community council meeting to discuss the fact that the water authority had lifted all the roads and there was chaos. I was the councillor so I got it in the neck. The meeting was late in starting because the chairman of the community council had fallen in a hole, so I know what this is all about.

I cannot see an answer to the problem that you raise. You say that the situation can only get worse because as the issue will become more remote from local authorities communication will not be so good. How do we cross that bridge? Who will speak to the businesses in the high streets? There are resource implications for the utilities companies and for councils. Do you have any suggestions? We are the secondary committee on the bill, so how can we cross the divide? If we do not do so, no matter how joined up we are at the centre the situation will not be great out there among the wee businesses.

In a way, it is easy to achieve such communication in a small community, but in the high street of a big place such as East Kilbride or Glasgow it is almost impossible to get all the businesses together. I am concerned because we are building a beautiful building, but there may be a bit of dry rot in the middle of it that has been there all along.

Susan Love: We believe that the focus should be on improving face-to-face engagement between local authority officers—not only on transport but on other services—and the local business community. It is hard enough to get that to happen now, but if the drive is to focus on a regional level it will become increasingly difficult to achieve that focus, particularly if resources are transferred from the local authority up to the regional partnership.

We would like more resources to be provided for roads managers or even town and city centre
managers so that they can liaise more often with businesses about what is happening and what they would like to happen in their areas.

Mr Stone: Would those people report to the new centralised partnerships?

15:00

Susan Love: We would like them to use that information to speak to businesses. I return to Allan Hogarth’s point that although we are talking about information from utility companies in the main, we are also concerned about how local authority road works affect businesses. We would like the local authority to act as a conduit for information to local businesses.

Allan Hogarth said that information was available. It is true that businesses could surf the internet and find out what is happening in their area, but the reality is that they tend not to do that and that they want someone to tell them what is happening. We would like more focus on such work.

Mr Stone: Has that point been made to the minister and officials in his department?

Susan Love: Not yet.

Mr Stone: Will you do that?

Susan Love: We make that point repeatedly. We have worked hard with many councils throughout Scotland to focus on the need to improve how they engage with business. We think that the focus should be on working with councils.

Mr Stone: Why should the focus be with councils? They may feel less engaged when the matter becomes slightly more remote.

Susan Love: We will make the point about the danger of removing resources up—or along—from local authorities to a regional partnership, given that the focus should be local.

Michael Matheson (Central Scotland) (SNP): I will pick up on the new enforcement provisions and particularly on the proposal to increase fines from level 3 to levels 4 and 5. Will those new provisions act as an incentive for companies to complete their work timeously, or will they merely be a way to pass on costs to utility companies’ customers?

Tony Cox: The main impetus for companies to finish their work quickly and efficiently is the normal commercial pressure. I said that we do not dig up roads for fun; digging up roads is a costly business and we would much rather not do it. When we must do it, we want to do it as quickly and efficiently as possible—we have commercial pressures to do that.

That is not to say that we are totally against any penalty when we fail. However, we must question how big that penalty should be. If the penalty is too big, it will push up our costs, because we do not get the work right every time. Sometimes we get it wrong and are—rightly—punished for it. However, the punishment should fit the crime.

Increased penalties should be allied to the impact that they have on congestion. Additional penalties should not be imposed for works on a side-street that have no impact on congestion or cause nobody significant inconvenience.

Do we need to increase the level of fines? Commercial pressures are placed on us already and we do not want to pay the existing fines, let alone increased fines. The fines should match the offence.

Michael Matheson: Do you suspect that the costs that you incur from fines will be passed on to your customers?

Tony Cox: The cost will have to be passed on to customers in some way. Some companies in the telco business are not profitable, so they have only one income source. At the end of the day, we all have only one income source: our customers. A fine will add to business costs in some way. I am not saying that costs would be passed on directly to a specific customer, but they would have to be absorbed. That returns to the question of benefits and the balance that must be struck.

Michael Matheson: The CBI’s submission says that charges “could be seen as a means of raising extra revenue from trivial breaches of legislation.”

Which provisions in the schedules to the bill are trivial?

Allan Hogarth: The bill’s skeletal nature means that the changes to permit decriminalisation allow a fine to be imposed for wrong application details, for example. If a company sent a letter to the register that was meant to say that on Monday 2 January it would dig outside 110 Holyrood Road, but the secretary made a mistake and typed 100, that company could in theory face a bill for wrongful registration.

The skeletal nature of the bill provides the opportunity for people who have been appointed primarily to find opportunities to have penalties imposed to do so in theory. That is why we are concerned about the change to decriminalisation without there being a clear picture of what those individuals are supposed to do and who is supposed to carry out activities.

Michael Matheson: The bill does not decriminalise as such, but it provides ministers with powers to decriminalise at a future date. Apart from timescales being wrong in an order that is issued, are there any other trivial offences in the schedules?
Allan Hogarth: Because of the skeletal nature of the bill, it is hard to sit here and prejudge what other trivial penalties could be imposed.

Michael Matheson: They are listed in the schedules.

Allan Hogarth: The full list does not give details of other changes that could be made by local authorities. Decriminalisation would open up offences beyond those that are listed, if ministers chose to go down that road. I accept that they do not have to do so, but one wonders why they are not keen on the option of decriminalisation.

The Convener: I have a final brief question. Do the FSB and CBI think that the powers that are proposed for the commissioner and the resources that will be available to the commissioner of around £200,000 a year will be satisfactory to do the job that you want them to do?

Susan Love: We would like the commissioner to focus on improving best practice in how local authorities work with information. We have not yet come up with any additional powers, so I suppose that the answer to your question is that they are satisfactory.

Allan Hogarth: The answer to your question will be evident once the commissioner has been appointed and we have given them time to carry out their job. It is too early to prejudge their success or failure, as they have not started their work. However, we welcome the idea that there will be someone to police what is happening on both sides of the fence.

The Convener: So the CBI welcomes additional regulation.

Allan Hogarth: There is always a place for ensuring that there is someone to police activities in both the private sector and the public sector.

The Convener: Great. Your evidence has been extremely helpful. I thank you for your written and oral evidence.

Agenda item 3 is evidence from another set of witnesses on the Transport (Scotland) Bill. I welcome Domhnall Dods, who is director of the UK Competitive Telecommunications Association; Alex Rae, who is new roads and street works co-ordinator for Scottish Water; and Harry Pendleton, who is chair of the management committee of the National Joint Utilities Group. I believe that Harry Pendleton is going to make some introductory remarks to open up the discussion.

Harry Pendleton (National Joint Utilities Group): I thank the committee for inviting us to give evidence. Unfortunately, Tony Cox has stolen my thunder and has said much of what I was going to say, but I will continue anyway.

As Tony Cox said, Scotland’s roads act as a conduit not only for pedestrians and traffic but for utilities and essential services. I stress that I am talking about essential services. Everybody wants gas, water, electricity and telecommunications, and we think that the utility services are not adequately recognised in the bill.

Contrary to public opinion, we do not dig up the roads for fun, as Tony Cox has said. We undertake road works for three reasons only: safety, security of supply and to connect or upgrade a customer service. The companies that are involved in digging holes in the road are already subject to regulatory and customer pressures to minimise the cost and duration of their work and we feel that those are effective. We support any measures that can reduce disruption and congestion. The bill will not adequately do that, but it will increase the costs for utilities undertaking essential works. Unfortunately, we will have to pass that increase on to our customers and increase household bills across the board yet again.

For the bill to be comprehensively effective, a level playing field is needed. All works that are carried out on the road should be equally accountable. The road works that the local authorities undertake are likely to cause as much congestion as the works that we do; in some cases, they can cause more.

The bill proposes significant changes to the way that utility companies work, but it lacks detailed explanation of how those changes will work in practice. That has prevented us from accurately assessing the implications and cost of the proposals, but we have some detailed points that we will be happy to cover in questions.

Mr Stone: At the second bullet point under “Our Key Issues” in your submission—the point is also marbled through the rest of the submission—you take issue with the notion that the local authority could dictate where you put something. In the past, I have been frustrated that local authorities could not exert more influence over water authorities or other utilities. Do you at least accept that, apart from trunk roads, public roads are the responsibility of Scotland’s 32 local authorities and that, ultimately, they have to account for them and explain to electorates and elected members what is going on? Are you really serious in saying that we should not have such provisions and that you should be able to put what you want where you want?

Domhnall Dods (UK Competitive Telecommunications Association): We accept that roads other than trunk roads are the responsibility of the local authorities, but we are saying that—I hate to use the word skeletal again—it is difficult to comment in much detail
because there is no flesh on the bones. A businessman might come to me to order a telecommunications pipe to connect him to the information superhighway, want it to go into his premises at a particular point, need two routes of entry for security of supply because the business is a financial institution and want the pipe to be installed in three weeks' time. If the local authority were given a blanket power to direct me as to where and when I can put my apparatus, it is easy to envisage a situation in which the authority might say that the proposed route was inconvenient because it had repaved the street and put monoblock down and say that we could not go into the building in two places, but that we could go down the next street and do it in six months' time. My customer would be very unhappy about that.

Edinburgh is a great banking centre and banks are infamous for their requirements for security of supply and diversity of routing, for example. We are not saying that local authorities should have no control whatever, but we are concerned that the blanket nature of the powers that would be given might compromise not only my ability as a service provider to carry out my business but that of my customers, because all Scotland's companies require state-of-the-art services. Our concern is the possible conflict between those two areas.

Mr Stone: That seems a fair answer. In recent years, I have seen local elected members and council officials carry out good work and discussion with utilities. When you talk about the bill being skeletal, are you referring to the lack of some sort of commonsense arbitration process that would allow everybody to get round the table and try to sort out matters in a way that is best for the customer but will not muck up what the local authorities want?

15:15

Domhnall Dods: Yes. One of the positive aspects of the bill is the creation of the Scottish road works commissioner, and we have stressed repeatedly to the minister that we support that because, in the world of utilities and roads authorities, two disparate sets of needs are in play and matters can sometimes become somewhat adversarial. The creation of an independent official who has an arbitration function and can say, "Look, it is unreasonable to restrict this company because it has a customer who has certain needs," is welcome.

The witness from BT referred earlier to an example that involved my company—not the body that I represent today but my employer. A local authority to the west of the city had imposed a voluntary moratorium on works—to which we all agreed—because it had resurfaced a road. During that period, it said, "We are delighted to award you a contract for a big, fat telecoms pipe to connect our offices and upgrade our infrastructure." We said, "We would love to help you but can we discuss the contract in a year's time when the moratorium has expired?" The answer came back, "Never mind that—we need the work done now," and the moratorium was waived. Commercial concerns are well understood when they affect local authorities themselves. We would like to see some safeguards; we are not saying that there should be no powers whatsoever, but there have to be checks and balances in the system.

Mr Stone: We will have a commissioner, who will be a good person and work pro bono publico. In a good scenario, he or she will have six people working for them. How can a group of that size possibly deal with arbitration the length and breadth of the country on every hole from Wick to Dumfries?

Domhnall Dods: Alex Rae is probably in a better position to comment on that because he is a more hands-on practitioner than I am, but I do not envisage that every single case will need to go to arbitration. The mere existence of an arbitration route might make the parties behave more reasonably and get together to sort things out before there is a need for arbitration. As with an appeal court, one has to have a final route of appeal even though not every case uses it. The vast majority of cases can be sorted out beforehand.

Richard Baker (North East Scotland) (Lab): I have two questions on the UK Competitive Telecommunications Association's submission. First, on the power to require resurfacing of entire streets, you say that similar provisions were introduced in England and Wales. How long have they been in place? You say that they have otherwise have been. That will have an extreme impact on marginal business cases for rolling out broadband networks, especially in Scotland, which has more remote territory.

The Scottish proposal is more extreme. An example was given earlier about the road outside the Parliament building. Under the Scottish
Absolutely. The comment that it will try everything else first. The department has reassured the industry that it will try everything else first. The department has reassured the industry that it will try everything else first.

To answer the point that Christine May made earlier, if I did a poor job of reinstating the road outside the Parliament, I would have no qualms about being required to make that job good—no reasonable operator could object to that. However, I would have a problem if I did a perfectly good reinstatement outside the Parliament but was required to make good the castle esplanade or the road outside the Ensign Ewart at the top of the Royal Mile. That would be completely unreasonable, and if I am responsible for that work in perpetuity, it becomes impossible for the accountants to make provision for that.

Richard Baker: You outline an extreme situation, but presumably there will be checks and balances in enforcing something like that. You say that in England there are less extreme provisions, as you put it, that require half of the road to be resurfaced. Did you say that those powers are in force?

Domhnall Dods: The powers have been given to ministers in England, but regulations have not been brought forward. The provisions are fraught with the same difficulties. How can I price a service to a customer? If I know that digging to connect to the customer accounts for 80 per cent of the cost, I can say to the customer, “I can give you a service today and it will cost X number of pounds.” However, if that is then suddenly going to be ripped up, my business case will be completely rewritten, because my costs will go up 385 per cent at some unknown date in the future. Do you say that those powers are in force?

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Richard Baker: But the English and Welsh Parliaments have decided that it is okay for ministers to have those powers, and the regulations are likely to come in.

Domhnall Dods: The Department for Transport in England has indicated that those powers are not in its first tranche of regulations. It recognises that the measure is one of the more extreme clubs in its bag. The department has reassured the industry that it will try everything else first.

Richard Baker: That is interesting. Finally, your submission states

“the Executive has failed to take account of the role that communications companies play in the solution to congestion”

through the use of broadband. What more should the Executive do? Is it not for businesses as well as the Executive to embrace broadband and allow for more flexible business practices?

Domhnall Dods: Absolutely. The comment stemmed from the initial consultation that led ultimately to the bill, in which the rhetoric was that utilities are a problem because they cause congestion and cost Scotland an enormous amount of money. That is a one-sided view, because we have a lot to contribute. In the telecoms sector we see ourselves as part of the solution as much as we are part of the problem.


Richard Baker: I should have said, “and the other Parliament.”

Mike Watson: That is the convener’s job.

Christine May: I will be brief. I refer to page 3 of the NJUG submission, under “Powers to restrict works”, which states:

“Utilities must be allowed to undertake unforeseen emergency works”.

That point is made in a number of other submissions. Where in the bill is there a restriction on emergency works?

Alex Rae (Scottish Water): Clarity is required when using the word “emergency”, because under the New Roads and Street Works Act 1991 “emergency” refers to life and limb-threatening situations. Utilities have a lot of urgent works to restore services. There is a need for clarification in the bill as to the meaning of “emergency”.

Christine May: Thank you. I had not appreciated the formal definition.

The same paragraph refers to the moratorium, and you seem to say in the last paragraph on page 3 that, provided that the roads authority gave notice and people were effectively consulted, you might be prepared to accept some element of a moratorium. Do I read that correctly?

Alex Rae: Yes.

Michael Matheson: I turn to page 4 of the NJUG submission, on road works offences. You clearly have some concerns about the punitive nature of the provisions in the bill. You suggest that the Executive should consider

“measures that encourage good performance”.

Could you expand on what you mean by “encourage good performance” and how you see such a system working?

Alex Rae: As a utilities group, we recognise that there is a quality issue, which we are striving to improve. It is no secret that national coring...
programmes have been carried out over the past few years. As a utilities group, we voluntarily go into local authorities, to ensure that we are striving to improve the quality of our road works. The bill focuses on the administration side, as opposed to quality issues. If some of those issues were taken on board, it would drive quality forward vis-à-vis ourselves and our contractors.

**Michael Matheson:** So if that was addressed, there would still be a requirement for some type of punitive measure in the bill.

**Alex Rae:** We are working towards that voluntarily in any case, but in our submission we suggest that that should be considered.

**Michael Matheson:** You also express concern about a potential conflict of interest in the fact that the fixed-penalty notices will be issued by the local authority. Why are you concerned about that?

**Alex Rae:** As you probably heard from the previous witnesses, there are concerns that local authorities might consider that fixed-penalty notices offer an income stream when their budgets are restricted. From a utilities point of view, we need to make sure that the imposition of fixed-penalty notices is done in an independent manner. We therefore suggest that the commissioner is best placed to impose fixed penalties.

**Domhnall Dods:** Some of our scepticism or concern has been born out of experience south of the border where a fixed-penalty scheme has come in. We lobbied long and hard and the ministers assured us that the schemes could not be used to generate revenue.

Now that the detailed regulations are being worked out, the local authority representatives on the working groups are saying that they have to have a new workforce of wardens—the blue meanies are back—who have to have spanking new computer systems and back-office people to administer the scheme, and to hang with the cost because the utilities will pay. They do not worry about it. The fixed-penalty schemes are not for generating revenue, but they are raising money that is then being spent on the scheme itself. There is concern that the same things might happen here.

**Michael Matheson:** If that happened here, what impact would it have on business?

**Domhnall Dods:** I cannot speak for any other industries, but in my industry, other than BT, no operators are creating massive profits, if they are creating any profits at all. So any extra costs will be borne by consumers and businesses. They will be directly passed on.

**Chris Ballance:** You said at the very beginning that your thunder had been stolen by Tony Cox and Allan Hogarth. Their position seems to be made up of four points. First, the bill is irrelevant to the main causes of congestion and seeks to tackle the wrong problem. Secondly, it is anti-competitive. Thirdly, the bill is skeletal and lacking in detail. Fourthly, if enacted, the measures are likely to hold back business growth. Is that your position?

**Domhnall Dods:** It is fair to say that it is. I do not want to sound entirely negative because there are positive aspects to the bill such as the independent role of the commissioner. We pushed long and hard for that to be put in the Traffic Management Act 2004, so it is welcome here.

If utility road works are not the major cause of congestion in Scotland—they represent only half of the road works congestion—we would like there to be a more level playing field. If road works are to be tackled, it does not matter whether they are being done by the private sector or by a public sector organisation. If there are going to be disincentives, or incentives to work better and faster, they need to apply to everyone. Arguably the private sector is already under commercial pressure that the public sector does not face. If additional incentives are needed, it is the public sector that needs them.

**Chris Ballance:** So utilities road works are only responsible for half of the 5 per cent.

**Domhnall Dods:** That is the best information that we have. That is a UK Government figure that I have seen quoted and not seen challenged.

15:30

**The Convener:** Thank you. That concludes our evidence session. I believe that Domhnall Dods is now required at the Local Government and Transport Committee. I thank the three of you very much for your written and oral evidence, which was very helpful.

We move on to item 4, which is the third evidence session on the Transport (Scotland) Bill. I welcome Alan Watt, from the Civil Engineering Contractors Association (Scotland), Sir Michael Hirst, from the Scottish Independent Airport Park and Ride Association, and David Flint, who is also from the Scottish Independent Airport Park and Ride Association.

To some extent there is a clear division in that Alan Watt is mainly concerned with road works caused by utilities, while Michael Hirst and David Flint are obviously more concerned with the airport situation. I will take introductory comments from Alan and from Michael. We will organise the questions in such a way that we cover both angles. Up until now, the utilities issue has dominated.
Mr Alan Watt (Civil Engineering Contractors Association (Scotland)): I feel that I have even less thunder now as most of the witnesses have covered the points that we want to put across.

As we state in our submission, our organisation represents about 80 per cent of Scotland’s civil engineers.

We acknowledge that there is a congestion problem. There was a slight lack of clarity in the previous evidence session about the volume of congestion that road works cause. The Scottish Executive has used the figure of about 10 per cent, of which roughly half is caused by utilities and roughly half is caused by local authorities.

The previous witnesses have said that road works by utilities serve a purpose. The infrastructure that has been inherited is not in good condition. If you see something being dug up, you can see why. I reiterate the point made by previous witnesses that the roads are being dug up purely and simply because Scotland needs potable water, safe gas, safe electricity and state-of-the-art telecoms.

I also reiterate the point that there is no commercial sense in overrunning or in being called back. Companies in our sector operate with a profit of between 2 per cent and 4 per cent, and if they are overrun or are called back they lose their profit. There is an incentive to get in and get out as quickly as possible.

One point that we want to highlight is that we would like whatever rules are brought in to be simple, consistent and applied across the board in relation to all road works, whether they are carried out by a local authority, the Scottish Executive, private developers or utilities. That is by far the most sensible way of dealing with the situation. Others have said that the bill is skeletal. We certainly feel that it lacks detail about where and to whom it will apply, and it certainly needs to be made more robust in that sense.

That covers the main points of my introductory statement, as others have covered many of the issues.

Sir Michael Hirst (Scottish Independent Airport Park and Ride Association): SIAPRA is grateful to the committee for the opportunity to provide written evidence and to give oral evidence today. My colleague David Flint is here to provide answers on the more abstruse legal points, which I may be unable to answer.

SIAPRA is a Scottish trade body that represents the operators of park-and-ride facilities for public transport hubs—principally airports, but also railway stations and ferry ports. The association estimates that it provides park-and-ride facilities for nearly 1 million Scots per annum, many of whom are holidaymakers or those who cannot conveniently travel to the transport hub by other means of public transport. We note that the Executive welcomes park and ride as a vital element in the Scottish transport infrastructure.

SIAPRA’s members make a significant contribution to the reduction of congestion at the transport hubs and provide a competitively priced parking facility for those who would otherwise be compelled to use limited and expensive parking resources at the hubs. For example, the business traveller, who is vital to enterprise in Scotland, can choose to use the more convenient, and more expensive, airport parking facilities, in which space would clearly be limited if there were no park-and-ride facilities.

SIAPRA members also provide services to tourists to ease congestion at peak travel hours, and some of our members are in discussion with the Strathclyde Passenger Transport about offering its facilities to those who travel onwards by rail or bus.

Members will know that although air transport is generally a reserved matter those who drafted the devolution legislation recognised the importance of airport bylaws and made them a devolved matter. However, it seems to be somewhat unclear in law whether transport hubs such as airports have the right to impose a charge for access. I deliberately distinguish between a charge for access and a charge for services. SIAPRA members at Glasgow and Edinburgh airports have concluded agreements to pay for services that are provided by the airports and have no objection to paying a fair, reasonable and transparent charge for such services. Accordingly, SIAPRA proposes in its written submission that in the miscellaneous section of the Transport (Scotland) Bill, where other legislative matters are tidied up, Parliament should clarify the issue to inject democratic accountability into any proposal to levy such a charge in future.

Some members may be aware that the Glasgow Airport Parking Association, which is a member of SIAPRA, petitioned against the introduction of new bylaws that, inter alia, would have given Glasgow airport the right to charge for access to the public side of the airport. During the past two and a half years, petition PE528 has slowly but inconclusively progressed through Parliament and it is unfinished business. The proposed amendments to the bill would clarify the matter once and for all. In addition, they would provide a welcome boost for the principle of park and ride, thus giving passengers competitive choice, benefitting communities by reducing congestion and maintaining free, fair and open access for passengers to the public areas of transport hubs.
The Convener: In order to make sense of the issues, I think that we should take questions to Alan Watt first and then move on to questions to Michael Hirst and David Flint. Otherwise, we will be all over the place. It is clear that there are two separate issues.

Christine May: I thank Alan Watt and, like others, I note the point that he made about the need for a level playing field and for measures that apply equally to everyone who digs up roads. In his submission there is a paragraph on coring that I found interesting, as I had not realised that it is not routinely applied to local authorities.

I want to ask a question that I have not asked any of the other witnesses, although I probably should have. Given the focus on the small percentage of congestion that is alleged to be caused by road works by utilities, have you discussed with the Scottish Executive and local authorities measures that the utility road works groups could take to help to reduce congestion and therefore to reduce still further that small percentage, if the figures are correct?

Mr Watt: I have not been in such discussions, but there is a group at which they take place. That group gave evidence last week to the Local Government and Transport Committee. I am racking my brains—I think that it is called the roads authorities and utilities committee (Scotland); you might have heard the name RAUCS, which is the forum at which the policing of road works and their impact on congestion are discussed.

Christine May: Given the cost of carrying out road works, it is surely in the interests of utilities to carry them out at times when they will cause the least disruption and when there is ease of access. Is it not therefore reasonable for restrictions to be placed on you to encourage you to carry out works at times such as evenings and weekends?

Mr Watt: Yes, although of course that has other implications. Obviously, road works are noisy and there are social implications to working in the evenings or overnight. However, if one was working at the Broomielaw one would obviously do so at night because otherwise the disruption that would be caused to Glasgow would be immense.

If the work were done during what we might call social hours—post-school drop-off and pre-school pick-up—it would elongate the length of time that the road works were in place, which would impact downstream on business. There would also be health and safety implications, because it is well documented that road works are most unsafe when cones and barriers are being set up in the morning and taken down in the evening, and the number of occasions on which those tasks had to be done would increase. There are wider considerations.

Mike Watson: A lot of the issues concerning utilities and the road works that they necessitate have been covered. I am interested in a couple of points in your submission. You state that

"In principle, CECA supports the aims of reducing congestion",

but you talk about the need for

"a broader focus on where ... issues lie."

Maybe it is just my interpretation, but you are dismissive of the need for legislation, given that road works by utilities cause only 5 per cent of congestion in the UK.

You represent a civil engineering body and I would like to know the organisation’s view on other aspects of reducing congestion, given that this committee is looking at the issue from the point of view of economic growth and the effects on Scotland’s economy. What is the organisation’s view of, for example, congestion charging and a shift from road to rail to try to reduce congestion? You note that traffic volume accounts for 65 per cent of congestion. Does the organisation have views on those issues?

Mr Watt: We have views although they are not prepared. There was no intention to be dismissive of the 5 or 10 per cent of congestion that road works cause. You will appreciate that we were simply attempting to put the issue into perspective. We support the transfer of freight from road to any other form of carrier, be it sea or rail, purely and simply because that will reduce congestion. The roads are our arteries and the tools of the trade are vehicles, so we are held up along with everyone else. Any measures that reduce congestion will automatically have our support, because they will mean that we can get to and from site quicker.

Mike Watson: So as an organisation you take a broader view.

Mr Watt: Yes.

The Convener: If there are no more questions for Alan Watt I thank him and invite him to stay at the table.

Now we will take questions to Michael Hirst and David Flint.

Mr Stone: I thank the SIAPRA representatives for their informative submission, which I read with great interest. The submission refers to somebody catching a cab at Heathrow and a BAA transponder being used for charging. I do not doubt your word, but is that right? If so, would BAA dare introduce that system here? Could it happen? I do not mean to be cheeky.

Sir Michael Hirst: I am glad that you asked the question. I cannot personally vouch for the
example in our submission. Any time that I have used a black cab at Heathrow there has been no transparency about the cost, but the meter has racked up pretty quickly. For example, many business people from Scotland use a taxi to get from Heathrow to Stockley Park, which is about the same distance from here up to the Meadows—maybe slightly more than that—and costs 11 quid. I always find that taxis from Heathrow are extremely expensive. As I said, I cannot personally vouch for the story, but I have it on very good authority from a member of the Independent Airport Park and Ride Association, which is the associated body in England and Wales.

SIAPRA members are anxious that airport owners might seek to charge for access. There is a paper from the House of Commons library setting out the position as it understands it. That paper states that an informal approach was made to establish the principle of charging in primary legislation, but for one reason or another BAA backed off.

SIAPRA members acknowledge that, in being able to bring passengers to an airport in an environmentally friendly way and in a way that enables the passengers to take advantage of off-site parking at a more modest price, they accept that their passengers are getting a service. That service is being provided by the airport and there is no objection whatever from any member of SIAPRA to paying for those services. However, they see payment for access as being the thin end of a decidedly undesirable wedge. Therefore, because of the apparent lack of certainty about the legal position in the Airports Act 1986, which is a reserved matter, SIAPRA members seek a minor piece of legislative tidying up to be done in the bill to ensure that any future intention to charge for access would be subject to approval by the relevant local authority. That process would provide proper democratic accountability.

15:45

Mr Stone: That is a very fair answer. In case you thought that my first question was hostile, I will now ask you an easier one.

The convener reminded us of our locus earlier. We must bear it in mind that the committee is the secondary committee in relation to the bill and that we are considering the bill from an enterprise point of view. You outline in your submission the benefits of park and ride—I say amen to that—and mention the positive impact that park and ride has on tourism. I give you the opportunity to support what you are saying by mentioning any other economic benefits that would be of interest to the committee.

Sir Michael Hirst: At the most basic level is the encouragement of smaller operators who provide off-site airport parking, which confers a huge benefit on passengers, holidaymakers—both incoming and outgoing—and so on.

An important point is that anyone who regularly uses the airports at Glasgow and Edinburgh will know that until the multistorey car parks were built one could frequently turn up and find that there was no airport parking available—I am glad to see Alan Watt nodding his head. I have found myself going to car parks 1, 2 and 3 and finding them all closed, leaving me seriously worried about whether I would miss a flight. I am probably typical of many business people in Scotland who require to use the airports for business purposes and are prepared to pay a bit extra. For example, at Edinburgh airport it costs £10.20 a day to use the short-term car park, which is the normal business car park. That is quite a lot of money in comparison with the cost of off-site parking. It is important from the point of view of the business community that business people have the convenience of airport parking. In particular, when they get up early in the morning and do a full day’s work they want to be able to get into their car and drive home at half past 10 in the evening. The value of such convenience cannot be understated.

Such provision is necessary if we are to encourage enterprise, which by its very definition will involve the use of transport from transport hubs. The questions have concentrated on airports, but of course SIAPRA covers the operators of parking facilities at other transport hubs such as railway stations and ferry ports. Such facilities are also important from the point of view of developing business, particularly in the non-industrialised parts of Scotland.

Mr Stone: Have you made similar representations to ministers and their officials?

Sir Michael Hirst: Yes. The Local Government and Transport Committee has received and acknowledged the representation that has been made on behalf of SIAPRA. We have indicated a willingness to provide additional information that it might require for its deliberations. The Local Government and Transport Committee has acknowledged that it has received that information from us and we wait to see whether it wishes to interview us. I appreciate that the bill is extensive and that it may not be possible to hear from everybody, but SIAPRA stands ready to provide evidence to anybody who wants to listen.

I appreciate that the Enterprise and Culture Committee is primarily interested in the encouragement of enterprise and the way in which the amendments that we suggest should be made to the bill may impact on that.

Murdo Fraser: There is in SIAPRA’s written submission anecdotal evidence about what is
happening—Prestwick is given as an example. What is the attitude of BAA Ltd, which operates the major airports in Scotland apart from Prestwick, to proposed charging?

**Sir Michael Hirst:** I alluded briefly to the fact that GAPA—all members of which are also members of SIAPRA—found it necessary to lodge petition PE528 against the proposed new byelaws for Glasgow airport, because they would effectively empower a private sector operator, such as BAA, to impose a charge for access. I am not saying that a charge would have been imposed, but BAA was seeking to take powers to charge for access, which could have a decidedly adverse effect on people who choose on environmental and convenience grounds to use off-site parking. I emphasise parenthetically how environmentally friendly such parking is, because it stops congestion at a busy transport hub. I cannot read or X-ray the minds of BAA, save to say that in seeking the new byelaws—which have still not been approved two and a half years later—there was evidence of a wish to secure a charge.

I ask David Flint to comment on Prestwick because, although it is not a BAA airport, there is on-going activity that committee members will want to hear about and which SIAPRA finds concerning.

**David Flint (Scottish Independent Airport Park and Ride Association):** As members will know, Prestwick used to be a BAA airport, but was sold to a private group some years ago and is now owned by an Australian group of companies.

I will say a little about the configuration. When one approaches Prestwick airport on the main road on the coast, one is greeted at the airport entrance by a roundabout. Off the roundabout, one goes to one of the short-stay car parks or to the front of the terminal building.

A SIAPRA member has for many years provided a shuttle bus service for holidaymakers to and from a car park that he has and which is distant from the airport. Prestwick is used primarily by low-cost carriers; the parking charge is usually significantly greater than the cost of a ticket, even if one parked only for a day. Parking is therefore an important cost for passengers there who tend—unlike in Michael Hirst’s example—not to be business people, but families and holidaymakers who are looking for low costs, and people like me taking their wives away for a weekend’s holiday.

**Mr Stone:** Cheapskate. [Laughter.]

**David Flint:** That company is in legal dispute with the owners of Prestwick airport—PIK Facilities Ltd. The first part of the court proceedings has finished, and the case is presently at avizandum with the judge. The airport operator is seeking to interdict the park-and-ride operator from bringing any of his buses into the airport for collecting and dropping off members of the public and argues that if he wants to bring passengers from the park-and-ride facility to the airport, he could drop them on the A79 and they could walk across the dual carriageway into the airport. I do not know how many ladies and gentlemen of the committee have ever tried to get a wife, two small children and a large number of cases even from the front of the airport building into the terminal. The idea of dragging them 150yd, pulling all the cases, and trying to persuade the children not to stop in the middle of the road because they have dropped something in front of the passing cars does not sound very attractive.

Prestwick’s owners argue that the airport is theirs, so they can stop coming in anyone they want. Part of their argument is that they operate a car park and do not see why they should allow another car-park operator anywhere near the airport.

**Murdo Fraser:** Thank you; that was very helpful. Convener, I suggest that if we are going to pursue the matter we might ask BAA to come to give evidence.

**The Convener:** I presume that we might also ask the owners of Prestwick airport to come.

**Mike Watson:** On the last point that Murdo Fraser made, SIAPRA’s submission mentions that the issue is already in front of the Public Petitions Committee. I am a member of that committee, so I have some knowledge of the matter. BAA has given evidence to the Public Petitions Committee—although that does not mean that its representatives should not come to this committee.

I would like to put a couple of points on that to Sir Michael Hirst and perhaps also to David Flint, although I accept that he is here to talk about Prestwick. BAA’s response has been that it had made facilities available for the drop-off. I think that it said that a covered walkway had been made available and that it provided an area for buses to wait when flights were delayed and so on. As those resulted in costs for BAA, it feels that it was entitled to recoup some of those costs, which does not necessarily undermine the basis of your case. How do you answer the point about BAA’s feeling entitled to recover costs?

**David Flint:** I had to negotiate an agreement with BAA. An agreement on access to the facilities was reached between the members of GAPA and BAA Glasgow and between the Edinburgh operators and BAA Edinburgh. As Michael Hirst said, the position of SIAPRA, GAPA and the Edinburgh airport operators is wholly consistent.
They have said openly that where BAA provides additional facilities such as shelters for people to stand in, illuminated signage and a courtesy telephone so that the customer can phone and say, "The plane was four hours late. I have finally got here; can you send a bus round to pick me up and take me back to my car?" we are happy to pay for those.

The agreement with BAA in Glasgow provides for an annual charge being made for precisely such facilities. There is scope within the agreement for BAA to come back to members after discussion and say that, for example, they have agreed that the bus shelters will now be heated or whatever the case may be. The operators have no problem with paying for such additional facilities, which benefit the people who use them. The operators' concern is that they should not be required to pay just because they come to the airport. If my wife chooses to drive me to the airport then drops me at the front door and drives away, that is two journeys. If she comes back and picks me up the next night and drives away again, that is another two journeys, but she would not expect to pay--nor would any committee member expect that she would have to pay—for undertaking such activity.

The members of SIAPRA do not understand why they should be charged merely because they happen to drive a 12-seater or a 20-seater minibus to the airport to drop off passengers who have in all cases pre-booked their places. We are not touting for business. Instead of phoning a wife, husband or friend to ask to be picked up, people arrange with a taxi company or a private bus operator to do it. That is what the issue is about. Paying for services is not a problem. The operators have no problem with paying for such facilities. There is scope within the agreement for BAA to come back to members after discussion and say that, for example, they have agreed that the bus shelters will now be heated or whatever the case may be. The operators' concern is that they should not be required to pay just because they come to the airport. If my wife chooses to drive me to the airport then drops me at the front door and drives away, that is two journeys. If she comes back and picks me up the next night and drives away again, that is another two journeys, but she would not expect to pay--nor would any committee member expect that she would have to pay—for undertaking such activity.

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Mike Watson: That was helpful and clear. I will sum up what you said. SIAPRA and the other organisations do not mind paying for services at the airport, but they do not regard the facility to turn up, drop people off and drive away again as a service.

David Flint: That is correct.

Mike Watson: You mentioned a four-hour wait when there is a delayed flight. Where would your members' vehicles expect to wait? I presume that they would not wait on airport property. They would wait somewhere off site in anticipation of a phone call.

David Flint: They would not wait at the airport. When passengers arrive at the airport they phone the operator, assuming that the bus is not there to pick someone else up; obviously, particularly in the summer, many people are waiting. If passengers arrive at a strange time of day or night they phone the operator and a bus is sent to pick up the passengers from that flight. There is no question of the operators having buses waiting at the airport facilities; that would be a very inefficient use of resources.

Sir Michael Hirst: I want to emphasise that, as I said in my introductory comments, there is no objection whatever to paying for services. Indeed, agreements have been concluded between the operators and the airports for the provision of services. The debate is about the principle of a charge for access.

16:00

I cannot see into the future, but it is conceivable that Edinburgh will at some stage have a congestion charge. Under those circumstances, we would not ask to be exempted—we are not seeking a privilege that is not available to everybody else—but we think that payment for access by park-and-ride operators is unjustified if it is not levied on Mrs Flint, for example, who cares to drop her husband off at the airport. It is all the more unjustified because a park-and-ride operator is doing something worth while in providing facilities that prevent congestion at transport hubs.

Mike Watson: You conclude your submission by making four suggestions for potential amendments. I would like to ask Mr Flint, as a lawyer, about this. One suggestion is that "carriageways within the environs of a railway station, airport or port … be deemed to be public rights of way."

Is there legal precedent for that to which you might point in advancing such an amendment, although not necessarily in those places?

David Flint: I am advised by Strathclyde police—to whom inquiries were made in relation to Glasgow airport, which happens to be the one that is closest to my place of business—that airport roads presently fall into a confusing category: they are roads that are not public, but to which the road traffic acts apply. Even as a lawyer, that is a somewhat difficult concept: it is hard to work out how the road traffic acts apply to private roads. I am sure that you will know that one, though, ladies and gentlemen.

Given the activities of the Scottish Parliament over the past year in allowing members of the public to roam over private areas of Scotland's countryside, I am sure that it is not beyond the skill of draftsmen and the committee to find their way to allow people to roam in their cars over the front of airports. [Laughter.]

Mike Watson: Perhaps we need an amendment to the Land Reform (Scotland) Act 2003.

I was perhaps a little wide of the mark in my last question to Mr Watt. I will ask Sir Michael a question that he might view in the same way. In its response to the bill, Strathclyde Passenger Transport makes a critical comment. It states:
SIAPRA’s members are unreservedly supportive of any such improvements, particularly rail links. There is no question about that. There has been significant growth in business because of the diversity of flight patterns and the growth in travel to short-stay holiday stops. I do not think that our members are all opposed to the principle of developing a rail link to Glasgow airport. Business at the airport has grown substantially, and it is estimated that 1 million people per annum use the park-and-ride facilities. Some of them would switch to the rail link.

As far as airports are concerned, I emphasise that some charter flights leave at times when convenient public transport might not be available; you will perhaps know that flights start pretty early in the morning from Glasgow airport. Part of the reason why many people prefer to use the park-and-ride facilities is that they have tied up with hotels to get cheap overnight accommodation and can be ready to get to the airport to check in at, say, 5 o’clock in the morning, when public transport is not available. There will be some displacement with the opening of the rail link, but there will still be viable business for our members. Healthy competition is important: if an airport operator has exclusive parking rights, that is a private monopoly, which I doubt would operate in the interests of the travelling public.

David Flint: A meeting took place in the past month between the members of SIAPRA and SPT on the rail link. They see the rail link as a benefit and would provide a number of park-and-ride facilities to the west of the Glasgow airport interchange which—as members from the west will know—is a particularly bad congestion spot in the morning. They intend to use that as a park-and-ride hub; members of the public will be able to park their vehicles for the day in secure parking and catch a shuttle to the Glasgow rail link. They will be able to join the rail link at the Glasgow airport terminus with a view to using that rail facility to travel into the city centre. That will take a large number of vehicles off the M8. We are very supportive of that idea, which we see as an opportunity to provide integrated transport by dovetailing all the parts together.

The Convener: I want to follow up the point that Sir Michael Hirst made about competition and the fact that BAA has a monopoly in Glasgow and Edinburgh. Am I right in saying that, under the Airports Act 1986, the byelaws are created by BAA, although no normal—if I can put it that way—private company can issue byelaws?

Sir Michael Hirst: Yes. That is a product of the legislation that privatised the British Airports Authority which—I fear—the record will show I unwittingly, I suspect, supported in the House of Commons. It is time for confession.

The Convener: We will not go into all your mistakes.

Sir Michael Hirst: There was probably logic in a public authority—as BAA was then—having the power to produce its own byelaws. What is different now is that BAA is a stand-alone plc that has to protect the interests of shareholders as well as those of its customers, including the travelling public. BAA has the right to promote byelaws that require sanction by the Scottish Executive.

The genesis of the concern that has prompted the proposal to introduce a minor legislative tidying-up in the Transport (Scotland) Bill is that the new byelaws that Glasgow airport promoted gave it a power to charge for access. A petition against that was brought to the Scottish Parliament, as there was no other way an aggrieved party could seek to have the matter examined democratically. Under our proposal, byelaws would be subject to local democratic accountability.

The Convener: Let us get this clear. Under the current legislation, BAA can—as can any company—promote a change in the byelaws, but would the byelaws be generated by BAA? What is the process?

David Flint: Air transport is a reserved matter; however, the provisions in sections 63, 64 and 66 of the Airports Act 1986 are declared as not being reserved matters, but are to be referred to the Scottish Parliament. The airport operator—or the “aerodrome operator”, as the 1986 act says—is responsible for preparing the byelaws, which have then to be approved by the Scottish minister. That is what BAA has sought to do in relation to Glasgow airport.

In my experience, byelaws that are promulgated by an organisation tend to go to ministers either here or in the UK Parliament to be, in effect, rubber-stamped. However, I understand that 23 sets of objections arrived at the Scottish minister’s desk in relation to Glasgow airport, the first of which questioned the vires of the matter. It is evidently something about which people have strong feelings. The petition to which Sir Michael Hirst refers took a wider view than the petition.
about Glasgow airport: it questioned whether that type of activity is something that the Scottish Parliament has a legitimate interest in pursuing. The question whether the matter is reserved or devolved caused a great deal of confusion among everyone, including BAA. It is unusual to find a statute in which only one section is devolved, with the rest reserved.

The Convener: Am I right in saying that statutory instruments are not required and that, if the Executive approves the byelaw, that is it?

David Flint: I defer to you on exactly the procedure that the Scottish Parliament would adopt for approval of such byelaws.

The Convener: I think that I was right, but we should check that out with Parliament’s lawyers so that we understand the process.

Christine May: The byelaws might well come to the Subordinate Legislation Committee, as did the regulations for charging for parking in the royal parks. The royal parks are reserved, but management of traffic is devolved and goes before the Subordinate Legislation Committee.

The Convener: We should get clarification, to be absolutely sure. Basically, the matter is about fair competition.

David Flint: It is, unashamedly, about fair competition. We believe that the park-and-ride principle, of which the Executive approves, is a socially worthwhile initiative; however, in this case there is clearly an aspect of competition.

Members should not restrict their thinking on the matter to airports, although it is in that respect that park-and-ride facilities are probably most developed. There is also demand for such facilities near rail hubs and ferry ports. If there is to be a continuing increase in transport movement, with all the attendant concerns about congestion, park and ride will increasingly come into its own as a worthy concept. Our proposal would enshrine that and ensure that there was open, fair and free access for members of the public.

Chris Ballance: I read your submission with a great deal of interest and sympathy. However, I am aware that we do not have any context for your proposal. The committee does not know anything about petition PE528, the byelaws or the procedures. We should perhaps try to contextualise the proposal by finding out what BAA and Scottish ministers think about it before we consider it further.

The Convener: Once we have taken the evidence, we can have a brief chat about where we will go from here.

Susan Deacon: I seek clarification. Jamie Stone asked whether the matter had been raised directly with ministers, and you said that the Local Government and Transport Committee had been furnished with all the information. I apologise if I missed your answer and you said something about this earlier, but can you tell us what the Executive’s view is?

Sir Michael Hirst: I defer to David Flint. There is a lengthy history of correspondence on the matter.

The Convener: Can I pre-empt that? I do not think that it would be right to ask for your interpretation of the minister’s view. I suggest that we find out whether the minister will be available for questioning on 18 December, as there are some things about both issues that we need to clear up. He can then tell us what his view is. It puts everybody in an invidious position when someone is asked publicly to interpret a minister’s view.

Susan Deacon: Absolutely, but is there anything on the record, such as meetings that have been held or answers that have been given through the parliamentary processes?

David Flint: I quote from the Public Petitions Committee’s webpages. That committee has considered the petition four times since it was lodged in July 2002. On the action that was taken in 2003, we are informed:

“The Public Petitions Committee considered a response from the Scottish Executive in relation to the issues raised and agreed to ask the Executive to provide details of the outcome of its consideration of the byelaws proposals. The Committee also agreed to write to the British Airports Authority seeking confirmation as to whether it is common practice across all of its airports to impose charges on certain companies to pick up and drop off customers.”

Action was next taken on 7 January 2004:

“The Public Petitions Committee agreed to seek clarification from the BAA on a number of issues raised in its response and to request an update from the Scottish Executive.”

As far as I can ascertain, from reading the minutes of the Public Petitions Committee and the update, that committee is still waiting for those responses.

16:15

The Convener: We will circulate that and the deliberations of the Public Petitions Committee.

I thank all three gentlemen for their written and oral evidence, which was extremely helpful. Just before we leave this item, I suggest that we have a brief chat about how we handle it. We are being asked to address two separate issues—the utilities issue, if I can call it that, and the airports issue. Our next meeting will be on 18 January. I suggest that members feed in to the clerks their views on utilities, and that we ask the clerks to prepare a draft paper on our response for that meeting.
On airports, from what Murdo Fraser suggested and from what I could glean from around the table, there is a feeling that we should, to be fair, give BAA and the owners of Prestwick airport the opportunity to give their points of view. We should circulate to the committee the deliberations of the Public Petitions Committee, and seek the views of the minister, either orally or in writing. We should also have the legal position, so that we understand the process that we are getting involved in, because we are being asked to support an amendment to legislation.

Mike Watson: Will we call the minister?

The Convener: That is one of the issues. As things stand we will not call the minister, but we can do so.

Susan Deacon: Before we agree a specific course of action, can we take a step back? Perhaps you or the clerks can clarify this for me. Given that the role of the committee is to consider the enterprise dimensions of the Transport (Scotland) Bill—that is, we are the secondary committee—as I said in my question to CBI Scotland, I am concerned that we have not spent time talking about the significant strategic transport issues and their impact on Scottish business.

I place alongside that the concern that we are on the brink of spending committee time on a point of detail—whatever its significance—that will be subject to detailed scrutiny at stage 2 and which, by the sound of things, is already being pursued by at least one, if not two, other parliamentary committees. I am anxious about that. I do not understand why we are pursuing the park-and-ride issue when there are other issues that we should pursue.

The Convener: The Local Government and Transport Committee has delegated to us responsibility for both issues. Our job is to report to this committee, so we are the secondary committee. The Local Government and Transport Committee will not at stage 1 go over ground that we have gone over. It has delegated responsibility to us, so we must complete the task. I presume that that committee will want to revisit the issue with amendments at stage 2.

There is the separate matter of what else we should consider, such as the need for and the economic impact of regional transport partnerships. I am open to suggestions if the committee wants to examine that, but there is an issue of timing, because the Transport (Scotland) Bill has been timed by the Parliamentary Bureau, and we have not been asked by the Local Government and Transport Committee to examine those issues, I presume because it is looking at them.

Susan Deacon: That is helpful, because it clarifies the point about whether we should or can spend more time examining the wider strategic issues. However, on whether we should pursue the issue of airport parking, I am left wondering why further inquiry is necessary at this stage, given that we are still at stage 1. Furthermore, the Public Petitions Committee has been considering this matter and has requested information from the Executive. Will it continue to play a role or has it simply referred the petition to the subject committee? Are we the subject committee for that purpose?

Mike Watson: As far as the Public Petitions Committee is concerned, the matter is still in the pipeline. We have considered the petition twice, but I cannot remember off the top of my head whether we have referred it to the subject committee. In any case, if we had done so, it would have gone to the Local Government and Transport Committee. That said, I would have to check the exact details with the clerks.

The Convener: Some aspects of this matter raise wider questions about how the Parliament operates. However, the key point is that an issue about airports has been raised in the Public Petitions Committee and this committee. In effect, the Local Government and Transport Committee has delegated the matter to us. I suggest that we bottom the issue out one way or the other and recommend to the Local Government and Transport Committee either that no action be taken or that it consider the matter in more depth at stage 2, because a genuine issue has been raised. In fact, we would be doing the Public Petitions Committee a favour because that would presumably close the matter one way or the other. After all, if anything is going to happen, it will have to happen during consideration of the Transport (Scotland) Bill, or else it will be a dead issue for the time being.

I do not think that it will take a great deal more effort—perhaps an hour or an hour and a half at the most—to put the matter to bed on 18 January and allow us to pass the matter back to the Local Government and Transport Committee with the recommendation either that the matter should stand as it is or that the legislation should be amended. At the moment, we are not in a position to make such a decision.

Susan Deacon is right to say that the matter raises wider issues about how bills are handled. The way in which the Parliamentary Bureau times these matters means that, frankly, we do not have the time to consider the economic aspects of the bill. Perhaps we should set aside time to discuss such issues and to decide whether we should make any input to the Procedures Committee to improve operations between the different committees.
committees. As far as this bill is concerned, we are up against time, because the bureau has already set the timescale.

Richard Baker: The Procedures Committee has already concluded its report on the timescale of bills so, in that respect, the horse might have bolted.

I have never been a member of a secondary committee that has been scrutinising such a major bill but, because of its economic aspects, I am surprised that we have not been asked to take evidence before this. I realise that we are coming to the matter relatively fresh-faced and have taken three substantial lots of evidence on a major issue; however, we are talking about the strategic use of billions of pounds. I take your point that we should put the issue to bed, but an hour and a half of evidence-taking represents quite a chunk of our time. Could we not put the matter to bed by corresponding with ministers?

The Convener: I think that, to be fair, we have to offer BAA the chance to respond publicly. Indeed, we would have no credibility if we did not do that.

Richard Baker: Fair enough.

The Convener: We might be able to avoid any recurrence of the issue by finding out beforehand whether we might want to consider the economic implications of a forthcoming bill. Before the bureau sets the timetable, we could ask it for some time to consider a particular bill from an economic point of view.

Richard Baker: That is a good idea.

Susan Deacon: I broadly agree with that approach. However, perhaps we need to be a little more focused. After all, every single piece of legislation has an economic dimension. This bill is qualitatively different, because it is directly relevant to the Scottish economy and Scottish business. I am slightly concerned about making a blanket pitch to consider anything that has wider implications for the Scottish economy.

The Convener: We would identify whether a bill has economic implications. For example, if we are discussing our work programme and we know that a bill is coming up in three months, a member could suggest that we should consider its economic implications. We reserve the right to ask the Parliamentary Bureau for an extension of the time available for the Transport (Scotland) Bill to allow us to consider its wider implications. I am open to that suggestion, if committee members want to do that.

Christine May: I suggest that there should be an informal discussion of the issue at the Conveners Group, which meets on Thursday. We run the risk of treading on lots of people’s toes if we go barging in trampling all over the place with big tackety boots. Let us be careful and diplomatic and find out whether there is a way of getting another evidence session and being allowed to make our comments. Perhaps at the Conveners Group, the convener might want to say, “If the bill raises significant issues that might warrant a delay in the timetable, would you guys have any problems if I ask the Parliamentary Bureau for a bit more time?”

Mr Stone: That is a sensible suggestion.

The Convener: That seems reasonable. The issue throws up one unsatisfactory aspect of the way in which the Parliament operates.

Christine May: Unless we discuss everything in plenary session, not all members can know everything about everything.

The Convener: Exactly.

I ask members to give their views to the clerks for the beginnings of a draft report on the issue, which will be considered on 18 January.
ENTERPRISE AND CULTURE COMMITTEE

EXTRACT FROM THE MINUTES

1st Meeting, 2005 (Session 2)

Tuesday 18 January, 2005

Present:

Mr Richard Baker
Susan Deacon
Michael Matheson
Alex Neil (Convener)

Chris Ballance
Murdo Fraser
Christine May
Mike Watson (Deputy Convener)

Apologies were received from Mr Jamie Stone.

Transport (Scotland) Bill: The Committee took evidence from:

Alastair Smith, Communications Director, British Airports Authority (BAA) plc;

Eddie Biber, Group Property Solicitor, British Airports Authority (BAA) plc;

Eoghainn CM MacLean, Advocate, Glasgow Prestwick International Airport (GPIA) plc;

David Grant, Director of Property and Retailing, Glasgow Prestwick International Airport (GPIA) plc;

on the Transport (Scotland) Bill.

Transport (Scotland) Bill (in private): The Committee agreed to defer consideration of a draft report on its Stage 1 scrutiny of the Transport (Scotland) Bill to its next meeting.
Transport (Scotland) Bill: Stage 1

The Convener: For agenda item 7, I welcome from BAA plc Alastair Smith, who is a fairly well-kent face round the Parliament, and Eddie Biber. From Glasgow Prestwick International Airport plc, I welcome Eoghainn MacLean and David Grant. The witnesses have circulated papers, and I think that I am right in saying that Alastair Smith and Eoghainn MacLean will make introductory statements, after which we will ask questions.

Alastair Smith (BAA plc): Thank you for the opportunity to address the committee. We recognise with almost grudging admiration the care with which the title of the organisation from which you have already taken evidence—the rather grandly named Scottish Independent Airport Park and Ride Association—was chosen. You might well be thinking, “What’s in a name?” but names carry connotations, and the term “park and ride” certainly does.

In making the arguments that we will answer today, SIAPRA seeks to dress itself up as an environmental protection organisation—certainly, Sir Michael Hirst and David Flint laid great store by their operation’s green credentials—but let us be clear that the organisation that gave evidence to the committee before Christmas represents owners and operators of private car parks. I am quite sure that they make a good living from their operations around our airports and presumably they would like free rein to continue to do so without any of the associated costs or other implications. I know that the Parliament has set its face against the so-called spin doctors, so I will try to assist you by referring from now on to private, off-airport car park operators, which is what they are.

Having said all that, BAA welcomes the service that is provided by off-airport car parks. They provide a service for our mutual customers and have created a market for which there is clearly a demand. We welcome the competition that they provide. We also welcome the additional capacity that they provide to our ever-expanding business, and our willingness to invest £100,000 at Glasgow airport and £250,000 at Edinburgh in facilities to accommodate their operations should indicate our recognition of the importance of off-airport car parks and the choice that they give to our customers. The off-airport car park operators are being asked to make a contribution—which, incidentally, will not cover the cost of provision in many cases—for the use of those facilities and the associated infrastructure. That contribution is
decidedly not a charge that is being levied for access to our airports. There is no such charge and there are no plans to introduce such a charge, nor has there been any attempt at any of our airports to introduce in the new byelaws anything that would facilitate access charging for competing operators.

My colleague will deal with the byelaws and our right to make them, but there is a single overriding principle. The byelaws and our authority under the road traffic legislation, both of which are subject to public accountability, exist so that we can ensure that airport forecourts can be managed safely and securely, kept free from congestion and managed in the best interests of the travelling public. To allow a free-for-all would be hugely detrimental to the service that we provide to the travelling public and could even restrict future development.

I ask the committee to picture the scene as a foreign visitor gets his first impression of Scotland on arriving at the airport and sees black taxis vying for kerb space with private hire cars; coaches and minibuses clogging the forecourt as they drop off their passengers anywhere they like; and people abandoning their cars to go into the terminal to begin his journey. That is to say nothing of more serious issues of security.

That is not a picture that we dare to contemplate and we hope that the committee will assist us in avoiding it.

Eoghainn C M MacLean (Glasgow Prestwick International Airport plc): Glasgow Prestwick International Airport plc is obliged to the committee for the opportunity to respond to the evidence that SIAPRA submitted. David Grant will answer any questions that relate to the operation of the airport, but I have been asked to lead and to address the committee on the thrust of our written submission, which is the effect of competition law on airports.

Glasgow Prestwick International Airport plc does not oppose SIAPRA’s first proposal for reform of section 63 of the Airports Act 1986—the provision under which the byelaws are made—because we do not seek to create rights to charge for any use of the airport by taking special powers under byelaws. We own the airport ground and the airport roads over which access to the airport is taken. There being no public rights of way over those roads, the airport is in the same position as any other owner of commercial property in that it has the right to determine how and by whom its property is used.

The airport seeks from the committee an assurance that those rights will not be cut down— or, at least, if they are cut down, that that be done only because of a specific justification based on the particular economic circumstances of the airport—and, by extension, that any transport facility will be dealt with in a similar way. Therefore, we specifically oppose SIAPRA’s second proposal: the blanket creation of public rights of way over all roads and accesses within transport facilities in Scotland.

It might be thought that enterprise or competition concerns are the basis for SIAPRA’s second proposal, but any such proposal is entirely unnecessary and wholly inappropriate. It is unnecessary because a well-established system of competition law already exists. That system deals specifically with a competitor’s access to an essential facility, including a transport facility. When a question of competition law arises, the application of the law requires an economic analysis of the circumstances that affect the facility and the markets and competitors that use it. If a case is made out in competition law, the duties that that law imposes override property rights. Competition law also provides effective remedies by which, if a case is established, competitors can force access to the facility in question, albeit sometimes on payment of a fee set at an objectively justified level to reflect the facility owner’s investment.

SIAPRA’s second proposal—to create blanket rights of way over transport facility access roads—would cut right across the system of competition law. The proposal would have the effect of prejudicially deciding all competition issues in relation to every transport facility in Scotland, both now and in the future, by effectively deciding those issues now, in favour of the competitor of the transport facility owner, by giving the competitor a permanent right to make free use of the transport facility owner’s asset in the generation of its own profits. In many cases, including that of Prestwick airport, the overall effect across a range of markets in which the facility is used would be anti-competitive.

The specific aspect of competition law that is engaged is the essential facilities doctrine. At its simplest, that doctrine dictates that where an undertaking is dominant in the provision of a facility and the use of that facility is also essential in a secondary market for the provision of other goods and services on which that undertaking also competes, it abuses its dominant position in the upstream market if it refuses without objective justification to provide access to the competitors, thereby eliminating competition. That doctrine has been applied consistently in European law. An example is the Frankfurt airport case, in which the owners of the airport were found to be dominant in the market for the provision of take-off and landing services at and around Frankfurt, and they were
required to open up access to the airport apron to ground-handling service providers.

In the current case before the Court of Session, PIK Facilities Ltd v Watson’s Ayr-Park Ltd, which is a member of the Scottish Independent Airport Park and Ride Association, that is the very doctrine upon which the park-and-ride operator relied before the Court of Session. It is something of a surprise that the park-and-ride association representative who gave evidence to the committee on 14 December did not draw that to the committee’s attention. However, the point is that that doctrine of general application is now of domestic application in this country.

Prestwick airport was purchased and developed almost exclusively with private investment and with considerable success. Some 2.6 million passengers are expected to pass through the airport this year. The airport achieves that success by attracting low-cost air service providers, and it can do that only by being highly competitive in its aircraft-handling markets. As a consequence, it is heavily dependent on non-aeronautical income— that is to say, income that comes from the retail side of its business and from car parking in particular. Car parking forms 40 per cent of the airport’s revenues from non-aeronautical income. Without that income, the airport could not continue to attract the low-cost air service providers that it does; indeed, it might not be sustainable as a business.

Providing the park-and-ride association with a free ride on the airport’s investment would have a serious effect on the airport’s ability to be competitive in upstream markets from car parking. It might also affect the airport’s ability to sustain the cost of maintaining the railway station, which is the only such station attached to any airport in Scotland. The on-going costs of the railway station, which are considerable, are met entirely by the airport owners. Although there are substantial benefits to the airport in having such a facility, and although the railway station forms part of an environmentally friendly transport policy for surface access to the airport, the costs are substantial. In addition, the presence of the railway station reduces the income from car parking. If that income were to be further reduced by allowing park-and-ride association members to have a free ride with completely free use of the airport’s facilities, the airport’s ability to sustain the cost of the railway station would be impaired.

Prestwick airport joins BAA in taking the view that park-and-ride operators are wrong to claim significant environmental benefits for large car parks that are near airports. Prestwick airport does not claim such a benefit for its car parks and it does not fall in favour of the park-and-ride case. Accordingly, Prestwick airport urges the committee to reject SIAPRA’s second proposal as a general principle and to recommend no amendment to the bill to create public rights of way in transport facilities. The matter should be left to competition law.

16:00

Murdo Fraser: You both make an articulate and powerful case. We also heard an articulate and powerful case from SIAPRA. I will play devil’s advocate for a moment and address my question to Alastair Smith, because it is slightly more relevant to BAA. If I, as a private citizen, had a lot of money—I do not—and I obtained planning permission to build my own airport somewhere in Scotland, which I constructed with a terminal, a runway, car parks and roads, and I had permission to connect to the public highway, it is understandable that I would be very upset if someone came along and sought to use my private airport without paying me a charge.

With respect, however, I point out that BAA is not really in the same position. The airports that you run were previously in the public sector. They were created with public money and privatised subject to several safeguards to protect the public and competition. You have the right to make byelaws in relation to traffic flow and congestion, but is that not an historical accident, given your circumstances?

Alastair Smith: You will have to ask that of the people who drafted the Airports Act 1986. The position is not an accident. Obligations are placed on us to act properly and fairly in everybody’s interests. Members should not forget that, in bringing the airports to their current position, we have spent more than £500 million in the past 10 years to develop the infrastructure in Scotland. We plan to spend another £500 million in the next 10 years. Those sums of money are substantial and we are not taking such money from our Scottish airports in profit. It is not unreasonable for people who share in our airports’ success to contribute to the facilities that we provide.

I repeat that we welcome the service that off-airport car park operators provide. We could not cope with the traffic flow if they did not exist. However, they are private operators, like us. The situation should involve a business arrangement between two private companies.

Murdo Fraser: I understand that BAA does not intend to make a charge to private operators, other than a charge for services provided.

Alastair Smith: We would charge only for facilities and not for access to an airport. No one is charged for access to Glasgow, Edinburgh or Aberdeen airports. A charge would simply be for the facility. We have recognised the importance of
Michael Matheson: What is the situation at Prestwick? Can the park-and-ride companies reach financial agreement with the airport's owners so that there is a similar arrangement to that at Glasgow airport or Edinburgh airport, for example?

Eoghainn C M MacLean: The airport is seeking to establish in the courts its right to exclusive use of the airport as a matter of property law. In defence, the park-and-ride association has said that the airport's property rights are limited by competition law. The airport's position on that is not that competition law does not apply, but that the particular requirements are not met in this case, especially because the use of airport roads is not truly essential to the business of such companies. The airport's overall position is that it wishes to establish the principle of its right to control its property. Three years ago, the off-airport car park operator simply took access without permission and managed to resist an interim interdict. It has operated on the airport's land, but has never done so with the airport's consent. The airport wishes to establish its right in property and is thereafter prepared to consider negotiating payment for access. However, the current position is that, as the airport is faced with unauthorised access for which no payment has been offered, it has been forced to take the matter to court to establish its property right.

Michael Matheson: In lay terms, what would happen if I set up a park-and-ride company in Prestwick and opened a car park, punters came along, parked their cars, jumped into my bus and I drove along to Prestwick airport and pulled up outside the forecourt?

David Grant (Glasgow Prestwick International Airport plc): At the moment, nothing would happen in operational terms, because the interim interdict was overturned on the balance of convenience—in other words, the court decided that it would take a long time to decide the matter in the court diary. In answer to the question who would suffer most from the interdict either being in place or not being in place, it was decided that the car park operator would perhaps be long out of business by the time that the court got round to deciding the matter.

In effect, the court has instructed us to allow free, unfettered access with no charge. If we are successful in the court action and the car park operator is excluded—assuming that that is the course of action that we decide to take—he can still drop off his passengers at the bus stops on the public road. Contrary to what Mr Flint has stated, passengers can be dropped off almost adjacent to the terminal—I am talking about a distance of around 50yd—or on the other side of the road, at the railway station. Passengers can use the railway station bridge to go directly into the terminal.

The off-site car park operator has stated that access to the front door is essential, but obviously it is not essential for the 38 per cent of our passengers who come by rail, as the train drops them 200yd from the terminal. In the court case, the lord ordinary recognised that the car park operator would be no more disadvantaged than the railway operator, which must drop off passengers even further away from the terminal. That does not prevent 38 per cent of our passengers from using trains.

Michael Matheson: I do not want to get too caught up in all the legal shenanigans—I simply want to identify what is happening. I presume that the Prestwick airport authorities took out the interdict to prevent park-and-ride operators from using the forecourt area. Is that correct?

David Grant: Yes.

Michael Matheson: So you are trying to prevent the operators from being able to drop people off at your airport in order to force people to use your car park or trains.

David Grant: No. People could still use the off-site car park. If the car park operator used his private minibus to convey passengers from the off-site car park to the airport, he would simply have to drop off passengers at bus stops on the A79 rather than drive round. That sounds like a moot point, but the point of the court case is to establish our property rights. To use the expression that SIAPRA used, this is the thin end of the wedge. If the car park operator is allowed free access, why should the car hire companies pay us any money
for being in the airport? Why should the taxi companies pay us any money?

Michael Matheson: You keep referring to your court case, but I want to be clear about the operational situation. You say that park-and-ride operators can use the bus stop that is on the other side of the main road. That does not strike me as convenient when you consider someone humphing five bags across the bridge with two kids in tow. At Glasgow and Edinburgh airports, there are convenient canopied areas that keep people dry and the walkways are properly maintained.

If the court rules in your favour, do you intend that the operators should not be allowed to come on to your forecourts, even if they are prepared to enter an agreement—as they have done with BAA—to pay a charge for using the facility?

David Grant: No—that is not what we are saying. Two points arise. First, we have to establish our rights. We cannot enter a negotiation to charge somebody if they have established in court that we have no right to do so. The question is, do we own our property? Have we the right to the exclusive use of our property, or can anybody come along and trade in a competing business without even telling us? That is the point of the court case.

Following the court case, having established our right, we may enter negotiations with anybody who wishes to conduct a business—competing or otherwise—at the airport.

May I correct Mr Matheson on an earlier point? With the benefit of funding from the west of Scotland transport partnership, for which we are very grateful, we have provided covered walkways from the A79 up to the railway station. Access from that side of the road is therefore much more convenient than it used to be.

Michael Matheson: That is helpful. Thank you.

The Convener: I remind everybody that we dare not enter into discussions on the merits of the court case, which is sub judice. I am not a lawyer and I do not think that anybody has yet strayed, but I am sure that somebody somewhere will tell me if so. We have to keep things tight.

Chris Ballance: GPIA’s written submission states that people can be dropped off at the bus stop at the airport railway station. I presume that, if you win the court case, you will have established your complete control over the facility and, therefore, over the bus stop at the airport railway station, which you also own.

David Grant: No—the bus stop is on the public highway.

Chris Ballance: It is not part of the railway station?

David Grant: No, it is not.

Chris Ballance: Okay. Thank you.

Mike Watson: For most of my colleagues, this is the second time that we have discussed the issue; for me, it is the fourth time, because I am also a member of the Public Petitions Committee.

My first question is for BAA. I know that you submitted draft byelaws in August last year. Our information is that ministers are awaiting a resubmission. As of 22 December, that resubmission had not been received. Has anything been submitted since then? If so, what does it say?

Eddie Biber (BAA plc): A reply has been sent; I sent it earlier this month and we are awaiting a reply from the Scottish Executive.

Mike Watson: So you made a submission in August and have subsequently made what is termed in our papers a resubmission. How does the second submission differ from the first?

Eddie Biber: One of the Scottish ministers asked us to consider one particular point, which I did. I replied to the Executive.

Mike Watson: Are you able to say what that point was?

Eddie Biber: It concerned disability discrimination and taxis.

Mike Watson: Right.

I wanted to pick up on a couple of points in Mr Smith’s submission. You talk about BAA’s investment of £100,000 at Glasgow and £250,000 at Edinburgh. Were minibus operators at off-site car parks operating in your airports before these facilities were there? I suppose that the question relates to Prestwick as well.

Alastair Smith: Yes—in fact, at Glasgow they still operate on the old system, outside the terminal building. Having only two stances, shared by 10 companies, was not convenient. My understanding is that there has been no charge for that up to now, and there is certainly no charge at Glasgow at the moment. In fact, there will be no charge until the operators move into the new custom-built facility.

Mike Watson: When I travel to Glasgow airport, I often take a bus from the city centre. Do the bus companies that operate that service pay you for their stances at the airport?

Alastair Smith: I understand that they do.

Mike Watson: Would that charge be similar to the one that you would seek from car park operators?

Alastair Smith: I do not know; I would have to take advice on that.
Mike Watson: I was not asking whether the charge would be a similar amount, but whether the type of charge would be similar.

Alastair Smith: Yes, given the facilities that would be provided.

Mike Watson: So basically you are asking car park operators to pay for something for which other people pay a similar type of charge.

16:15

Alastair Smith: Yes. It all comes down to organisation and ensuring that we have not a free-for-all but a sensible operation for the passenger. Most companies accept that our proposals would be good for off-airport car park operators, who have freephone facilities in the building that allow people to contact them and ask them to bring their car round. There are three such operators at Glasgow airport, and the facility will shortly be introduced at Edinburgh airport. Even those operators acknowledge that that is a sensible way of doing business.

Mike Watson: SIAPRA told the committee that it has reached agreement on paying for services. However, when I asked a specific question on the matter, it drew a line between services that are paid for and picking up and dropping off cars, which it regarded as a facility, not as a service. What services do operators pay for at the moment?

Alastair Smith: At Edinburgh airport, there is access to a dedicated coach park that is directly opposite the domestic arrivals hall and a free telephone that allows customers to call and ask to be picked up. Obviously, that park is shared with coach operators, but it is a sensible way of clearing a lot of traffic from the front of the terminal. The issue is not just about convenience; it is about safety and keeping the forecourt clear. There are also security issues to take into account, but I do not want to make too much of them.

At Glasgow airport, there are three freephones in the terminal building. We have also completed a covered walkway and waiting area just outside international arrivals, which should be convenient for people who are returning with all their luggage from Ibiza, for example. That new facility is not yet in operation, because we are not clear about how it will be policed. If we are to offer airport car park operators the further convenience of that walkway and waiting area, we will need to ensure that they have a space to drive up to and that their space is not occupied by a charter coach that has simply found a convenient place to drop people off. As I said, there is no charge at Glasgow airport at the moment, but one will be introduced once operators start making use of the facilities.

Mike Watson: Perhaps I am not quite clear in my own mind. I thought that SIAPRA told us that it had already reached an agreement on the services that it will pay for.

Alastair Smith: Yes, it has. I have just described those services. We are not charging for them yet because they are not fully operational.

Mike Watson: Now I am confused, because SIAPRA does not regard those as services and is not willing to pay for them. Are operators paying anything at the moment?

Alastair Smith: No, and there is no access charge for any member of the public who wants to drive up and drop off passengers.

The Convener: Is there some confusion between what constitutes a service and what constitutes a facility? Alastair Smith described the investment in facilities, which I take to mean the new covered walkway and waiting area. I do not imagine that BAA spends much on providing a phone, but I presume that that is both a facility and a service.

Alastair Smith: Yes.

The Convener: We are simply seeking some clarification on the matter. SIAPRA has agreed in principle to pay for the phone, the use of the covered area and so on. Is that correct?

Alastair Smith: Yes.

The Convener: And those elements are not in operation yet, but they will be.

Alastair Smith: I will double-check the existing arrangement.

Mike Watson: If we are talking about an in-principle arrangement, that makes things perfectly clear and answers my point.

The Convener: I seek further clarification. Will the additional charges that we are discussing be levied on operators to allow them to come on to your forecourts in order to pick up and drop off passengers?

Alastair Smith: No, it is not an access charge.

The Convener: So, to be clear, there is no access charge.

Alastair Smith: No, and there are no plans to introduce an access charge.
Alastair Smith: None.

The Convener: Apart from the charges on which agreement has already been reached, what other charges do you propose, if any?

Alastair Smith: None that I know of.

Mike Watson: I have one other question for the gentleman who represents Prestwick airport. We have heard about what BAA provides at Glasgow and Edinburgh airports, but am I to understand that you have not invested in a similar facility on Prestwick airport’s forecourt?

David Grant: There must be a dedicated area under the Department for Transport rule, which is commonly called the 30m rule. That relates to the security and parking of vehicles within 30m of the front of a terminal building. For security reasons, we have to control who parks where. At present, there is a facility on the east side of the terminal that is commonly used by the off-site car park operator, courtesy coaches from hotels and charter coaches—there is disabled access there. There is a dedicated, signposted area.

Mike Watson: But there is no covered walkway or other facility similar to that provided by the operators of Glasgow and Edinburgh airports.

David Grant: Unfortunately, we do not have £1 million a week to spend on our property, so I cannot claim that the facility is the same quality as the facilities that BAA provides.

The Convener: I should remind you that you are being broadcast.

Mike Watson: I noticed in your submission a comment about the previous owners and operators of the airport.

You mentioned the coach operators and the hotel courtesy coaches that use the facility. Do they pay? I asked a similar question of BAA.

David Grant: They do not pay at the moment.

Mike Watson: Have they been asked to pay and have they refused on similar grounds as apply to the off-site car park operators?

David Grant: No, we will not pursue revenue from those businesses until we establish whether we have the right to do so at law.

Mike Watson: So the case that is currently in the Court of Session is a test case as far as Prestwick is concerned.

David Grant: The main thrust of the submission is that there is a body of competition law that relates to all those issues. It is not a case of one size fits all. We are not BAA; we are a different animal altogether. The SIAPRA proposal takes a broad brush and applies it to every transport facility, whereas the body of competition law allows every individual situation to be assessed on its economic merits and a decision to be taken on an individual basis. We have made a submission to the Court of Session in relation to the competition law tests. The SIAPRA proposal pushes that to the side and asks for law to be made that rules in its favour without going through all those tests. I am talking about the application of what is already in place for the purpose of establishing rights of access to essential transport facilities and, if there is a charge, what that level of charge should be.

Eoghainn C M MacLean: From the competition perspective, Prestwick airport must be able to reserve the right to charge for bare access. The reason for that in competition terms is that it has created by private investment a transport facility that generates economic activity in its upstream markets—the air service handling markets. That has created a secondary market in car parking. The competitiveness of the airport in its upstream, aircraft-handling market is significantly dependent on its incomes from its secondary market. In that market, the off-site car park operators are direct competitors of the airport. That is not like the example of Mr Flint’s wife dropping him off—she is not in competition with the airport.

Mike Watson: I see that. You have referred to quite a lot of case law. It seems to me that, because of the Frankfurt case, you will ultimately prevail.

Eoghainn C M MacLean: That will depend on—

Mike Watson: I am just saying that whether the case is decided in the Court of Session or has to go to the European Court of Justice, the test seems to me to be a general one. I am not talking about the specific case.

Eoghainn C M MacLean: It is not obvious that the airport will definitely prevail. On balance, our argument that the use of the private roads is not essential has a prospect of success, but that is not certain. It is important to make the point that a distinction has been drawn between services that are provided and bare access. I submit that the committee should not take the view that charging for bare access is in some way illegitimate. Such charges may be critical to Prestwick airport’s ability to remain competitive in its upstream markets, which will determine the future of the entire facility.

Prestwick airport might not be the only case in which that is so. The analysis of such matters is gone into in competition law. The proposal to provide free access across the board is an economically unattuned proposal and the balancing exercise should be left to the provisions of section 18 of the Competition Act 1998 and the European law that goes with it.
across by a provision that would run right through competition law and might have serious consequences for Prestwick airport.

Richard Baker: I seek clarification so that I understand the debate properly. My understanding is that SIAPRA has indicated that it is happy to pay for facilities of the sort that BAA provides. I agree that there are revenue implications and that we want to retain a level playing field for providers of services at airports. However, I will pick up on something that BAA raised in its initial statement. You say that you have no plans to charge for access but that you wish to retain the power to do so in case of potential problems or situations in the future relating to congestion or safety issues, for example.

Alastair Smith: I will ask Mr Biber to comment, but I should add that congestion can also be dealt with under our road traffic responsibilities.

Eddie Biber: The airport is a highway authority, so it can make road traffic orders and create yellow lines and so on, in consultation with the police. It advertises such provisions in the usual way so that anyone who objects can make representations. In effect, that work controls the traffic. I do not think that byelaws control traffic, although obviously they control what people can do at the airport—for example, people cannot climb fences and take photographs.

Richard Baker: If you can handle congestion in other ways, why do you want to retain the current byelaws? SIAPRA is happy to pay for the dropping-off facility that you provide.

Eddie Biber: If we give a right for anyone to come on to the airport roads, we cannot control—

Richard Baker: Yes. On that point, it seems to me that there is an argument about the facilities that are provided. I thought that SIAPRA said that it was happy to pay for those facilities and that the debate is not about access. Is that a misconception?

Michael Matheson: My understanding, too, is that SIAPRA is quite happy with the idea of a service charge and that it has reached agreement with BAA on that. Its concern is about the fact that BAA can introduce a charge for access to the airport area.

Alastair Smith: I have made it as clear as I can that there are no plans to introduce an access charge.

Michael Matheson: What would the process be if BAA wanted to introduce a charge for access to Glasgow or Edinburgh airport or to any of its airports? Would you have to ask ministers for byelaws?

16:30

Eddie Biber: I do not think that such charges can be imposed under the byelaws, as has been suggested. I have read the byelaws, but if you can tell me—

The Convener: Would primary legislation be needed to do that?

Michael Matheson: How would it be done?

Eddie Biber: It would be done through primary legislation. There is also a suggestion that, because an airport is in effect a local authority under the transport legislation, it could apply to create a charging area. Obviously, the legislative procedures would have to be followed in order to do that.

The Convener: Why have you submitted draft byelaws?

Eddie Biber: We wanted to update the byelaws, which were made in 1986. The byelaws for the south-east airports were updated in 1996 and the Scottish airports wanted to do the same thing. That is what we have done.

The Convener: Is ministerial approval required for you to impose charges for facilities and services on operators?

Alastair Smith: No. Such charges are an arrangement between two private companies. Obviously, the companies will discuss those matters, as we did with SIAPRA, which agreed that the charge is reasonable. That is how we do business.

Michael Matheson: If primary legislation were not required and the charge could be imposed under byelaws—

Eddie Biber: That cannot be done under byelaws.

Michael Matheson: Are you quite clear about that?

Eddie Biber: That is what I am saying, but if you can tell me something different, I will be pleased if you can take me through the process.

The Convener: Let us bottom this out. As far as BAA is concerned, it already has the power to charge for facilities and services. It has reached agreement with the operators on those charges, although the measures have not yet been implemented—

Alastair Smith: I will check that in relation to what I was saying about the Glasgow situation.

The Convener: Is it your understanding that any attempt to charge for access would require primary legislation? Is that BAA’s position?
Eddie Biber: Yes. We cannot do that under the byelaws, so some form of legislation would be required. I have not really got the gist—

The Convener: I want to be absolutely correct about your interpretation.

Eddie Biber: My interpretation of section 63 of the Airports Act 1986 is that we cannot do that.

The Convener: Is it your interpretation that primary legislation would be required to change the situation?

Eddie Biber: Yes.

Alastair Smith: Let me add to the convener’s summary. There is no intention to charge for access. We are not even considering the subject.

The Convener: Prestwick airport is a different kettle of fish, because it does not have the same history as the BAA airports. Like BAA airports, the airport is entirely privately owned, but BAA inherited certain public responsibilities under the legislation. My understanding is that Prestwick airport is entirely free from such obligations and that the company does not have the same power or statutory duties as BAA has.

David Grant: We have the right to make byelaws, which was conferred when Prestwick was a BAA airport. We have not updated our byelaws and we would not seek to use them to impose charges.

Eoghainn C M MacLean: In relation to the imposition of charges, Prestwick seeks to do no more than to exercise its property rights, just as any other owner of commercial property would do.

The Convener: That is why you are going to court to establish your property rights.

Chris Ballance: When do the witnesses from Prestwick expect a decision in the court case?

Eoghainn C M MacLean: No decision has been issued today; I checked before I came to the meeting. I expect that the decision will be issued within the next month or two.

The Convener: If we need any further information to clear up the issue, we will require a quick turnaround, if the witnesses would oblige us with that. I hope that we will not need further information, but if we do we will come back to you and ask for a quick reply, because the situation must be clear. I think that it is clear, but we might need to clarify one or two technicalities before we discuss our report to the Local Government and Transport Committee. I thank the witnesses for their extremely interesting and useful evidence.
WRITTEN SUBMISSIONS TO THE FINANCE COMMITTEE

SUBMISSION FROM COSLA

Introduction
The Convention of Scottish Local Authorities (COSLA) welcomes the opportunity to contribute to the Finance Committee’s evidence gathering on the financial implications of the Transport (Scotland) Bill.

We have attempted to restrict comments around the detail of the Financial Memorandum as requested by the Committee.

This written response will be complemented by evidence that will be presented to the Committee, in the absence of COSLA’s Roads and Transportation Spokesperson, Councillor Alison Magee, by Councillor Andrew Burns and COSLA officers, on Tuesday 23 November 2004.

Context and Overview
We note the Scottish Executive’s Departmental Expenditure Limit of £823m for the transport budget in 2004/05. We also note the £441m to Local Government in Grant Aided Expenditure. While overall we welcome the Scottish Executive’s considerable financial commitment to transport, we believe that it is only once the long term national, regional and local strategies are in place that the required funding can be truly identified and prioritised.

Being positive, we see the new Bill as a valuable step forward in the debate on the future planning, delivery and financing of transport services. For the first time, the white paper “Scotland’s Transport Future”, which set the scene for the Bill, brought together all aspects of transport, making explicit the links to economic activity, tourism, land use planning, the environment, health improvement and community planning, and confirming the key role that Local Government has to play at the centre of these. COSLA will be seeking to ensure that these links are not lost as the Bill and accompanying Orders develop over the coming months.

Key to this is a structured approach to identifying funding priorities and COSLA has long argued for a national, integrated, resourced, long-term transport strategy for all Scotland. The commitment to this by the Minister is therefore welcome.

We see the national strategy being developed by the Scottish Executive in conjunction with ourselves, business and other key stakeholders. The sooner that we can begin work on this the better. We believe that the development of a proper national strategy should take place alongside that of consistent regional transport strategies. This will mean links being made to other policy areas and clear priorities being identified and agreed at national, regional and local levels, allowing a truly integrated approach from top to bottom in terms of transport strategy, resourcing and delivery. This also ensures that transport priorities will not be dominated by the larger partnerships or high profile ‘pet’ projects.
COSLA will strive to ensure that the necessary funding is available to deliver at national, regional and local levels.

Despite the overall funding potentially available above, the Committee will be aware that improvements to transport infrastructure do not come cheap. Much of the budget will be taken up funding public transport and the promised national concessionary fares scheme, particularly in the longer term. Also much is already effectively committed to previously announced high profile projects.

A prime example to explain the scale of the problem facing Scotland in terms of transport and how easily the money could be spent is roads maintenance. The work required has been estimated by SCOTS, and confirmed by Audit Scotland, at over £1.5bn over ten years. COSLA made what we considered a reasonable bid during the current Spending Review for funding to begin to address the problem. It should perhaps be stressed that the £60m annual funding through GAE from 2006/07, agreed by the Executive will in fact mean councils only receiving £48m with the remainder having to be made up from council tax. Also, the roads face another year of deterioration. However, we are committed to delivering on improved roads with this money but, given the size of the problem, we must be realistic in what can be achieved and how spend will have to be planned over a long period.

Further, much of the funding available within the overall Transport budget is capital. Substantially increased revenue funding is necessary to maintain and develop existing services.

Turning to the detail of the Financial Memorandum. Again, it is difficult to comment meaningfully when the details of the new arrangements are not known. However the lack of a long term commitment is disappointing.

**Staffing and Administration Costs**
The Bill states that the Scottish Executive will give "some funding to support" the core cost of current transport partnerships and will continue this. We welcome the commitment to start up funding but are disappointed that there is no commitment to fully fund this and only commitment to funding additional staff costs for the first year. The Executive commits to 25 new staff for the five suggested partnership areas but not any funding shortfall.

There is no acknowledgement that the number of partnership areas may change during the Bill’s progress. It may be that a change will be justified and more, or less, partnerships formed. If so, we would expect a commitment to find funds accordingly.

The new partnerships are designed to allow better planning and delivery of services. Even if the money made available for year one is enough, local authorities are not being provided with any additional monies and future year’s funding will have to be found from existing transport budgets, potentially diverting it away from front line services. This is particularly disappointing given the Executive’s drive for efficient government.
There is also no acknowledgement of potential staff transfer costs or the possible cost to local authorities as senior managers take the opportunity to retire.

We are clear that any additional burden on Local Government must be fully financed by the Scottish Executive.

**Members Expenses**
Again the Scottish Executive provide only a short term commitment to funding travel and subsistence costs. Assumptions are made regarding the number of partnerships and members across Scotland. However, even if numbers were to be limited as suggested there will be considerable travel involved if there were to be fortnightly meetings. As COSLA has pointed out separately, flights from the islands, for example, are costly and the available funding will not go far.

Should the costs exceed £100,000, then we would expect the Scottish Executive to fund these in full.

In the longer term, again funding will potentially be diverted from council services to fund meetings of the partnership.

**SPT Transitional Costs**
SPT has made its own detailed submission.

**Accommodation Start Up**
The Financial Memorandum states that the Scottish Executive will fund "additional accommodation charges" for the first year only. Again, no funding is given for future years.

The same argument as referred to with staffing and administration costs above applies. While Local Government accepts that the new partnership arrangements will bring benefits in terms of joining up planning between local and national levels, COSLA did not support the immediate move to statutory partnerships. We wished them to evolve naturally. With that in mind, we believe that the Scottish Executive must fund this added burden on a longer term basis, at least until they are fully established. The impact of the new partnerships will be considerably lessened if there is a perception, and in this case reality, that they are being funded at the expense of existing council services.

**Transferring Functions**
The Bill also makes reference to the possibility of functions currently undertaken by a local authority transferring to the regional partnership in the longer term. Funding would presumably transfer with the function. COSLA is clear that this must only happen if agreed by all local authorities within a partnership.

**Sharing of Costs**
The Bill states that the sharing of costs is to be determined by the Transport Partnership. COSLA is clear that decisions on the allocation of costs should only be taken by elected representatives on the Partnership. While we welcome the involvement of outside parties on the Partnerships, they should not be taking decisions on the spending of public money.
If no agreement is reached on the sharing of costs, then the Bill suggests that Ministers will make a decision based on population size. While we hope this situation won't arise, we would argue that such a decision must take account of a number of additional factors, such as commuter levels, transport links etc. We will consider this further in evidence to the Local Government and Transport Committee.

**Capital Costs**
The Memorandum states that the loan charges of any capital requirements will be met from the income derived from local authorities. This seems to run counter to other messages from the Scottish Executive about limiting local authority spending under the Prudential Regime as borrowing is too high.

It also means that the plans for supported borrowing levels that local authorities have made will need to be revised to meet with the capital spend undertaken by transport partnerships. Again, also, potentially this will mean non-elected members are dictating the level of capital spend a council can undertake. This is not acceptable to COSLA.

**Conclusion**
For several years, we have argued for subsidiarity of decision making and clear priorities being identified and agreed at national, regional and local levels, allowing a truly integrated approach from top to bottom in terms of transport strategy, resourcing and delivery. The new structure provides that opportunity. But, to be effective, it must be fully funded. We will continue to work with the Scottish Executive to secure that commitment.

**SUBMISSION FROM SCOTTISH POWER**

Thank you for the opportunity to provide a response to the above questionnaire consultation document for the Finance Committee.

I have enclosed comments from ScottishPower on the Finance Committees, Financial memorandum consultation document on the Transport (Scotland) Bill. These comments are submitted on behalf of the licence holding and asset management companies within the ScottishPower group, namely, SP Transmission Ltd., SP Distribution Ltd and SP PowerSystems Ltd.

ScottishPower operates extensive underground and overhead electrical networks throughout the UK and the USA and appreciates the need for the Scottish Parliament to improve working in carriageways. We already have wide experience of the application and operation of the NRSWA 1991 Act in Scotland, England and Wales.

**Executive Summary**
ScottishPower welcomes the opportunity to comment on this questionnaire consultation document. The following comments are submitted on behalf of the licence holding and asset management companies within the ScottishPower
group, namely, SP Transmission Ltd., SP Distribution Ltd and SP PowerSystems Ltd.

We operate extensive underground and overhead electrical networks throughout the United Kingdom.

It must be understood from the outset that the majority of congestion is directly or indirectly associated with road authority schemes. Over 50% of road works fall into this category being roads construction or renewal, roads maintenance, roads diversionary works, utilities diverting existing apparatus due to roads diversionary works within a roads works site or utilities undertaking diversionary works offsite in order to maintain their network.

We are concerned about the Scottish Parliament's questionnaire consultation, if at the end, it only takes in more revenue from the utilities and does not ensure that the main driver is improvement of traffic flows and reduction in disruption to road users. We believe that if it centres on only financial revenue raising, that this would represent a substantial imposition on electricity consumers (and others) and would not contribute to the efficient conduct of road works that we are required to undertake to fulfil our statutory and electricity licence obligations.

Utility companies will seek to recover any imposed additional costs of new regulations, which if approved by our Regulator, will inevitably lead to higher electricity prices.

The correct way forward is a joint approach, which I would state should be "In particular, we want to encourage roads authorities and utility companies to work together better and find effective joint solutions to improving the way in which works promoters road works are carried out".

Views on the financial memorandum questionnaire consultation document – underlying assumption

General comment:
Independent research carried out by the National Joint Utilities Group (NJUG) has revealed that at least 50% of road works are, in fact, carried out by the Roads Authorities. Given the more intrusive nature of the work carried out by roads authorities, it is likely that they cause a disproportionate degree of congestion compared with for example, electricity companies, whose projects are characterised by works in the verge or the footpath and which tend to be completed more quickly.

Recent data published in England (Transport Research Laboratory 1999 report quoted in the Highways Agency Business Plan 2002-3) advised that road congestion is caused by 65% traffic volumes, 25% incidents and 10% road works. It is generally accepted that 50% of road works relates to utility works and 50% authority works. The data supplied by the Scottish Road Works Register (SRWR) concerning the quantity of notices issued is incomplete, as many roads authority equivalent works are not noticed or recorded on the SRWR as their roadwork's are carried out under the Roads Scotland Act 1980. This Act does not place an
obligation on the Roads Authority to send NRSWA notifications. The consultation must scale the problem to the proportions of responsibility and not restrict its investigations to a minor contributor to the perceived problem of congestion.

The original consultation stated that there is concern at the levels of traffic congestion caused to road users by works carried out by utility companies. While it is understandable that the original consultation document was focused on works carried out by utility companies, such an approach is based on the assumption that utility company works are the main or only source of congestion to road users.

In England and Wales, the Department for Transport (DfT) consultation on similar proposals, termed the Traffic Management Act (TMA) 2004 has not ignored the impact of highway authorities’ works on the level of disruption and we would urge the Scottish Parliament to take recognition of this crucial area. If this situation is not corrected, such an inherent weakness in the basis for legislation or change makes it doubtful whether new legislation or proposals could significantly reduce congestion on Scotland’s roads, since it ignores at least half of the root cause of the problem it seeks to address.

The original consultation paper proceeded on a second assumption – i.e. that there has been a great increase in the congestion to road users caused by road works. We would suggest that further research be carried out to determine whether this is in fact the case before implementing regulations and costly charging proposals. There is no evidence to say whether the problem has got better or worse since 1993, it is perceived that pressure has increased both from numbers of road works and from levels of traffic.

It would be extremely disappointing if the Scottish Parliament were to set a precedent for introducing new legislation and charges based purely on perception rather than on firm evidence of a requirement or an assessment of the likely effects. We believe that Scotland already leads the way in the field of coordination of works, due largely to the spirit of co-operation which exists between Roads Authorities and Utilities and their combined use of the Moleseye system (which may soon be available on a UK wide basis). Scotland has an opportunity to lead the way in the United Kingdom and to show that it is possible to effectively manage the congestion caused by road works without resorting to cumbersome charging mechanisms.

Questionnaire

CONSULTATION

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
ScottishPower Plc. did take part in the Scottish Executive’s consultation exercise on two documents for SCOTLAND’S TRANSPORT consultations these were on “Proposals for a New Approach to Transport in Scotland” and “The Regulation of Utility Company Road Works”.

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Comments were emphasised on the policy and choice within the consultation documents. The potential cost implications were only covered, in as much, as possible potential costs to this organisation in relation to operation of the new regulations.

No comments were made on the financial assumptions made, as the majority of these centred on the Scottish Executive and the Local Authorities.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
ScottishPower Plc. did not comment on the costs to the Scottish Executive and the Local Authorities in the original consultation and that is still the case for the Financial Memorandum, with regards to Parts 1 and 3.

However, with regards to Part 2, this will have financial implications for this company:

The section on “Costs on the Scottish Administration”, page 72 and 73, from paragraph 150 to 155 is generally reasonable and acceptable to this organisation.

The section of training and other associated awareness raising, as described in pages 73-74, paragraphs 156 through to 158 will have cost implications, but as this is a very important area for all organisations, which excavate on the roads. All staff operating on the roads, should be suitably trained and authorised to the appropriate level for the work required of them. This should be applicable to Roads Authorities and Utilities and any contractor involved in this type of work.

Refresher courses should be organised on a regular basis and no operative should have their module or certificate automatically renewed, without attending a refresher training course and passing the necessary requirements.

Legislation is continuing to change with regards to NRSWA and it is imperative that the operatives are kept up to date and abreast of these changes.

Therefore ScottishPower will accept these additional Transport (Scotland) Bill, NRSWA training costs, to ensure legislative compliance.

The paragraphs on Page 74 from 159-163 will have to be assessed from a comprehensive Regulatory Impact Assessment (RIA), when the detail of the Regulations and Code of Practice are visible, from the nominated RAUC(S) Working Groups.

With regards to the section on Enforcement, Pages 74-75, sections 164-168, without including road authority activities within the proposals, the public will only be marginally affected by any improvements.

ScottishPower Plc. welcomes the decriminalisation of certain offences into fixed penalties, but wishes these to apply to both Utilities and Roads Authorities.
The question is not clear, as there will be increased charges. If charges are introduced, they will definitely increase the administration of the systems and if they become overly complicated, then additional costs will be incurred, both by the road authorities and utilities. It is important that any new requirements are simple, realistic to operate and not overly complicated with regards to introduction of improved IT requirements or associated staffing.

It is important that sight is not lost of the main driver of this consultation and that is to reduce congestion and disruption to other road users, this is enshrined in the HORNE report, which brought about the NRSWA Act 1991, it is not to raise revenue for local government.

These points were raised, within the original consultation, but have not been identified as additional costs to other bodies and businesses, such as ScottishPower Plc.

3. Did you have sufficient time to contribute to the consultation exercise?
Yes.
- In fact, ScottishPower Plc. actively participated through myself, in the additional submissions by Scottish Joint Utility Group (SJUG) and the Road Authority and Utility Committees for Scotland RAUC(S), combined Road Authority and Utility submission to the Scottish Executive.

COSTS:

4. If the bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not please provide details.
Refer to item 2.0 above.

The Financial Memorandum implies that the operation of this Bill will have little or no financial impact on the Statutory Undertakers (SU’s), but this is not the case.

The table 1.0 below emphasis this point:

<table>
<thead>
<tr>
<th>Description</th>
<th>£m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Start up costs for ScottishPower-PowerSystems (SP-PS)</td>
<td></td>
</tr>
<tr>
<td>Initial staffing and administration costs</td>
<td>0.4</td>
</tr>
<tr>
<td>IT systems improvements</td>
<td>0.2</td>
</tr>
<tr>
<td>GIS system improvements</td>
<td>0.25</td>
</tr>
<tr>
<td>Fixed Penalty Notices (FPN), based on 20% of NRSWA Notices sent</td>
<td>0.5</td>
</tr>
<tr>
<td>Additional training requirements</td>
<td>0.1</td>
</tr>
<tr>
<td>NRSWA Training and Accreditation database</td>
<td>0.05</td>
</tr>
<tr>
<td>NRSWA Management database (for defect, monitor and control)</td>
<td>0.15</td>
</tr>
</tbody>
</table>
There will also be ongoing annual costs for the Statutory Undertakers, likely to be in the region of £0.5 M per annum.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
Yes.

*However, the enforcement charges must be rigorously monitored to ensure fair play and applied equally to Roads Authorities and Utilities. They must not be perceived to be profits, based on revenue raising from Utilities.*

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
Yes.

**WIDER ISSUES**

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
Taking an overall view of the Bill and consultation documents, I would express my opinion in the affirmative.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
Yes. The Codes of Practice will require extensive revision to be legally compliant with NRSWA and its associated regulations, but once achieved, areas of doubt and conflict could be eliminated or at best minimised, thus reducing costly court cases.

In particular the "Safety at Street Works and Road Works" COP and the "Code of Practice for Inspections" should be made into legislative requirements. This is because the majority of issues, come from Safety and Inspections of site works and is therefore an issue for Utilities and Roads Authorities.

Without including road authority activities within the charging proposals, the public will only be marginally affected by any improvements from the introduction of this Bill.

The existing Scottish Gazetteer must be a legislative compliant requirement, to be as accurate as possible for all works promoters to utilise effectively and to make it become electronically driven by use of Geographical Information Systems (GIS) systems for Roads Authorities and all Statutory Undertakers. This would have a financial implication on the Scottish Executive and Local Authorities.
It is in everyone's interest to carry out the roadworks as quickly and efficiently as possible and to the correct reinstatement specification, so as the general public, do not have congestion or disruption for any longer than is necessary. However, if the work is not carried out correctly, thus resulting in a defect and further excavation and disruption, then more severe fixed penalties could be applied to these defects.

Measurement of road works, over runs and extensions to notified and agreed work periods, should be monitored and reported on, as a separate consultation exercise to assess the extent of disruption caused by inefficient or prolonged working by both Utilities and Road Authorities.

SP-PowerSystems has developed a NRSWA Management database, which will provide management key performance indicators, based on defects reported from local authorities. This system will report on in-house and external contractors performance per Council and should allow SP-PowerSystems to monitor and drive quality of safety at excavations and improve reinstatements. Perhaps a similar management system could be developed and implemented by the Scottish Executive or the Moleseye UK electronic notification be improved to provide these performance measures.

If the status quo is maintained and only the Utilities have their performance monitored and measured, but if the Roads Authorities performance is to be monitored also, then the reporting of performance indicators should be via an independent body, (such as the arbitrator role) to the Scottish Executive, via RAUC(S), this will provide overall improvements.

If the Scottish Executive introduced legislation, which levies a nominal charge for every notice submitted to a Roads Authority. Then the Roads Authority could utilise this income to employ additional experienced Roads Inspectors and thus monitor and report the defects to the site operatives as the work proceeds across all the dimensions from start to finish. At the present time the Roads Inspectors are viewed as the "expert" authority on the NRSWA aspects of road and street works. This system could have the desired effect without huge administrative charging systems being required.

SUBMISSION FROM HIGHLANDS AND ISLANDS STRATEGIC TRANSPORT PARTNERSHIP

1. HITRANS is a voluntary partnership comprising:-

- Argyll and Bute Council
- Comhairle nan Eilean Siar
- Highland Council
- Highlands and Islands Enterprise
- Highlands and Islands Public Transport Forum
- North Ayrshire Council (Arran and the Cumbraes)
- Moray Council
- Orkney Islands Council
2. Its objects are to undertake research and gather information about the transport needs of the region; to prepare and keep up to date a regional transport strategy endorsed by all the partners; to implement regional transport projects; to act as the strategic consultation body on behalf of the partners; and to establish a dialogue with government, users and operators.

3. The following comments relate to the request for written evidence on 28 October 2004 from the Clerk to the Finance Committee and follow the headings in the questionnaire enclosed with that letter.

Consultation

4. In June 2003 HITRANS forwarded preliminary observations on a National transport Authority and Regional Partnerships to the Executive’s officials who were drafting the consultation paper on proposals for a new approach to transport in Scotland.

In September 2003 that consultation paper was published. In November HITRANS organised a major seminar for regional transport stakeholders, and the output from that seminar along with HITRANS response to the consultation paper was forwarded to the Executive in December 2003.

The White paper on Scotland’s Transport Future was published in June 2004 with the consultation paper on proposals for Statutory Regional Transport Partnerships following in October, at the same time as the Transport (Scotland) Bill. A response to this consultation will be agreed by HITRANS in December.

5. In answer to the questionnaire HITRANS did play a part in the consultation exercise over a period of 6 months during 2003. Sufficient time was available to contribute to the consultation exercise. Our response on financial matters suggested that central government grant should be the main source of funding for the Regional Transport Partnerships, both for running costs and particularly in terms of capital resources for delivering regionally strategic projects. The Financial memorandum allows for the first year’s start up costs to be met from central funds, but thereafter it assumes that all costs will be borne by the constituent Local Authorities. We did not envisage powers of requisition on Local Authorities in our consultation response because this is a new function. The ongoing running costs of the new Regional Partnerships, rather than simply the first year start up, should be met by continuing central grant.

Costs

6. Although we have yet to respond formally to the latest consultation, HITRANS has always taken the view that our Regional Partnership should not draw up functions from Local Government. Therefore we see the Partnership as a Model 1 organisation concentrating on strategy. The running costs to perform this function will be slightly more than the costs of running
the voluntary partnership because a statutory body will need to allow for premises and members costs, and should not have to depend on in kind help from its members. The current annual running cost for HITRANS is £250,000. We believe that the cost of a statutory partnership will be in the order of £400,000. This is detailed in the attached table. These draft estimates have not been forwarded yet to the Executive as part of the consultation process and still require to be discussed by the HITRANS Board.

7. In answer to the questionnaire we believe that the start up costs proposed for the Scottish Administration will not meet the full costs. Using the broad assumptions in the Financial Memorandum the proposed allocation to HITRANS would be £320,000, some £80,000 less than the running costs that we anticipate. Beyond year one, should these running costs transfer to the constituent Local Authorities, then there is no provision to meet them under the current GAE settlement. At present the Local Authorities are contributing some £110,000 to the running costs and a fourfold increase would be difficult to fund. This is why we have argued that central grant should continue beyond start up.

8. Future costs in running the partnerships are not clear at this stage. There will be the power to borrow money under Section 3(5) of the Bill. Loan charges will form part of the net expenses which under Section 3(1) of the Bill will be paid by constituent councils. This where significant requisition requirements could arise which could lead to cuts elsewhere in the local authorities transport budgets. The HITRANS Board has been unanimous in opposing this type of requisitioning on local transport funds and is firmly of the view that central funds should support the partnerships.

Annex A

Example of a staffing and administration budget for the regional partnership

Staff Establishment:

Chief Officer
Administrator
Research officer

Budget:

3 staff (salaries/pensions etc) £130,000
Expenses (travelling etc) (2 staff x £1000 per month) £25,000
Consultants and studies £200,000
Office costs (rent, rates, heat etc) £10,000
IT (computers/phones/ communications) £5,000
Publicity £5,000
Admin (members costs, insurances, stakeholder groups) £30,000

Total £400,000
HITRANS Budget 2004/5

- Co-ordination and administration £70,000
- Board meetings £5,000
- Consultants studies £169,000
- Publicity £6,000

Total £250,000

Financial Memorandum Estimates

- 5 staff £160,000
- Administration £40,000
- Members Expenses £20,000
- Office costs £100,000

Total £320,000

SUBMISSION FROM STAGECOACH SCOTLAND

CONSULTATION
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
Yes, but not on the financial assumptions.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
Not applicable.

3. Did you have sufficient time to contribute to the consultation exercise?
Yes.

COSTS
4. If the bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
There is uncertainty in the detailed implications for us, but we are happy that, through CPT, there is scope for discussion with MSPs and key officials.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
Any cost implications ought to be met through partnership working between operators, local authorities, regional partnerships and the Scottish Executive.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
Largely, but there is uncertainty, as outlined above.
WIDER ISSUES

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
   Largely, but there is uncertainty, as outlined above.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

   We are not well placed to forecast such costs at this time.

SUBMISSION FROM CBI SCOTLAND

Iain McMillan, Director of CBI Scotland, has asked me to respond to your recent request to complete a questionnaire regarding the financial assumptions underlying the Transport (Scotland) Bill.

Overall, the financial assumptions made do appear to be reasonable, although the estimated costs associated with the establishment of the Regional Transport Partnerships do have a tendency to be 'optimistic'. The costs may turn out to be greater but probably not significantly so.

We are not in a position to comment on the validity of the additional provision made in the Scottish Executive transport budget for national concessionary travel schemes.

Nor are we able to comment on whether there will be any additional costs associated with the Bill.

SUBMISSION FROM CABLE AND WIRELESS

Thank you for allowing Cable & Wireless UK (C&W) the opportunity to respond to the Finance Committee’s Questionnaire on the Bill.

C&W, a public communications provider, since 1984 has invested in developing, and continues to develop a communications network in Scotland for the purpose of providing communication services to Scottish subscribers.

C&W supports the Executive’s objectives to reduce congestion and improve co-ordination, communication and co-operation, in activities that affect road users. However C&W has concerns that some measures contained within the draft Bill will have a significant financial impact on the construction and maintenance cost of that part of C&W’s existing and future network in the public roads of Scotland, while failing to deliver any real benefits of managing traffic in the future.

Please find below a sequential response to the questions raised in the Financial Committee’s Questionnaire
CONSULTATION
1. Question: Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
Answer: Yes C&W as a member of National Joint Utilities Group (NJUG) took part in the consultation exercise for the Bill and identified a number of areas of financial concern over such issues as training, additional resurfacing, increases in fines and fixed penalty offences. NJUG, on C&W’s behalf were unable to quantify any meaningful additional budgetary costs to the communications industry at the consultation stage. This was due to the lack of detail contained in the consultation document, which dealt with the generic options available to the Scottish Parliament to reduce road traffic congestion.

2. Question: Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
Answer: No because as in 1 above, the opportunity to comment in detail was not available. The Financial Memorandum, specifically Part 2: ROAD WORKS (SECTIONS 14 to 36) paragraphs 149 to 166 provides the basic detail not available in the consultation document.

3. Question: Did you have sufficient time to contribute to the consultation exercise?
Answer: Yes, through NJUG.

COSTS
4. Question: If the bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
Answer: Only as far as the financial costs to a public communications provider are indicated in costs for new training, additional road resurfacing, increases in fines and fixed penalty offences that are related to the proposed new requirements that would be place on C&W by the Bill. However, as with the similar Traffic Management Act 2003 (in England) it is not possible to provide a reliable estimate of the increase in substantial costs without a detailed understanding of any secondary legislation.

5. Question: Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
Answer: C&W will have to either meet the additional costs or pass them on to its subscribers. Consultation with the industry regulator will be essential to avoid this legislation having an impact on C&W delivering services to existing and future subscribers in a timely and cost-effective manner and developing new communication services in Scotland.

6. Question: Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
Answer: C&W supports the comments made to the Committee by NJUG, which are:
“No. There is no comfort factor available to industry associated with the Financial Memorandum because it can only indicate policy at the current stage of consultation. The secondary regulation associated with the Bill will be the key factor relating to the cost to industry and its customers. Our experience with the Westminster Government’s Traffic Management Act 2003, has been that the use of an enabling bill with minimal detail, with all the detailed implications being worked out during the Regulations stage, limits the ability of stakeholders to influence the legislation, because the ability to accurately identify the costs of proposed measures, is severely hampered until very late on in the process, when decisions have already been made. We would urge greater detail to be made available, in order that we can accurately provide the likely costs of the proposed measures.”

WIDER ISSUES

7. Question: If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
Answer: No as in 6 above.

8. Question: Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Answer: As stated in Answer 6 above, secondary legislation (regulations etc.) will be a major factor in determining the annual increase in cost to C&W in complying with the Bill. Such additional costs may affect and prevent C&W from delivering services required by existing and potential subscribers within acceptable time and cost parameters.

SUBMISSION FROM THE NATIONAL JOINT UTILITIES GROUP

NJUG is the voice of the utilities in streeetworks. It represents the major industry associations and operational companies in the electricity, gas, water and telecoms industries. NJUG was formed, as the National Joint Utilities Group, in 1977.

NJUG welcomes the opportunity to respond to the Finance Committee’s questionnaire on the Bill. NJUG has unrivalled experience of the passage of this kind of legislation, gained from in-depth involvement in the supporting the development of policy, both through working with Government directly in the drafting of Regulations and Codes of Practice etc, and through supporting Parliamentary intervention / scrutiny. We would therefore be delighted to assist the Committee in its investigation.

NJUG supports the Executive’s objectives to reduce congestion and improve co-ordination, communication and co-operation, and indeed have been working hard to improve in these areas, independent of any legislative measures. We support the introduction of a Transport Commissioner to oversee works across Scotland, however are concerned that some measures contained within the Draft Bill will
have a significant financial impact on utilities, without delivering the consequent benefits.

In this response, we reply in turn to each of the Committee’s questions:

CONSULTATION
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
NJUG and its member companies all took part in the consultation exercise for the Bill and identified a number of areas of financial concern over such issues as training, additional resurfacing, increases in fines and fixed penalty offences, however we were unable to quantify any meaningful additional budgetary costs to industry at the consultation stage. This was due to the (expected) lack of detail contained in the consultation document which dealt with the generic options available to the Scottish Parliament to reduce congestion.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
No, because as in 1 above, the opportunity to comment in detail was not available. The Financial Memorandum, specifically Part 2: ROAD WORKS (SECTIONS 14 to 36) paragraphs 149 to 166 provides the basic detail not available in the consultation document.

3. Did you have sufficient time to contribute to the consultation exercise?
Yes.

COSTS
4. If the bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
Partly, but only as far as the financial costs to industry specifically reflected in the new training, additional resurfacing, increases in fines and fixed penalty offences are related to new additional requirements.

In performing an exercise to estimate the likely costs arising from the Traffic Management Act which was passed by the Westminster Parliament earlier this year, NJUG estimated that the total costs arising out of that Act could add £55 annually to utility bills for every consumer household. This was based on a series of assumptions about the detailed content of secondary legislation and, in truth, it is impossible to provide a reliable estimate of the costs associated with the Bill without a detailed understanding of any secondary legislation. What we can say for certain, however, is that we would expect the costs to be extremely large by any standard of measurement.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
NJUG members will only be able to meet the additional costs by passing on these costs to the consumer. Consultation with the industry regulators will be essential to avoid this legislation having a negative impact on utilities’ responsibilities to deliver essential services to customers in a timely and cost-effective manner.
6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

No. There is no comfort factor available to industry associated with the Financial Memorandum because it can only indicate policy at the current stage of consultation. The secondary regulation associated with the Bill will be the key factor relating to the cost to industry and its customers. Our experience with the Westminster Government’s Traffic Management Act, has been that the use of an enabling bill with minimal detail, with all the detailed implications being worked out during the Regulations stage, limits the ability of stakeholders to influence the legislation, because the ability to accurately identify the costs of proposed measures, is severely hampered until very late on in the process, when decisions have already been made. We would urge greater detail to be made available, in order that we can accurately provide the likely costs of the proposed measures.

WIDER ISSUES

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

No as in 6 above.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

As mentioned in 6 above, the subordinate legislative framework will be the key factor allowing industry to evaluate the budgetary costs of complying with the Bill. Invariably this will involve future costs which we will have no alternative but to pass on to the consumer as higher charges for all utility services, including fuel.

SUBMISSION FROM NESTRANS

NESTRANS, as the existing voluntary Regional Transport Partnership for the north east is pleased to respond to the invitation to submit written evidence to assist the Finance Committee in its scrutiny of the costs arising from provisions in the Transport (Scotland) Bill.

As a voluntary Regional Transport Partnership NESTRANS is comprised of four partner organisations - the two north east local authorities, Aberdeen City and Aberdeenshire, Scottish Enterprise Grampian, and representing the local business community Aberdeen and Grampian Chamber of Commerce. Building upon informal working between the four partners since 1997, NESTRANS was formally constituted in summer 2001. It operates through a Board (presently chaired by the leader of Aberdeen City Council), a Management Team of officials from the four partners, and a small full time office. The NESTRANS office comprises a Coordinator (secondment at Director level), a PA/Administrator, and soon to commence work a Transport Policy Officer (also on secondment). NESTRANS' current operational budget is £750,000, this being funded by the two local authorities, Scottish Enterprise Grampian and the Scottish Executive. Funding contributions in 2004/2005 are: Aberdeen City Council £162,500, Aberdeenshire
Council £162,500, Scottish Enterprise Grampian £100,000, and Scottish Executive £325,000 (matching local authority contributions). The Scottish Enterprise Grampian contribution is particularly tied to projects/activities which support economic development.

Of the total budget of £750,000, staff and office costs comprise £146,000, specialist support, events etc comprise £154,000, with the remaining £450,000 allocated to project development and delivery covering for example the development and appraisal of rail enhancement projects, the preparation of a freight distribution strategy, travel awareness initiatives, and traffic modelling.

The following comments address the particular questions raised in the questionnaire circulated by the Senior Assistant Clerk to the Committee.

**Consultation**

The proposals for the establishment of statutory Regional Transport Partnerships set out in the Transport (Scotland) Bill have been based on extensive earlier consultation by the Scottish Executive, especially through their September 2003 consultation paper *Scotland’s Transport: Proposals for a New Approach to Transport in Scotland*. NESTRANS was actively involved in that consultation process and also facilitated a consultation meeting involving a wide range of stakeholders in the north east. However, the resource issues raised in the consultation related essentially to the method of funding Regional Transport Partnerships (requisition from local authorities, direct funding from Scottish Executive, etc), rather than their likely establishment and running costs.

Whilst the financial assumptions for Transport Partnerships as now set out in the Financial Memorandum accompanying the Transport (Scotland) Bill are not drawn from any previous consultation they have sought to take account of the running costs of some of the existing voluntary Regional Transport Partnerships.

**Costs**

**Year 1 Costs**

The Financial Memorandum states that the Scottish Executive will cover the full additional start up costs for the new Regional Transport Partnerships in their first year of operation (assumed to be 2006/2007). This is deemed to cover the costs of staff, accommodation and member expenses involved in the production of regional transport strategies. Excluding the particular provisions for the Strathclyde Passenger Transport successor body, the Memorandum assumes these costs for each of the other four Regional Transport Partnerships to be £320,000 comprised of:

<table>
<thead>
<tr>
<th>Staff costs (5 staff)</th>
<th>£160,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration costs</td>
<td>£40,000</td>
</tr>
<tr>
<td>Members' expenses costs</td>
<td>£20,000</td>
</tr>
<tr>
<td>Accommodation/establishment costs</td>
<td>£100,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£320,000</strong></td>
</tr>
</tbody>
</table>
Whilst the commitment by the Executive to fully fund these initial costs is welcomed NESTRANS would question whether the financial provision is sufficient both in respect of staff costs (when on-costs are included) and more specifically the likely additional specialist consultancy costs which would need to be incurred in the preparation of a regional transport strategy.

Besides the production in their first year of a regional transport strategy it will be reasonable to expect the new statutory Regional Transport Partnerships would continue the work of existing voluntary partnerships, and especially continue their role in the development and delivery of regionally important transport projects. This has been the main focus of recent NESTRANS activity, developing, appraising and arranging for the delivery of strategically important projects such as the Aberdeen Western Peripheral Route, Aberdeen Crossrail, and Rail Freight Gauge Enhancement. The annual cost of this work has been of the order of £450,000. Recognising its strategic importance NESTRANS has received financial support from the Executive through grant under Section 70 of the Transport Act (Scotland) 2001, matching local authority expenditure. It is vitally important that this work and the funding contribution from the Scottish Executive is maintained. This would appear to be the case from the statements in para 135 of the Financial Memorandum that ... "the Scottish Executive currently provides funding to support the existing core costs of the voluntary Regional Transport Partnerships ... and ... the policy intention is to continue the provision of this funding to Regional Transport Partnerships", and also para 140 relating to grants for special initiatives. Some further clarification and confirmation of this continued funding would be welcome.

**Ongoing Running Costs for Local Authorities**

The Financial Memorandum assumes that after their first year of operation the full costs of the new statutory Regional Transport Partnerships will be borne by constituent Councils, through requisition by the Regional Transport Partnerships. It is also stated in para 143 that no increased costs for local authorities are anticipated as a consequence of Regional Transport Partnerships.

Even on the basis of the Transport Partnerships opting for the minimum of functions it is difficult to see how this will not lead to some increased costs for local authorities. The minimum functions of maintaining a regional transport strategy (through monitoring, review and co-ordination), are essentially new burdens falling upon local government and as such it would be reasonable to expect additional ongoing financial support to be made available to local authorities. It would also be expected that the Scottish Executive will continue to provide Section 70 grant to Regional Transport Partnerships towards the development, appraisal and delivery costs of strategic transport projects.

Whilst the Councils in the north east each presently contribute £162,500 to the costs of NESTRANS, primarily in relation to the co-ordinated promotion of north east transport needs and the development of strategic projects, any significant additional ongoing costs could be difficult for constituent Councils to meet, without prejudice to their other commitments.
The ability and willingness of constituent Councils and other potential funding partners to meet the financial costs of a new Regional Transport Partnerships for the north east will depend upon its total costs, the proportion expected to fall to local Councils, and the provision made for any additional expenditure in GAE provisions. In response to the 2003 consultation NESTRANS did not favour direct funding of statutory Regional Transport Partnerships by the Scottish Executive. The preference was for continued joint funding of core costs with the Scottish Executive match funding local authority contributions, this reflecting the belief that local accountability requires some local funding.

The principle of requisition from Councils is extremely contentious and serious concerns have been expressed within the north east Councils, especially should requisition be used as a means of financing loan charges for prudential borrowing.

Wider Issues
The Bill seeks to implement that part of the proposals in the 2004 Transport White Paper Scotland’s Transport Future relating to the effective co-ordination of transport and delivery of strategic projects at the regional level. The other main strand of those proposals in respect of delivery is the establishment of a National Transport Agency. As it does not require legislation the National Transport Agency does not feature in the Transport (Scotland) Bill nor are the costs of its establishment referred to in the Financial Memorandum. As the functions and costs of the National Transport Agency are not specified it is difficult to know whether or not there is any significant relationship to the costs of the proposed Regional Transport Partnerships.

SUBMISSION FROM STRATHCLYDE PASSENGER TRANSPORT AUTHORITY AND EXECUTIVE

Introduction
1. This memorandum of evidence is submitted to the Finance Committee on behalf of Strathclyde Passenger Transport Authority and Executive (SPT). Separate evidence is being submitted to the Local Government and Transport Committee, which provides SPT’s perspective on the broader policy context of the Bill.

2. In summary, however, SPT sees the present Bill and White Paper as an improvement on last year’s consultation document, and welcomes the fact that the Scottish Executive has addressed some of the issues raised in SPT’s consultation response. Nevertheless, SPT retains significant concerns about the Bill. It also has specific reservations about the Financial Memorandum and the funding arrangements which are envisaged for the future delivery of transport at the regional level. It is important to note that the adverse policy consequences of the current proposals will be concentrated on the west of Scotland, but some of the potential financial ramifications of the Bill affect all of Scotland.

3. SPT’s evidence to the Finance Committee has been prepared to:
• outline existing and proposed financial arrangements, and their weaknesses
• comment on some of the policy assumptions behind these financial arrangements; and
• highlight specific concerns about transitional and ongoing costs.

**Financial arrangements**

4. The Scottish Executive’s White Paper, *Scotland’s transport future*, indicated an intention to continue with broadly the current mechanisms for allocating funding for transport purposes, and this is confirmed in paragraphs 129 - 130 of the Financial Memorandum. SPT is strongly of the view that this is inconsistent with the policy intent of the Bill, since it provides no basis for protecting against a diminution of local government spending on transport when increasing pressures on other services take priority. This is borne out by experience in the west of Scotland.

5. Currently SPT is required to negotiate with the 12 unitary councils in its area to secure revenue funding for transport delivery and to cover the debt charges associated with its previous section 94 capital expenditure. The revenue funding received by SPT from its contributing councils has increased by no more than 2.5% per annum since 1998, at a time when the costs of procuring subsidised bus services have risen on average by more than 10% per annum. In addition, no additional revenue funding has been included within the local government settlement for additional burdens arising from central government policies and legislation. Compliance with the Transport (Scotland) Act 2001 alone has resulted in unfunded expenditure by SPT of more than £500,000 per annum. SPT also continues to bear costs arising from previous government policies relating to bus industry privatisation in the form of pension liabilities of £600,000 per annum, again without any evident provision within the local government GAE.

6. SPT’s general transport expenditure is greater than the level of contribution from its unitary authorities. The attached graph (Appendix A) confirms that in previous years the amount of GAE funding factored through to unitary authorities has not been passported to SPT for public transport purposes. While the amount raised is now much closer to the level of support within the RSG (GAE included for buses, subway and ferries plus loan charge support), the figures also show that no allowance has been made within the local government settlement for the transport planning and promotion functions which form part of SPT’s statutory duties as a strategic regional body.

7. Without additional funding, the creation of regional transport partnerships (RTPs) across the whole of Scotland will simply extend this problem more

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1 There is an obvious inconsistency here. SPT has received its own separate S94 consents direct from the Scottish Executive, but central support for debt charges is channelled indirectly through the councils.
widely. Inevitably, local councils will wish to give preference to their direct statutory functions, such as education and social work, in any conflict of funding priorities with those of RTPs.

8. The Scottish Executive’s current consultation on RTPs suggests that the power of requisition will overcome such funding difficulties in future and thus avoid problems of the type that SPT has experienced. But this proposal appears to rest on a misreading of the current legislation and a misunderstanding of its application. SPT already possesses the power of requisition: what the consultation document actually seems to describe is the power of precept. Even this, however, would almost certainly result in a system of informal political negotiation which would in practice limit RTPs’ ability to fund a needs-based budget through a draw on their contributing councils.

9. The proposal that RTPs will be able to participate in prudential borrowing for transport projects is to be welcomed. However, it needs to be understood that the requirement for local government investment in the public transport sector is a reflection of market failure. If private sector operators are unwilling to fund the investment that is required to deliver public policy objectives in this field, the hard reality is that such projects are unlikely to generate a sufficient financial return to remunerate public sector investment through the prudential code. SPT raised this issue with the Scottish Executive at the beginning of the current financial year but to date is outstanding a response or any practical guidance as to how use of prudential borrowing will add significantly to the capital resources available for transport purposes.

10. As an example, if SPT wished to spend an extra £3m on the delivery of transport infrastructure, an additional £300,000 per annum for a period of 15 years would be required to service this debt. While in terms of the total transport budget £300,000 is very little, it would represent an additional 1% on SPT’s requisition, and obviously this requirement would grow year on year if investment – and re-investment – in transport projects was to be maintained at this annual level. With no direct charge-raising powers of their own, SPT and the proposed RTPs will have virtually no means of generating revenue streams in support of prudential borrowing other than through requisition. The limitations on the practicalities of securing additional requisition from unitary authorities referred to in paragraph 7 apply equally in this area and must be recognised.

Policy assumptions
11 SPT considers that the basic financial premise underlying the Bill and therefore the Financial Memorandum – that the funding already available for transport in the local government settlement and through the Scottish Executive’s existing direct provision will be sufficient to ensure the transformation in Scotland’s

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transport to which Ministers aspire – is fundamentally flawed. The Scottish Executive itself has commissioned research which was explicit regarding the inadequacy of funding available in Scotland for transport purposes. This research concluded that an increase of about 50% in capital funding and 20% in revenue funding is needed in Scotland for effective transport policy delivery.\(^3\)

12 This is consistent with SPT’s own experience in the period since local government reorganisation, during which its funding has been substantially less than prior to 1996 and below that available to comparable English PTEs. (See Appendix B – GMPTE is the nearest equivalent.) While recent announcements of additional funding for major public transport infrastructure projects in Scotland may go some way towards recovering lost ground in capital funding, this does not address the persistent and chronic shortage of revenue support for maintaining and developing existing public transport provision and ancillary facilities such as integrated ticketing and passenger information. This issue has been discussed repeatedly with the Scottish Executive, but no secured additional revenue funding has been forthcoming.

13 In a context where private motoring costs are increasing at less than the rate of inflation while for financial reasons public transport fares are increasing in real terms, it becomes progressively more difficult to secure the diversion of journeys from private to public transport which is needed to secure the Scottish Executive’s transport policy objectives. There is therefore a fundamental mismatch between the Bill’s stated high-level policy justification and the financial provisions and implications of the Bill and its accompanying documentation.

**Transitional and ongoing costs of the proposals**

14 SPT does not believe the Bill's proposals add any real policy value that could not be delivered through current mechanisms. SPT considers that the proposed expenditure of at least £7m over two financial years to establish the Transport Agency and RTP network would be more effectively utilised in delivering real transport solutions. Additional spending of £3.5m per annum on transport provision in the west of Scotland would be the equivalent of an increase of 22% in SPT’s general transport budget. For example, the purchasing power of this would equate, in the SPT area, to delivery of local bus services to more than 4 million passengers per annum or the purchase of three new Subway trains to enhance frequency and reliability.

15 Paragraph 138 of the Financial Memorandum assumes the transfer of some SPT powers, and therefore staff, to the new Transport Agency. SPT currently has 11 staff directly concerned with rail franchise management and development. However, this team relies on extensive support services (policy, finance, legal etc) to ensure delivery. It is unclear whether the transitional cost allowance assumes only the transfer of these 11 staff or includes all other relevant support staff and costs. There is insufficient information to support a transitional cost calculation of £1m.

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16 The Memorandum states clearly at paragraph 135 that the Scottish Executive will fund an additional £1m to cover the costs of establishing RTPs for the first year only. Thereafter this £1m will fall on council funding. SPT believes that the assumption that the unitary authorities will fund an additional £1m is unjustified and indeed experience suggests the naivety of such an assumption. Without additional funding through the local government settlement, this extra cost is more likely to result in a diversion of resources from front-line transport services.

17 Paragraph 136 states that £100,000 has been assumed for the costs of RTP members’ expenses. This provision is wholly inadequate and takes no account of the staffing resource or facilities that will be required to manage and service RTP meetings. SPTA currently operates within an eight-week cycle with 34 members, and these processes create a total cost base of nearly £300,000 per annum, of which only £40,000 is attributable to member’s expenses and allowances – the only significant cost driver which is directly related to the number of authority members. To replicate this four times to cover the whole of Scotland will inevitably cost more than £100,000 and again will create an additional burden on local government which will result in the diversion of resources away from transport delivery.

18 The assumption that RTPs could achieve significant savings by utilising constituent authority support services (paragraph 144) is questionable. RTPs will be separate legal bodies and therefore will require adequate support services to ensure proper functioning and delivery. It is therefore rash to assume that there is sufficient capacity within existing local authority structures to absorb an additional workload arising from new statutory regional functions at no net cost to the public purse.

19 Finally, it is SPT’s understanding that the Financial Memorandum requires to be prepared on a contingency basis. Section 43 of the Bill proposes amendments to the terms of the Transport (Scotland) Act 2001 which would have the effect of enabling councils within the SPT area to exercise certain bus-related functions which are presently only available to itself. SPT considers this proposal to be contrary both to the general intent of the Bill and the Best Value test set out in paragraph 3.6 of the White Paper.

20 Since such functions are not within the current responsibilities of council roads departments within the SPT area (with the exception of Argyll & Bute, which exercises public transport functions on its own behalf over most of its area) and involve specific competences which will not form part of the existing duties of councils’ departmental staff, the minimum requirement for the discharge of this additional responsibility would be at least one extra qualified member of staff for each of the 11 councils apart from Argyll & Bute. Using the same basis of calculation as paragraph 135 of the Financial Memorandum would suggest a continuing additional cost on local authorities in the SPT area of at least £440,000 per annum. This cost arising from Section 43 of the Bill does not appear to have been identified in the Financial Memorandum.
Increased SPT expenditure in 2004/2005 in part due to free bus concessionery travel – otherwise expenditure would be static year on year
SUBMISSION FROM SUSIEPHONE LTD

Consultation
Susiephone Ltd does not consider that as a body, it has been given adequate opportunity for consultation on this issue. The company has not been approached formally and the company board have not had an opportunity to consider and agree a response. Previously Susiephone Ltd responded through its indirect awareness of the subject via RAUCS. As the financial assumptions of the Bill were not known at the time, no comment was possible.

Costs
On behalf of the user community and to meet its obligations as Keeper of the Register, Susiephone Ltd has contracts and services in place for the provision of the SRWR, direct employee costs and supporting professional services such as Legal, Accounting and Training/Technical support relating to the development of the operation and use of the SRWR. These are all financial commitments which could potentially have extra costs if contracts were stopped early or services cancelled. The implications of these are unclear at this stage however and the company has no extra resources to cover any such additional costs. Any claim for such costs would need to be met by the Scottish Executive.

The SRWR is already established and operating, but additional capacity may be required to reflect the needs of the Regional Transport Partnerships (RTPs), and the Commissioner, and the office of the Commissioner. It is not possible at this stage to size or assess the financial implications of this requirement, as the role of the RTPs will be decided by the members of each RTP. The role of the Commissioner and the office of the Commissioner have yet to be specified.

Costs may arise due to the Bill’s requirement that ‘all’ must enter notification of works on the SRWR in the prescribed manner. Once identified by the Commissioner, the prescribed manner could give rise to the need for additional funding. This funding is currently obtained from the participants in a co-operative
process, but it has yet to be ascertained how funding, if any, will be obtained from all who are required to enter notification of works in the prescribed manner and also the method to determine the sharing of costs.

Wider Issues

Subsequent Codes of Practice would likely result in additional costs for the SRWR, although minor changes are typically processed under the terms of our existing Service Agreement with our Application Service Provider (Moleseye).

The duty to enter on SRWR brings the need for training on how to use the system. Those requesting the training currently meet the cost of this. The Scottish Executive has assigned £100,000 for regional seminars to communicate changes. This should be seen as quite different from hands on system training, which would be required and may give rise to additional costs. This cost is difficult to size, as the scale and impact of the changes are not yet defined.

The role of a Scottish Road Works Commissioner in relation to Susiephone Ltd is very unclear and the Susiephone Board would seek further advice on the likely role and responsibilities of this post to allow the Board the opportunity to provide a considered response to the proposals as outlined and to anticipated additional costs.

SUBMISSION FROM LOTHIAN BUSES PLC

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
   Yes, Lothian Buses submitted written evidence and also appeared before the Local Government & Transport Committee. Our comments on any financial assumptions were restricted to any impact arising from a National Concessionary Fares Scheme for Scotland.
2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
   Yes
3. Did you have sufficient time to contribute to the consultation exercise?
   Yes

Costs
4. If the bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
   We do not believe the bill has any financial implications for our organisation. We do note however, that other operators may benefit as a result of simplified administration should Scottish Ministers take over the management of concessionary travel from local authorities and agree with this assessment.
5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
   Not applicable – see 4 above.
6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
   Not applicable – see 4 above.

**Wider Issues**

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
   Unable to comment.
8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
   Unable to comment or quantify.

**SUBMISSION FROM SCOTTISH WATER**

**Consultation**

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Scottish Water has participated in the previous consultations on the ‘Regulation of Utility Company Roadworks’ in January 2004 and ‘Reducing Disruption from Utilities Roadworks’ in February 2002.

Scottish Water identified areas of financial concern during these consultations. However it was difficult to provide any meaningful detailed budgetary costs that would impact on the Scottish Water business at the consultation stage.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Scottish Water identified areas of financial concern and these are reflected in the consultation but believes that, as referred to in the answer to Question 1, the opportunity to comment in detail was not available.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

**Costs**

4. If the bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
The only costs to Scottish Water that have been reflected relate to the additional training that will be required. Other costs have been indicated, but these should be viewed as definitive.

In addition to this Scottish Water believes that additional resources would be required to manage the proposed changes to the current legislation. Until further guidance is made available it is not possible to calculate an accurate cost.

Furthermore Scottish Water’s investment programme, Quality & Standards III (Q&SIII), which covers the period 2006 until 2014, has made no allowance at this stage of planning for the impact that the Transport (Scotland) Bill will have on Scottish Water business.

Scottish Water is therefore concerned that funding is not currently available or planned for the additional financial costs associated with the Bill and compliance with the additional regulations.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

As stated in the answer to Question 4, Scottish Water is not currently funded for the additional financial costs associated with the Bill. The Water Industry Commissioner’s Strategic Review of Charges for the period 2006-2010 is currently underway, of which Q&SIII feeds into, and currently we are not aware that he is making any provision within that regulatory settlement for the costs and duties highlighted within this bill.

Scottish Water has further concerns that financing some of the additional costs associated with the Bill will only be possible by passing those costs, which are not directly related to quality and efficiency, directly onto Scottish Water customers. As such these issues will be required to be discussed with urgency with Scottish Water’s regulator, the Water Industry Commissioner (WIC).

The Water Industry Commissioner is due to make his draft determination on the funding required for Scottish Water and the costs to customers in June 2005.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Scottish Water believes the Financial Memorandum is unclear as to when these costs may impact and as previously indicated projecting accurate costs at this stage is not a practicable option due to the need for further guidance.
Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Please refer to the answer provided to Question 6, above.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Scottish Water believes that there may be future costs associated with the Bill as more guidance becomes available. Scottish Water believes that it is only when the subordinate legislation has been developed that a more detailed costing of the impact on Scottish Water can be produced.

SUBMISSION FROM WESTRANS

Background
WESTRANS is a local authority Joint Committee whose membership comprises the following councils:

- Argyll and Bute;
- West Dunbartonshire;
- East Dunbartonshire;
- North Lanarkshire;
- South Lanarkshire;
- Glasgow;
- East Renfrewshire;
- Renfrewshire;
- Inverclyde;
- North Ayrshire;
- East Ayrshire;
- South Ayrshire; and
- Dumfries and Galloway.

The Chair of Strathclyde Passenger Transport is a co-opted member of the Joint Committee

The remit of the Joint Committee is:
- to advise the councils on matters of common interest, such as consultation documents relating to transport insofar as they relate to their respective functions, and to co-ordinate submissions and responses on such matters;
- to work with Strathclyde Passenger Transport Authority (SPTA) and other relevant bodies to prepare, recommend and keep under review a Joint Transport Strategy for the WESTRANS area; and
- to recommend and prepare bids for funding for projects which affect more than one council area, and which are not the statutory responsibility of SPTA, to the Scottish Exective’s Public Transport Fund, Integrated Transport Fund, or such other relevant funds as there may be.
WESTRANS is empowered to do anything that is calculated to facilitate, or is conducive or incidental to the discharge of any of the aforesaid functions.

A Core Team of four full-time staff members has been employed by the Joint Committee since early in 2004, and an additional member of staff will join shortly. Renfrewshire Council serves as Lead Authority to the Joint Committee, supplying legal and financial services, and providing the Clerk to the Joint Committee.

The Core Team’s revenue budget for 2004/05 is £300,000, made up of £250,000 for staff, premises and administration; and £50,000 for the preparation and continual review of a Regional Transport Strategy (RTS). The Scottish Executive funds 80% of the £250,000, with the remainder being funded by the constituent authorities (excluding SPT). In 2005/06 the percentage funded by the Executive will reduce to 65%, and in 2006/07 it will reduce to 50%. SPT contributes £25,000 towards the annual RTS costs, with the remaining £25,000 shared by the constituent councils.

Consultation
Between June 2003 and September 2003, Executive officials met with WESTRANS officials several times to discuss the creation of a national transport agency and how best to deliver strategic regional transport projects. The consultation paper “Proposals for a New Approach to Transport in Scotland” was published in September 2003, and the Minister addressed a transport conference in Glasgow in November 2003. WESTRANS responded to the consultation in December 2003, suggesting that Regional Partnerships should be funded by block grant under section 70 of the Transport (Scotland) Act 2001. The White Paper suggests a different method of funding for the new partnership. WESTRANS is satisfied that consultations during the preparation of the Bill were adequate, and sufficient time was given for response.

Costs
Paragraph 135 of the Financial Memorandum gives a commitment by the Executive to fund 5 staff for each of the 5 new regional partnerships, plus 5 extra for SPT’s successor body. Thus the west of Scotland Partnership will be allocated funding for 10 people, and the four other partnerships will receive funding for 5 people each. That equates to 30 people in total, not 25 as stated elsewhere in para. 135. The proposed allocation of £333,333 (one third of £1million) to the west of Scotland partnership is sufficient to cover the existing annual budget of WESTRANS (£300,000), but not sufficient to cover the additional five “SPT” staff.

It is likely that there will be additional costs to be met during the period of transition. There will inevitably be a degree of rationalisation and consolidation of staffing in the early period of the new partnership and it is likely that an additional £1million will be required to cover these costs. There will be ongoing costs associated with administering and undertaking the work of the new partnership, and it is essential that this is funded by the Executive at a level that reflects the size of the proposed new West of Scotland Partnership area, which will be responsible for regional transport services for almost half the population of Scotland.
Wider Issues
WESTRANS does not wish to comment on the financial implications of other aspects of the Bill, such as concessionary fares and public utility roadworks, since they are both outwith the remit of WESTRANS. It is uncertain at present whether local authorities will wish to transfer any of their transport powers to the new body. If at some future date, it is agreed to transfer powers, suitable financial arrangements will need to be made.

CORRESPONDENCE FROM SCOTTISH EXECUTIVE, DATED 9 DECEMBER 2004

How will the proposed requisition process actually operate?

The Bill proposes that the net expenses of a regional transport partnership, that is any expenses which are not met from other sources (such as grants from the Scottish Executive or partnership revenue streams) will be met by its constituent councils.

The Bill also proposes that it will be for the partnerships to determine the share of the expenses that is to be paid by a constituent council. The means by which that decision will be made is currently subject to consultation. There is an expectation that most decisions will be reached by consensus however there may be occasions where progress can only be made by putting decisions to a vote. In those instances the presumption is that a simple majority will suffice though we do recognise within the consultation paper that partnerships may wish to require a higher share of the vote, or indeed unanimity, in favour for particular issues such as requisition. The voting methodology will form part of the constitution order.

Once the requisition is decided the councils, under section 3, subsection 1 of the Bill, have a duty to provide the determined contribution. The Bill empowers the Scottish Ministers to provide as to the arrangements for the payment of the amounts payable i.e. the necessary accounting and administrative arrangements.

There are a number of safeguards proposed to ensure that the partnership does not act unreasonably in determining its requisition: first, the partnership board will contain a representative from each of the constituent councils, with those members carrying a minimum of two-thirds of the voting weight on the partnership; second, the funding requirements of the partnership are necessarily linked to proposals within the regional transport strategy which will be the subject of consultation with constituent councils; third, for the transport strategy to take effect it has to be approved by the Scottish Ministers who are obliged by legislation to assess how the strategy will contribute to the realisation of their transport policies.

How might regional transport partnerships utilise the prudential borrowing regime?

The prudential borrowing regime is available to partnerships to fund or part-fund capital projects. The funding of significant capital projects of national importance will remain the responsibility of the Scottish Executive; capital projects of regional significance will in future be the responsibility of the regional transport partnerships
but the Executive will continue to provide capital grant to help fund these projects. This approach will replace the current ad hoc arrangements between councils and the Executive. Individual councils will still be able to fund transport capital projects of local importance.

Partnerships will, of course, need to be able to pay the loan charges arising from any prudential borrowing. If a partnership has no independent revenue stream then revenue will need to be obtained from its constituent councils through the requisition and they in turn may draw on the loan charge support that local authorities receive. A partnership will be fully engaged with its constituent councils when planning its capital expenditure and borrowing to ensure that each council makes provision for its share of the loan charges within its budget.

It is difficult to know in advance of the strategies being produced what will be the required level of capital borrowing. It is worth noting, however, that the Scottish Executive’s spending plans for 2006-07 and 2007-08 already include £35m of capital grant each year for regional transport partnerships. Any borrowing under the prudential regime would be on top of that.

The production of a strategy covering forward years will prove of immense benefit as an aid, providing a degree of certainty to capital planning and thereby the loan planning for local authorities.

What is the basis for the figure for transitional costs and for the assessment of the long term costs?

The regional transport strategies will set the agenda for transport delivery for future years within their respective regions. It is vitally important therefore that the correct support structures are in place to enable partnerships to concentrate on that initial activity. It is for that reason that the Scottish Executive has decided to provide central funds to establish the partnerships, hence the additional funding in their first year to pay for additional staff to assist with production of the regional strategies, to cover administrative and accommodation costs as well as members’ expenses. While the figures in the financial memorandum are only estimates, they are based upon reasoned assessments and should be adequate to meet the first year costs. The financial memorandum also provides a clear statement that the Scottish Executive will continue to provide existing funding in support of the core costs of the partnerships.

Once the initial strategies have been produced, the Scottish Executive believes that the running costs of the partnerships need not absorb significantly more resource than is currently spent on SPT, and the existing voluntary partnerships which already receive core support from the Executive. We will be happy to consider requests to increase running cost support in the future as transport activity increases following the outcome of the last spending review, but that is not an issue arising from this legislation and so does not feature in the financial memorandum.

Should councils choose to transfer greater responsibilities over time to a partnership from local authorities then the necessary resources will be part of the
requisition from the constituent local authorities who will no longer be carrying out that function. Indeed it is possible that the pooling of functions at the regional level could lead to economies of scale and overall savings to the local authorities concerned. Best value principles should apply throughout and partnerships will be encouraged to make use of shared services where appropriate. For example, the current Westrans partnership utilises the legal and financial services of Renfrewshire council.

The Scottish Executive has recognised that there will be additional transitional costs for SPT as a consequence of functions being transferred. The financial memorandum makes clear that provision of £1m will be made available from central resources to facilitate that transition.

The over-riding objective is to ensure that transitional activity should not impact on business delivery and therefore the Scottish Executive will consider very carefully any case made by SPT for additional funding to ensure its business continuity. We are already engaged with SPT and Westrans in discussions about handling the transition in the west of Scotland.

What will be the financial impact to local authorities, within the SPT area, resulting from the provision of concurrent bus powers?

Since the local authorities in the SPT area would have discretion in whether to use the proposed concurrent powers on bus measures there is no requirement on them to incur any additional expenditure. The expectation is that the most likely use of the bus powers would relate to Quality Partnerships where the involvement of the local authorities in the SPT area would stem from their roads responsibilities. This is because Quality Partnerships will often include improvements to the road infrastructure. On this scenario the ability to negotiate a Quality Partnership would not significantly increase the local authority’s costs but would provide new powers to deliver improvements.

Will there be any impact on any existing or proposed projects and commitments, that have been given by existing authorities, as a consequence of the proposed changes?

There should not be any negative impacts on projects or commitments as a consequence of establishing regional transport partnerships. The existing voluntary partnerships use constituent authorities to execute projects and these existing commitments need not be disturbed, even if the new statutory regional partnerships choose to promote new projects at their own hand.

In the case of SPT’s transition to a new west of Scotland partnership, one of the key parts of transition planning will be to ensure that there is continuity in relation to all existing or proposed projects and commitments.
Transport Bill

I hope you will not mind my writing to you further about the Financial Memorandum accompanying the Transport Bill, but there have been two developments since SPT gave evidence. The first is the additional note from the Scottish Executive, dated 9 December 2004 circulated with the papers for your meeting on 14 December. The second is the Ministerial announcement about concessionary travel.

Scottish Executive note (F1/S2/04/33/1)

I do not want to comment in depth on the note of 9 December 2004, but I feel that the first paragraph about the requisition process corroborates the views we expressed in evidence on 23 November. It shows that, far from being a more satisfactory form of funding, as implied in paragraphs 44-5 of the Scottish Executive October 2004 consultation document on statutory regional partnerships, the proposals offer no advantage over SPT’s existing funding regime.

What I would like to touch on, however, is the penultimate paragraph about concurrent bus powers. I feel that these comments are somewhat disingenuous – if the powers are only discretionary, and are most likely to be used in connection with councils’ roads responsibilities, why are they necessary? SPT has always accepted that any quality bus arrangements involving roads provisions will be developed in full partnership with the local council(s) concerned; what we cannot accept, however, is that councils should use their roads responsibilities unilaterally to cut across the role of SPT (or its successor) as the public transport planning and procurement body.

The analysis (particularly in the last sentence of the paragraph) completely misses the point that all of the 2001 Act powers which would be amended are about bus service quality, not the infrastructure aspects of bus provision. With respect to my colleagues in council roads department, these are not matters which fall within the professional skill sets of roads engineers, and those councils outwith the SPT area which exercise such powers generally employ staff with the necessary public transport qualifications or experience to complement the engineering input. Since those resources are not available to councils in the SPT area, they would have to be acquired, and would consequently increase the call on local funding. The final sentence of the paragraph is therefore misleading.

Concessionary Travel

As you recall, Scottish Executive officials appeared before your Committee on 23 November. Jonathan Pryce explained the lack of any reference within the Financial Memorandum to the administrative costs of the proposed national concessionary travel scheme provided for in Clause 37 of the Bill on the basis that these costs were excluded because this part of the Bill’s provisions was permissive (columns 1963-4). (In passing, it is worth remarking that this statement
was inconsistent with paragraphs 138 and 148 of the Financial Memorandum, which includes transitional financial provision for the exercise of another purely permissive power, the transfer of SPT’s current rail responsibilities to Scottish Ministers under the provisions of Clause 12 of the Bill).

However, since Jonathan’s evidence on 23 November and his further appearance on 14 December, the Minister has now confirmed his intention to introduce a national concessionary travel Scheme in April 2006, to be operated by the proposed new transport agency.

While the Minister provided some headline costings in his announcement in Parliament on 22 December, his statement left many issues unanswered. For example, although he spoke of a capped expenditure of £159 million on the scheme (Official report, column 13170), he did not make it clear whether this included the administration costs of the Scheme, which will be a new resource requirement for the civil service. The Minister also referred to a “multi-million pound scheme” for the introduction of smart cards to provide a means of monitoring reimbursement (column 13175), but again it was unclear whether this cost would be met from the capped budget. A similar scheme in Yorkshire is budgeted at around £25 million.

From an SPT perspective, we have several major reservations about the costings and practicability of the Minister’s proposals, which appear to have been developed in bi-lateral discussions with the operators’ trade association, CPT, without any input from those currently directly involved in administering concessionary travel arrangements. Consequently, it appears that there is considerable scope for questioning the financial provision that is proposed, and now that the Scottish Executive has signalled its clear intent to make use of these permissive powers – should they be granted – I wonder if there is scope for your Committee to return to this subject before it concludes its consideration of the Bill’s Financial Memorandum.

Please get back to me if you wish clarification of any of the above; meanwhile, all good wishes for the New Year.

SUPPLEMENTARY CORRESPONDENCE FROM MINISTER FOR TRANSPORT’S OFFICE, DATED 13 JANUARY 2005

This email provides the answers to the queries on concessionary travel raised.

Whether there has been an example of an operator not getting the full amount it applied for as a result of a faulty claim or a fraud investigation

We are generally aware that claims from operators are regularly and systematically subject to validation procedures which could result in adjustments to the value of the claims in question. We have asked all 16 local scheme operators for details of any cases involving a faulty claim or fraud. Once we have received responses we will inform the Committee.
The Convener asked for a breakdown (in relation to the £196 million) between the continuation of the existing schemes and new provision or development of the scheme.

The additional £96m in 2006-07 and £100m in 2007-08 for concessionary travel will be used to pay for the national free bus scheme for older and disabled people and the national concessionary travel scheme for young people. These sums are in addition to provision already programmed for concessionary travel of £13m in the transport portfolio budget and £104m currently in the local government finance settlement. As the national bus scheme will be run by Transport Scotland, discussions will take place with COSLA on the share of the £104m which should also be used for the purpose of the national schemes. The national free bus scheme for older and disabled people will replace the current local schemes and expenditure will be capped at a maximum of £159m in 2006-07 and £163m in 2007-08. In 2003-04 £96.6m was allocated for all aspects of concessionary travel (the local bus scheme and concessionary travel on other transport modes through the local government settlement. In addition, £20.1m was provided through central top up grants).
FINANCE COMMITTEE
EXTRACT FROM THE MINUTES

30th Meeting, 2004 (Session 2)
Tuesday 23 November, 2004

Present:
Ms Wendy Alexander
Mr Ted Brocklebank
Mr Frank McAveety
Des McNulty (Convener)
Jim Mather
Alasdair Morgan (Deputy Convener)
Dr Elaine Murray
Jeremy Purvis
John Swinburne

Transport (Scotland) Bill: The Committee took evidence on the Bill’s Financial Memorandum from—

Dr Malcolm Reed, Director General; Valerie Davidson, Head of Financial Services; and Hilary Howatt, Policy Development Manager, Strathclyde Passenger Transport; and Councillor Andrew Burns, Transport Spokesman for City of Edinburgh Council; and James Fowlie, Policy Manager, COSLA; then

Jonathan Pryce, Head, Transport Strategy and Legislation Division; Frazer Henderson, Bill Team Leader; and Claire Dunbar-Jubb, Group Accountant, Roads Policy and Group Finance Division, Scottish Executive Enterprise, Transport and Lifelong Learning Department.

The Committee agreed that Scottish Executive officials would provide further information on various issues in relation to the Financial Memorandum before giving further evidence at a subsequent meeting.
Transport (Scotland) Bill:
Financial Memorandum

The Convener: The third item on our agenda is consideration of the financial memorandum to the Transport (Scotland) Bill, which was introduced by Nicol Stephen on 27 October. As I said on 9 November, because of the delay in publication of the efficient government plan, we cancelled the meeting that we had planned for 16 November. No doubt that was welcomed by members, but the cost of that is that we will have a lengthy meeting today. We will take evidence from bodies that will be affected by the Transport (Scotland) Bill, and from the Executive.

To help us in scrutinising the bill, I welcome from the Convention of Scottish Local Authorities Councillor Andrew Burns, who is transport spokesman for the City of Edinburgh Council, and James Fowlie, who is COSLA’s policy manager. We also have representatives of Strathclyde Passenger Transport: Dr Malcolm Reed is the director general of the Strathclyde Passenger Transport Executive; Valerie Davidson is head of SPT’s financial services; and Hilary Howatt is its policy development manager.

Members have submissions from SPT, ScottishPower plc, Highlands and Islands strategic transport partnership, Stagecoach Scotland Ltd, the Confederation of British Industry Scotland, Cable and Wireless, the National Joint Utilities Group and north-east Scotland transport partnership. We also have late submissions from Susiephone Ltd, Lothian Buses plc, Scottish Water Ltd, west of Scotland transport partnership and the Convention of Scottish Local Authorities. Those were sent out yesterday and last Friday.

Dr Malcolm Reed (Strathclyde Passenger Transport Executive): Thank you for your introduction. We very much welcome the opportunity to speak to the committee and to elaborate some of our concerns about the bill and its financial memorandum. Of all the public authorities that will be affected by the Transport (Scotland) Bill, SPT is the one that is in the firing line, both generally and financially.

As the convener said, the committee has our written evidence, so we will be happy to answer questions. I start, however, by apologising for an error in appendix A to our memorandum, which is on page 23 of the papers that members have before them. Perhaps because of wishful thinking, the legend on the vertical axis of the bar graph has been inflated. It should read “£thousand” rather
I will summarise some of the key issues behind our written submission. First, SPT considers that the financial arrangements that the Scottish Executive proposes for future regional transport delivery in Scotland fall far short of what will be required to achieve the bill’s stated objectives. That comment applies at two levels. At the macro level, the Scottish Executive's own research has demonstrated that transport is significantly underfunded in Scotland in comparison with good practice elsewhere. In addition, at the more detailed level, the funding mechanism that the Executive proposes to put in place to support regional transport partnerships’ revenue and capital expenditure does not seem to be fit for purpose. The capital and revenue funding proposals appear to reflect a lack of awareness of the realities of local government finance and of the economics of the public transport sector. The likely consequence is that, even within the limitations of planned local government spending, transport will not be able to secure the financial support that the Executive assumes will be available to support the policies of the transport white paper.

Secondly, we feel that the financial memorandum understates the direct cost of the Transport (Scotland) Bill’s provisions and fails to explain how local government will be funded for the extra burdens that will pass to it after the short period of transitional Scottish Executive support. In our view, the additional transitional and on-going costs will represent a significant diversion of resources from front-line service delivery.

Thirdly, we do not feel that the white paper and the bill have paid sufficient attention to the other opportunity costs of the proposals. SPT is the only regional transport delivery organisation, and the current consultation envisages that the west of Scotland will probably remain unique in having both direct service delivery and transport planning administered at regional level. Consequently, SPT will have to manage a complex transition process while continuing to deliver public transport services and projects that affect 42 per cent of Scotland’s population. That will inevitably result in competing demands being made on financial and human resources and could threaten the implementation of key projects in the current programme.

The committee will be aware that the Scottish Executive now proposes to implement its plans for a national transport agency without introducing primary legislation. In our policy evidence, we point out that all the white paper’s objectives for transport partnerships and regional delivery could likewise be achieved under existing legislation, thus avoiding all the transitional costs and the substantial delivery risks that are associated with the current proposals. As a consequence, we find it difficult to see how those aspects of the bill’s provisions could satisfy any objective best-value test.

We feel that the financial memorandum is inadequate, so we ask the Finance Committee to take account of our specific concerns in that respect and, perhaps, to seek further clarification from the Scottish Executive. In addition, SPT considers that the financial case has not been made for the sections of the bill that deal with regional structures, and that fundability issues and the broader economic context have not been properly addressed. We do not feel that there has been a rigorous appraisal of the full costs of that part of the proposals or a demonstration of any tangible additional benefits that could not have been secured under existing legislation. In short, options have not been fully evaluated. That seems to be a strange omission in view of the Scottish Executive’s commitment to transparency and evidence-based policy making.

We hope that when the Finance Committee makes its recommendations on the Transport (Scotland) Bill, it will consider that the financial and economic justifications for the proposal warrant further scrutiny.

The Convener: Thank you. I invite Councillor Andrew Burns to make an opening statement on behalf of COSLA.

Councillor Andrew Burns (Convention of Scottish Local Authorities): I add my thanks to the committee for allowing us to give evidence this morning. We welcome the general principles of the bill. We agree that there is a need to set up the regional transport partnerships and we are grateful for the shift and growth in funding in the general transport budget; in particular, we are grateful for the shift away from road building towards public transport provision. By 2006, some 70 per cent of the transport budget will be within the ambit of public transport provision.

We welcome the general tenets of the bill and the general thrust to establish regional partnerships, but we share some of the concerns that SPT expressed. Before I mention those, I add that we feel that we are in a catch-22 situation because the consultation on establishment of regional transport partnerships is on-going and will not finish until the third week of January. All the comments that we have made in our submission, and those that I will make this morning, must be taken in that context. We do not know the final structure of the RTPs—we will not know that until early next year, so I stress that caveat.
I will not go into all the details unless I am questioned on them but, from our reading of the financial memorandum, we feel that about one year’s worth of Executive transitional funding for the establishment of regional transport partnerships is too limited. Some of the points that SPT made in its evidence are repeated in ours; for example, we believe strongly that there must be a longer lead-in period. COSLA argues that transitional funding must, as a minimum, be available for the current three-year spending round, until April 2008.

We accept that regional transport partnerships are the way forward; there is no question but that they will result in significant changes to regional delivery of transport and to local government delivery of transport infrastructure and provision. However, it will take much more than one year to work through the financial requirements that will be imposed by the changes, especially on the local authorities that will make up the RTPs.

11:30

In summary, we welcome strongly the general principles of the bill, the establishment of RTPs and the shift and growth in funding, but we have concerns about transitional funding and the period for which it will be available. We urge the committee to consider carefully that period and whether—as we argue—such funding should be available for at least three years until the end of the current spending round in April 2008.

John Swinburne: I am interested in concessionary travel. Reports that I receive suggest that the phantom passenger is the biggest problem that the transport industry in Scotland faces; companies are making a killing and augmenting their income from local authorities by saying that passengers who do not exist are using the scheme. Do you support the introduction of smart cards for senior citizens, and others who receive concessionary travel, as being the only sensible and controllable way of preventing the fraud that is currently taking place?

Dr Reed: There is an issue about phantom passengers. SPT backs up evidence from operators with on-board surveys and we cross-check the claims that are made. There is certainly a perceived problem.

I agree that smart cards are probably the way forward, but no transport organisation in Britain—including Transport for London—has been able to make a business case for their introduction; external funding has always been required. If we want accountability and proper allocation of revenue through a concessionary fares scheme, smart cards are probably the only technical answer, but their introduction would cost a lot of money in addition to what is already being spent on the concessionary scheme.

John Swinburne: What is your answer to the problem? It is all right to sweep the matter aside and to say that smart cards are not the answer, but what would you be comfortable with? Do you favour inspections and spot checks? All over the country, there are empty buses running for which local authorities are paying.

Dr Reed: I declare an interest in that I will become eligible for the concessionary fares scheme tomorrow.

John Swinburne: We will send you an application form.

Dr Reed: We can go as far as possible with spot checks, but ultimately there must be a method of checking every journey. In that respect, there may be a difference of philosophy. Although I understand the benefits of the scheme, I do not think that the cost in loss of data and records of transaction that resulted from the move to the scheme was taken fully into account. That cost must be weighed in the balance as being part of the downside of moving to a completely free scheme.

Dr Murray: While I was reading the evidence, I became increasingly concerned not about the policy intentions but about the amount of consultation on the financial memorandum and the uncertainty that surrounds the bill. That said, SPT did not comment specifically on whether it was consulted on the financial memorandum. How much consultation was there?

As with other bills that we have considered, the cost of the proposed legislation will be dependent on guidance and secondary legislation, which we have not seen and on which we cannot comment. Indeed, much of the written evidence suggests that no one can comment on the costs because no one knows what they will be. How much did the Executive consult, particularly organisations such as SPT and other voluntary regional partnerships that have experience of the regional transport planning function?

Dr Reed: We have been having general financial discussions with the Scottish Executive since the consultation process began, but we were not specifically consulted on the financial memorandum—we certainly had no input in respect of the values that are set out in the memorandum. My colleague Valerie Davidson can detail some of our concerns about the amounts, which we think have been understated. In fact, we think that there has been a complete omission from the memorandum.

Valerie Davidson (Strathclyde Passenger Transport): SPT is concerned that the level of financial information in the memorandum is very thin and very difficult to get behind, principally because secondary legislation will be used and we do not know exactly what the orders will say.
I want to concentrate on one or two specifics in the memorandum. First, £1 million has been highlighted as a transitional cost for one year only. Given that level of detail and the workings of a transport organisation such as SPT—which is already a regional transport body—the costs will be very difficult for local authorities to subsume beyond year 1. We probably share that concern with the Convention of Scottish Local Authorities. The amount that is currently spent on transport via the local government mechanism makes it very difficult for us to argue the case for transport when we are, in effect, in competition with education, social work and other areas. As a result, it will be difficult for us to ask local authorities to contribute an additional £1 million without their receiving any additional funding. I seriously doubt that that money will come through into transport.

Although the financial memorandum says that £1 million will be made available for transitional staffing costs for SPT, it does not contain enough information for us to assess how that figure has been calculated. The Executive might be talking about simply transferring rail power staff, of which SPT has only a small number. However, those staff are supported by a raft of services that cover policy, financial, legal and other matters, which appear not to have been taken account of. When one goes down into the bill’s detail, it is not clear what costs the proposed move would generate. I am concerned that the bill will cost more to implement than is suggested.

Our submission also highlights a concern that has been expressed by other voluntary partnerships, to the effect that the cost of RTPs has been significantly understated. Moreover, we feel that one aspect has been completely omitted from the financial memorandum. Paragraphs 19 and 20 on page 22 of SPT’s submission focus on section 43, which seeks to amend the provisions of the Transport (Scotland) Act 2001. Those powers, which we estimate will cost about £440,000 per annum, do not appear to have been taken account of and are not referred to at all in the memorandum. Those costs may be somewhere in the detail, but we cannot identify them. What prompts our concerns about the level of detail is the fact that it is not possible to identify whether all the costs have been taken account of.

Dr Murray: I am concerned about the following statement in your written submission:

“The revenue funding received by SPT from its contributing councils has increased by no more than 2.5% per annum since 1998”.

I do not know whether that is a real-terms increase or whether the figure includes inflation. We understand that local government is expected to make a significant number of efficiency savings in the coming period and that the budget for local authorities seems to be less generous than for other parts of Scottish Executive spend.

After local government reorganisation, the areas in which councils were expected to come together were often picked off first. That is because, when the screws are turned on councils, they tend to look at the services they provide for their own populations rather than their contribution to the greater good. I am concerned that councils might, if local government has to find efficiency savings over the next three years, be reluctant to make the contribution to the wider aspects of the regional transport authorities, which may not benefit their indigenous populations directly.

The Convener: That was known as the Argyll and Bute question to people who were on Strathclyde Regional Council.

Jeremy Purvis: Paragraph 144 of the explanatory notes talks about costs on local authorities. It states:

“The Transport Partnerships will be encouraged, where practical, to maximise the benefit of shared services utilising, where appropriate, re-charge facilities. A Transport Partnership, for example, might utilise the legal services of one or more of its constituent local authorities rather than maintaining its own in-house service.”

Do you anticipate that, rather than be replicated in every local authority area, some services will be pooled for greater efficiency?

Dr Reed: That is another area in which we feel the financial memorandum has not drilled down deep enough. That paragraph fails to take account of the fact that what is proposed is, for most parts of Scotland, an entirely new function. What is proposed is not the transfer of an existing function, but the creation of a new regional transport planning function. Because that function will be carried out by bodies that have a separate statutory locus, they will have to be sure that the advice that they get and the services that they require are sufficient to support that activity. As the service does not exist anywhere in local government except in the SPT area, it will have to be created and will, therefore, impose an additional resource requirement on local government. Although it may be possible for partnerships to draw services from the constituent councils on an agency basis, the councils will nevertheless have to provide additional resources.

When we started SPT after reorganisation, we tried to create a fairly lean structure; however, we found quickly that we could not rely on council provision for certain specialisms and services, first, because they were not priorities in their own service plans and secondly, because there could be conflicts of interest such as arose, for example, in relation to property issues. Whatever the intent is and whatever recharging basis is adopted for
supporting the activities of the regional transport partnerships, within a short time most regional transport partnerships will likely find that they require to provide a good number of the services at their own hand, simply in order to discharge their statutory duties.

Jeremy Purvis: Does COSLA have any comment on the opportunities for pooling services?

Councillor Burns: I accept that there are chances for pooling resources. I speak from my experience of the City of Edinburgh Council’s establishment of Transport Initiatives Edinburgh Ltd, which is now known as TIE. We have pooled and utilised resources from the City of Edinburgh Council. However, I concur with what Malcolm Reed said about the need for specialised resources for specialised projects, which cannot be pooled from individual local authorities. TIE has had to establish a legal support system that is wholly separate from that of the City of Edinburgh Council.

We did not want, and would rather have avoided, such duplication, but the nature of the projects in which the arm’s-length organisations and the RTPs might be involved is such that it is almost impossible to pool certain types of resources. I am sure that there is potential for making efficiencies, but we should not underestimate the difficulties in providing the necessary support for the large and complex infrastructure projects that the RTPs are likely to deal with.

Jeremy Purvis: An important project for my area is the Waverley line, which is also a priority project for the City of Edinburgh Council. In effect, the partnership that is the promoter of the Waverley line and TIE, which promotes the city’s many other projects, are two separate entities that put a burden on local authorities. A disproportionate burden has been put on the Scottish Borders Council, which has had to up its staff so that it could take on the increased burdens of that project. Could not an RTP, which would have a bigger centre, drive through such projects more efficiently and more cost-effectively than its constituent parts?

11:45

Councillor Burns: I accept that 100 per cent—that was a good example. However, I reiterate that even if efficiencies can be gained by having one RTP deliver projects such as trams or the Borders rail link, the RTPs will still require specialised legal support and other specialised services. I agree that there exists the potential for efficiencies, but it will not be possible to draw down from local authorities all the required resources. The RTPs will need to develop individual and specialised services in-house at significant cost.

The Convener: I had intended to let Ted Brocklebank ask his question, but he has gone away to sort out the Waverley line.

Mr McAveety: I hope that he is not away to dig the line.

Perhaps both Malcolm Reed and Andrew Burns can respond to this question. Earlier, Malcolm Reed made three points rather gently but quite lethally. First, you said that the RTPs will divert resources from front-line delivery. Secondly, you said that the bill does not meet the principles of best value, which I am sure Andrew Burns might want to comment on. Finally, you said that options have not been fully evaluated. Will you expand on any of those criticisms?

Dr Reed: I will attempt to do so.

On the lack of evaluation of other options, we pointed out in our policy evidence to the Local Government and Transport Committee that the Transport (Scotland) Act 2001 already provides Scottish ministers with the power to require public authorities to draw up joint transport plans. In many ways, that is a better power than the one that is proposed in the Transport (Scotland) Bill because it allows ministers to require, for example, transport-hungry organisations such as hospital boards or local enterprise agencies to be engaged in regional transport plans. We have found it difficult to engage such organisations in effective regional transport planning. In a sense, the power that the bill will provide already exists.

Also, local government has plenty of powers of general competence to set up the sort of joint working that is envisaged under the bill. Despite reports to the contrary, there has been no failure on the part of local authorities to work together in delivering transport plans or projects—the existing voluntary partnerships are testimony to that.

We do not need legislation to do what is already good practice and we are concerned that the bill has not been thought through in terms of best value. There is a case for re-examining the option of using existing powers so that we can see what value would be added if the existing powers proved to be insufficient. There is a case to be answered on that.

Councillor Burns: Shall I respond to the question too?

The Convener: I am anxious to avoid the situation whereby both groups of witnesses respond to every question.

Alasdair Morgan: My question is on the funding of the RTP organisations, which the SPT submission says will have a prudential borrowing
power. From my reading of the bill, I am not entirely clear that that is the case, but let us assume for the sake of argument that such a power is provided if one reads schedule 1 along with the various acts that are cited. The SPT submission makes the fair point that prudential borrowing is meant to have a revenue stream to pay the interest.

Most of the transport schemes that local authorities will undertake are ones that the private sector will not undertake. That is simply because there is not enough income to pay for them, effectively. Private sector bodies might get into trouble if they get involved in a prudential borrowing scheme. You said that you were seeking clarification from the Executive on that point. Have you received any such clarification yet?

Valerie Davidson: We have received no clarification about that as yet. We are still in discussion with the Scottish Executive. The issue has been on-going for some time. We have reached the stage when contract awards cannot now be made, because SPT has no security of funding. That will delay transport delivery.

Alasdair Morgan: So unless you get another source of income—unless somebody else is prepared to put in the money—the schemes cannot go ahead. Is that what you are saying?

Valerie Davidson: That is correct.

Alasdair Morgan: I have a question on funding the partnerships. The explanatory notes state:

“if the Transport Partnership is unable to decide”—

with respect to the share of expenses to be paid by each constituent council—

"then the relevant shares will be prescribed by the Scottish Ministers by order.”

Do you know what is meant by “unable to decide”? Does that relate to a majority vote by the members of the partnership? What constitutes a decision by the partnership as to what the relevant shares are? If a partnership does arrive at a decision, does that represent a legally binding requirement on councils or members to pay the money?

Dr Reed: That is still the subject of consultation through the separate consultation document on the funding and governance of the regional transport partnerships, which has just been issued. We might be wrong, but our assumption is that the allocation within RTPs will be decided by majority voting. That seems to be the principle that is embodied in the consultation document.

We are slightly lost with regard to the fact that the system that is described in the consultation document is the system that we have at the moment. We are a requisitioning authority. Frankly, it is difficult to make the system work. Whatever the statute says, such things inevitably come down to informal political negotiation.

It is very difficult to get a budget that exceeds the willingness of the least wealthy partner to pay. There have been situations when some councils in the SPT area have indicated a willingness to pay more but, because we have to operate with all 12 councils, our increase has been held back to what the smallest, or least well-resourced, council can afford. We do not think that the Scottish Executive has thought through the practicalities or the realities of local government finance or what mechanisms will be available to the new partnerships so that they can draw down from their constituent councils funding that is not already available to SPT. In our experience since local government reorganisation, that has not been a particularly robust method of funding public transport.

The Convener: Wendy, do you have a supplementary question?

Ms Alexander: I am aware that time is pressing. I will try to suggest a way forward, based on what we have heard so far. I want to steer completely clear of the policy dimensions, because the remit and focus of this committee is on the financial dimensions.

That said, we have heard of four areas in which there are big, outstanding questions. First, we ended on the point about requisitioning through precept and the meaning of the proposed legislation and the implied process in that regard. Secondly, there is the issue of whether it is practically possible to conceive of the prudential borrowing regime being made use of by the new regional transport partnerships. Thirdly, there is the issue of the adequacy of the transition costs and the time horizon over which they should operate. Fourthly, there is the Strathclyde-specific issue of bus-related functions and the exemption for Argyll and Bute.

Might it be possible for us to write to the Executive, in advance of Executive witnesses coming before us, saying that those are the four issues in which we have a specific interest, and that we would be grateful if it could provide us with a memorandum dealing with those issues well in advance of our meeting?

We might also want to alert the Local Government and Transport Committee to that, but we cannot prejudice the outcome until we have heard what the Executive has to say. However, it would be helpful if the Executive responded on those four issues.

I have one final observation. We have been here before but, given the complexity of the issue, the clerks might want to reflect on whether they need
a little expert support in writing up our response on
the financial memorandum to the Local
Government and Transport Committee. No other
committee of the Parliament would try to handle
matters of this technical complexity without a little
support. I do not expect the clerks to answer that
today. I just think that they should be invited to
reflect on whether they need some assistance in
writing this up.

Four financial issues have been highlighted. I
propose that we alert the Executive witnesses and
the Local Government and Transport Committee
to them and see what comes back.

**The Convener:** I could add at least one more
issue, which is uncertainty. I remember that in
Strathclyde there was an issue about being able to
commit to projects or secure banking continuity.
There is an impact issue for outgoing authorities in
the context of taking transport projects forward.

The Executive witnesses are due after this
discussion. I presume that they will have noted the
issues that you raised—they will certainly be able
to read them in the *Official Report*—and that we
can question them on those issues.

On timescales, the Local Government and
Transport Committee is looking to take evidence
from the Minister for Transport on 21 December.
We may want to take time over preparing our
report and wait for written answers. I take your
point about specialist advice.

**Jim Mather:** So far, we have been given a
devastating critique, which has been backed up by
comments from COSLA, Highlands and Islands
strategic transport partnership, NESTRANS and
others. What would be an ideal way forward, if you
were starting with more of a blank slate than we
currently have?

**Dr Reed:** As far as the west of Scotland is
concerned, we do not think that anything is wrong
with the present arrangements. They work
effectively. The minister has commended the level
of public transport delivery in the west of Scotland.
Given that as recently as 1999 the Scottish
Executive went into the whole issue of regional
structures, I am at a loss to understand what has
changed so much in four years that it wants to
shake up the local government map yet again.

The situation in other parts of Scotland is
different, and I would not presume to speak on
their behalf, but the fact that voluntary
partnerships have been able to do so much on the
basis of co-operation shows that that approach
can add value. I am not persuaded that moving to
a statutory partnership will add any value when the
underlying purpose of the statutory partnership—
the delivery of a regional transport plan—is
already available under the Transport (Scotland)
Act 2001. Rather than shaking everything up
again, the best and most effective approach in
terms of delivery would be a period of stability to
let local government get on with the job and start
delivering what is already in the pipeline, which
seems to accord with ministers’ priorities.

As the convener said, any reorganisation, no
matter how benign, is a distraction. I know from
experience exactly what he is saying. In
Strathclyde we lost an important rolling-stock deal
simply because we could not offer the covenant to
the financial sector that would have been available
had we had continuity and an ability to plan more
than two or three years in advance.

**Jim Mather:** Recognising the discontinuity
between costs that you take on board and the
wider economic advantage to local authorities and
central Government, do you see any advantage to
the economy in general in making the move?

**Dr Reed:** No, because, as we said in our
evidence, the bill fails to address the chronic
underfunding of public transport in particular, and
transport in general, in Scotland. The Executive’s
own evidence has pointed out that we are
spending about 50 per cent less in capital and
about 20 per cent less in revenue than is spent
according to examples of good practice
elsewhere. We must address that problem.
Moving the deck chairs around does not get to
grips with the real issues that affect passengers,
people who want to ship freight and the people
who want modern communications in Scotland. To
me, it seems that we are starting at the wrong end
of the problem. If we can get the financing right,
the rest will follow. Reorganisation should not be
an excuse for lack of funding.

12:00

**The Convener:** As there are no other questions
for our present witnesses, I thank them for coming
along. I am reflecting on Wendy Alexander’s
suggestion. It would perhaps be useful to have a
limited evidence session from the Executive today,
for clarification, and to seek a more detailed
session with the Executive witnesses in due
course. I will try to reschedule the process to allow
for that. Is that acceptable to members?

**Members indicated agreement.**

**The Convener:** The second part of this agenda
item is evidence from the Scottish Executive
officials who will talk about the Transport
(Scotland) Bill. We have with us Jonathan Pryce,
the head of the transport strategy and legislation
division; Frazer Henderson, the bill team leader;
and Claire Dunbar-Jubb, the group accountant for
the roads policy and group finance division of the
Scottish Executive’s Enterprise, Transport and
Lifelong Learning Department—which is a rather
long title.
You have heard the previous evidence. We would like now to address some issues that require clarification and perhaps invite you back for a longer session of evidence taking. It is only fair to give you the opportunity to make some opening remarks before we move on to that limited questioning. Are you willing to come back for a further session, in a week or two weeks’ time, once we have got some clarification, especially on the issues that Wendy Alexander raised?

Jonathan Pryce (Scottish Executive Enterprise, Transport and Lifelong Learning Department): We are grateful for the opportunity to talk to you about the financial provisions of the bill. If the committee would find it helpful for us to come back, we will certainly do so. I will make some general points to start off. I am sure that you will want to follow up some of the questions that we heard you ask earlier.

As you know, the bill has three main aims: to put in place new regional delivery structures for transport infrastructure and services; to improve the regulation of road works; and to provide a discretionary power to enable the Scottish ministers to run concessionary travel schemes at their own hand. It is worth emphasising the fact that the Scottish Executive already provides support for existing voluntary transport partnerships. There is no intention to diminish the level of that support as a result of the bill.

The financial memorandum concentrates on the additional costs of the transport partnerships that we believe may arise in the transitional year and the additional costs that the partnerships may wish to incur in getting their regional transport strategies off to a flying start. We do not believe that, in the longer term and directly as a result of the provisions in the bill, there will be significant additional costs to the partnerships and local government over and above those for which the Executive already provides support to the existing partnerships and to SPT.

On the regulation of road works, the intention is to provide funding to enhance the capabilities of the existing road works register, to provide training and information on the enhancements to those engaged in operating the register and to establish the office of the road works commissioner. You will also be aware that the Executive has made a substantial increase of around £100 million per annum from 2006-07 in the support for concessionary travel. That increase is not conditional on the powers in the bill, which provides the flexibility to allow Scottish ministers to determine later who should take responsibility for concessionary travel. For that reason there are no costs directly attributable to concessionary fares in the bill, although we refer to the overall concessionary travel bill in the financial memorandum. We are happy to respond to questions.

The Convener: One of the problems that we have is that in relation to at least a couple of elements, items in the bill are still out to consultation, so there is a great deal of uncertainty. The Executive’s financial guidance note 2003/01 on the preparation of financial memoranda states:

“Where a Bill proposes powers, or implementation is dependent on the detail in secondary legislation (or further primary legislation), it may not be possible to be precise. In these cases, the Memorandum should say so. But this should be supported by an outline of what the current intentions of the Executive are, what the financial implications of these intentions will be, and what the effect of varying the major assumptions will be.”

You have not given us even a range for some of the costs, which we might reasonably have expected to have been provided.

Jonathan Pryce: Having taken account of the fact that we are still engaged in consultation, we have tried in the financial memorandum to estimate reasonable provision from the Scottish Executive budget for the costs of transition. I do not pretend that we have got those costs exactly right. We tried to overestimate rather than underestimate transitional costs. I apologise if we have not given you the sensitivity ranges. We have to take account of what we think the regional partnerships will need to spend on preparing their regional transport strategies in their first year to ensure that the funding is available in a period when they might not have their funding arrangements with the local authorities fully in order and to ensure that reasonable provision is made for transitional costs relating to staff, which we do not anticipate to be particularly high.

The Convener: But we have heard from COSLA that it anticipates that transitional costs will stretch over more than one year and it is difficult to see how the transition can be achieved within a single year. We heard from SPT and COSLA that specialist staff—whether providing technical expertise or legal or other support—need to be in place in order for the new regional partnerships to carry out their functions effectively and separate their functions from that of any local authority.

Jonathan Pryce: One of the things that make the figures complicated is the fact that we could have different models of transport partnership in different parts of the country. The regional partnership in the west will build on Strathclyde Passenger Transport and the vast majority of staff from SPT will be subsumed within the regional partnership. It will therefore include the specialist functions to which you refer. I am not anticipating additional costs for the specialist functions in the west. The consultation paper
states that there is the prospect of another four regional partnerships in other parts of Scotland. We are not clear that those partnerships will take on transport powers from the local authorities. That decision will be in the hands of the local authorities. If those regional partnerships are not Executive delivery bodies, they are unlikely to have significant costs, I believe, in relation to their specialist functions, although they will need to staff up for the strategic planning function.

The Convener: You have not left much scope for them to have significant costs or significant staff requirements, according to the financial memorandum.

Jonathan Pryce: We have assumed that the staffing for the existing voluntary partnerships will continue at those levels. As I said, there will be additional funding, at least in the first year, for the preparation of regional transport strategies.

The Convener: So five members of staff will be sufficient. That is the figure in the document.

Jonathan Pryce: Yes, that is the figure in the financial memorandum.

Alasdair Morgan: My question is a supplementary to the first point that the convener made. One of the problems that we have with the concessionary travel scheme is that, because statutory instruments do not come to this committee and because there are no financial memoranda for affirmative SIs, as far as I am aware, using that mechanism evades the purpose of having a financial memorandum in the first place. I am not saying that that is why it is being done that way, but the end result is the same; what could be a fairly significant part of expenditure is not subject to the scrutiny that is normally given to a financial memorandum.

Jonathan Pryce: I understand your point. That should be adequately addressed in the regulatory impact assessments that need to be conducted on any secondary legislation that has an impact on business.

Dr Murray: My first question is about the level of consultation that existed—on the financial memorandum specifically, as opposed to on the policy intent. For example, we have written evidence from NESTRANS, which says that although "the financial assumptions ... set out in the Financial Memorandum accompanying the Transport (Scotland) Bill are not drawn from any previous consultation they have sought to take account of the running costs of some of the existing voluntary Regional Transport Partnerships."

We also heard from Susiephone Ltd, which did not feel that it had been consulted and which had not been approached formally, despite the fact that it runs the current road work register. I am a bit puzzled that there seems to have been a lower level of consultation with those bodies that are already undertaking some of the functions. I appreciate your comment that the financial memorandum is supposed to cover the additional costs rather than the existing costs, which are already funded. However, I would like your advice on the way in which those organisations have been consulted, specifically about the financial aspects of the bill.

I was a bit concerned about paragraph 143 on page 71 of the financial memorandum, which states:

"No increased costs for local authorities are anticipated as a consequence of the establishment of Transport Partnerships."

Given the uncertainty that surrounds the nature of those partnerships, how confident can you be in making such a statement?

Jonathan Pryce: I shall try to take your points in order. Please pick me up if I miss out anything on the way.

We have consulted quite extensively overall on the general policy, and the Local Government and Transport Committee has heard from witnesses that we have done a pretty comprehensive job of keeping in touch with people. We have not issued any formal written consultation on the provisions in the financial memorandum, although we have had some general discussions with COSLA and we have a reference group that consists of COSLA representation, Strathclyde Passenger Transport and the existing voluntary regional transport partnerships. In the course of those discussions we have touched on financial issues, but we have not, as you rightly point out, actually gone out and said, "Here is a draft of the financial memorandum. Can you give us comments on that?" We are continuing to engage with all those organisations as the bill moves forward to ensure that we can take account of the financial implications.

You mentioned Susiephone Ltd. We did not intend to omit that company, but it is small and works with the road authorities and utilities committee (Scotland). As a result, we thought that we had covered it the company in that context.

On the question whether there would be any specific additional costs for local authorities, the financial memorandum highlights our belief that it is a reasonable proposition that, in the long term, the bill's provisions will be at least cost neutral and could lead to savings for local authorities through economies of scale. However, much of that will depend on certain decisions by partnerships.

12:15  

Dr Murray: How long do you mean when you say "in the long term"?
Jonathan Pryce: That depends on what you think is a realistic timescale for partnerships to take decisions to transfer functions into stronger regional bodies.

The Convener: We will come back to the witnesses, but I will take two more questions.

Jim Mather: The Executive claims repeatedly that transport spending is a key element of economic development spending. However, I do not think that that is mirrored in the financial memorandum, which does not contain anything that might be called a cost justification. For example, there is no mention of economic growth and the derivatives of additional income such as council tax, business rates or whatever that would come about as a result of the bill.

Jonathan Pryce: The financial memorandum concentrates on the bill’s direct provisions and does not highlight the extent of the increase in transport funding in the Scottish budget. Between 2002 and 2008, that budget increases by 100 per cent or more. As a result, there has been and will continue to be very significant growth in transport spending.

Jim Mather: Evidence that we heard earlier suggests that this is not so much a zero-sum game as a negative-sum game. I would feel more comforted if the financial memorandum could pinpoint any additional flow of revenue, even if it were going to the Westminster Exchequer.

Jonathan Pryce: If I understand you correctly, you are asking whether we could provide any analysis of the general increase in gross domestic product and growth in business and the economy that would arise from that transport spend. That would be extremely difficult to quantify.

Jim Mather: Indeed, but that is the basis for cost justification.

The Convener: I am not sure that even Jim Mather would require every financial memorandum to contain a statement about how the proposed legislation would contribute to growth in GDP.

Jim Mather: I was asking for more prosaic measurements than that, convener.

Mr McAveety: What is the witnesses’ gut reaction to earlier evidence that best value, capacity for diverting from front-line delivery and other options have not been fully evaluated? I know that we will get some more detail on that matter.

Jonathan Pryce: The framework in the bill will provide an opportunity to improve transport delivery in Scotland and will enable the rest of the country to take a more collective approach to more regionally based transport planning and delivery. To some extent, it will bring matters closer to the current situation in the west of Scotland. The proposals will enable councils even in that part of the country to pool some of their roads functions and secure better provision of bus services and the infrastructure that goes with them.

Mr McAveety: But the partnership in the west of Scotland, which, in a sense, led the way in Scotland, submitted to us half an hour ago that those were three principal concerns among many. If SPT is concerned, how does that give other parts of Scotland the confidence with which to follow a broadly similar model that will benefit the whole of the country? We agree that the direction is right; the questions concern how we get there, what it will cost and the implications for morale, confidence and future direction. If the key organisation that has done a lot of that feels uncertain, what message does that send to the rest of Scotland?

Jonathan Pryce: A time of change creates uncertainty and concern for everyone who is involved. I understand why staff at Strathclyde Passenger Transport will be unsettled by the prospect of change and the move to a regional partnership in the west. I know that staff in the Scottish Executive are, to some extent, unsettled by the move to a transport agency. However, that is something that we have to manage through.

The Convener: I thank our witnesses. As agreed, we will come back to you for another session. In the meantime, we will write to you with several issues on which we want a response before our next session. We are looking to have that session a fortnight from today, but we will get back to you to set a date.
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

33rd Meeting, 2004 (Session 2)

Tuesday 14 December, 2004

Present:

Ms Wendy Alexander  Mr Ted Brocklebank
Des McNulty (Convener)  Jim Mather
Alasdair Morgan (Deputy Convener)  Dr Elaine Murray
Jeremy Purvis  John Swinburne

Transport (Scotland) Bill: The Committee took evidence on the Bill’s Financial Memorandum from—

Jonathan Pryce, Head, Transport Strategy and Legislation Division; Frazer Henderson, Bill Team Leader; and Claire Dunbar-Jubb, Group Accountant, Roads Policy and Group Finance Division, Scottish Executive Enterprise, Transport and Lifelong Learning Department.

Scottish Executive officials undertook to provide further information on various issues
11:43

On resuming—

Transport (Scotland) Bill: Financial Memorandum

The Convener: The second item on our agenda is further evidence on the Transport (Scotland) Bill. As members will recall, we took evidence on the bill on 23 November from the Convention of Scottish Local Authorities and Strathclyde Passenger Transport. We also took limited evidence from the Executive. We asked the Executive also to write to us, and we agreed to invite officials to appear before us again.

Jonathan Pryce has remained with us from the previous agenda item. With him are Frazer Henderson, the bill team leader, and Claire Dunbar-Jubb, group accountant to the roads policy and group finance division of the Enterprise, Transport and Lifelong Learning Department. Members will have a copy of the letter that the Executive officials sent to us. We heard an opening statement on the bill previously, but does Jonathan Pryce have anything more to say?

Jonathan Pryce (Scottish Executive Enterprise, Transport and Lifelong Learning Department): No, I am quite happy, thank you. I am grateful for this opportunity to come back to the committee. I hope that our reply has been helpful, and I am happy to take members’ questions.

John Swinburne: With wide differences across the country, surely you cannot expect a standard system to apply in the central belt, up north and in Jeremy Purvis’s Borders area when it comes to transport difficulties and one thing and another. I cannot see how it could possibly be the case that the same input will be sufficient in every area. Surely variation is required across the country.

11:45

Jonathan Pryce: If you are referring to different levels of resourcing, including staff resourcing, for the partnerships in various parts of the country, you may well be right. Certainly, each region of Scotland is affected by different transport issues. Throughout the process, we have been clear that we are not pushing for a one-size-fits-all approach to be taken. A degree of flexibility is built into the consultation that we are undertaking at the moment, although we are trying to provide a consistent framework that can be applied across the country.

It is quite possible that different levels of resource will be required in different partnership areas. The financial memorandum does not contain a detailed partnership-by-partnership analysis of the resource levels that may be required. At this point, it is difficult to do a finer analysis of which regions might require five staff and which regions might need three or six staff. You have a point, but at the moment we have a broad-brush assessment of what we think is reasonable based on our current level of knowledge. The averages that are included in the financial memorandum are based on those reasonable assessments.

John Swinburne: In order to get the levelling out of costs that the Executive seeks, council tax might have to rise more in some regions than in others.

Jonathan Pryce: I do not think that the staffing resource at the partnerships will have an impact on council tax levels. At the moment, we are looking at what we outline in model 1 in the consultation paper as a regional transport planning body, which would have a relatively small expenditure on staff. As we make clear in the financial memorandum, at present we provide core funding to the existing voluntary partnerships for that.

You may have been referring to the possible impact on council tax levels of different levels of spending on transport infrastructure and services in different parts of Scotland, but that is a matter on which I cannot speculate. That question is one for the partnerships to consider along with their local authorities. They will need to decide whether, in the first instance, to take on the kind of executive powers that will be needed in order to deliver transport services. It is the sort of question that the 32 local authorities have to take account of at the moment for their local area. Again, no significant impact should occur as a result of the bill.

The Convener: You seem to expect that additional staff will be required for the additional duty of preparing the regional transport strategies. However, you are making funding available only for the first year. Given that you say in paragraph 143 of the financial memorandum that

“No increased costs for local authorities are anticipated as a consequence of the establishment of Transport Partnerships”

do you expect that the additional staff who are referred to in paragraph 135 will be employed for one year only? If so, will the additional accommodation costs that are referred to in paragraphs 136 and 139 also cease to be incurred at the end of the transitional year?

Jonathan Pryce: What we are saying in the financial memorandum is that we do not envisage that there will be significant additional costs in the long term over and above the level of resource that the existing voluntary partnerships have and
deploy, even in relation to the monitoring and updating of the regional transport strategies.

As you say, the numbers to which we refer in the financial memorandum are noted only for the first year. They address the additional costs that are involved in the production of the strategies. We are not necessarily saying that five additional staff will be required in each of the partnerships to produce those strategies. Indeed, it is perfectly possible that those strategies will be produced with the support of consultants. Five staff in each of the partnerships might be the long-term staffing for those partnerships. We think that it should be possible to meet the costs of doing that, taking account of the support that the Executive already provides in core costs to voluntary partnerships.

The Convener: I want to pursue that point further. If I have understood you correctly, you are saying that the cost of the five staff envisaged for each of the transport partnerships is not the only cost of the set-up process; there will be additional consultancy costs for that year. You are then saying that the cost of the five staff for each of the transport partnerships could be an on-going cost. That does not seem to be what the financial memorandum says. I thought that the five staff was a one-off cost. Am I wrong?

Jonathan Pryce: At this point, I do not know for certain what precise methodology and staff the partnerships will use for the production of their regional strategies. In the financial memorandum we are saying that we think that it is reasonable to expect five staff to produce the regional strategy in the first year. In the financial memorandum, we did not make an allowance for consultancy costs because we think that it is possible that the five staff could just do it. However, we recognise that the partnerships might choose to make do with fewer staff and spend some of that money on consultants. What is set out in the analysis in the financial memorandum is really a staff-equivalent cost.

The Convener: But section 7 of the bill contains a requirement to keep the strategy under review and to prepare revisions as required by the ministers. That will fall on the regional partnerships and if funds are not made available beyond the first year, it can be funded only by the local authorities, so that will be an additional burden for those partnerships. We think that it should be possible to meet the costs of doing that, taking account of the support that the Executive already provides in core costs to voluntary partnerships.

Alasdair Morgan: I have a follow-up to what we asked last time on prudential borrowing and what you said in reply. Am I right in assuming that before it can qualify for the prudential borrowing facility, any public transport project—regardless of whether it has a capital grant—has to be able to generate enough revenue to pay all its operating costs and, in addition, pay all the loan charges arising from prudential borrowing?

Jonathan Pryce: It would be extremely good if a project were able to do that, but it is not a requirement, in that it is possible for the partnership to meet the loan charges from the borrowing through its requisition from its constituent councils. The partnership has an income stream that it can draw on from its constituent authorities that will allow it to meet those charges and to undertake prudential borrowing.

Alasdair Morgan: Hang on. If a council, for example, is to undertake a scheme with prudential borrowing, it will have to have a revenue stream to justify its prudential borrowing. I presume that that revenue stream is not the council tax; it must be a revenue stream from the project. Is that correct?

Jonathan Pryce: If a council were promoting a project, it would hope that there was sufficient income not only to meet the running costs but to contribute to the on-going debt costs, but that would not be essential. In the local government finance settlement there is an element of revenue support called supported borrowing, which local authorities can use to pay the debt charges of...
borrowing under the prudential regime. Councils can draw on that element to meet the loan charges of a particular scheme, and it is that same support that regional partnerships could draw on through their councils in supporting a regional project.

Alasdair Morgan: There is a danger of two organisations biting the same cherry. How is that co-ordinated? A council might have already borrowed prudentially on the basis of its support from the Executive and then the transport partnership might decide to borrow prudentially and assume that various member councils will have enough spare cash to contribute. There is scope for the borrowing to be less prudent than it should be.

Jonathan Pryce: You are absolutely right. There should be no question of either side making assumptions. Regional partnerships should not assume that there will be spare capacity in local authorities. That will be part of the dialogue between the councils and the regional partnership in preparing the regional strategy and the capital investment plan that goes with it, so that councils do not find themselves overstretched.

Jim Mather: The committee was concerned about the potential for fraud in relation to concessionary travel. Can you expand on the steps that are being taken to combat that?

Jonathan Pryce: Ministers are aware of the issues and of the committee’s concerns. There is a range of contractual issues to do with ensuring that there is no fraud, and what is delivered for the public support is value for money and fairly reflects the amount of public support that has gone in. We are clear that claims for concessionary travel have to be properly scrutinised. We strengthened the guidance for the current financial year, and made it clear that authorities must carry out a rigorous audit before submitting their claims to us and that operators’ claims to the councils or the concessionary fares operator must be validated. There is a range of things that councils can do to ensure that what seems to be happening on the buses reflects what the passengers are doing, such as using mystery travellers and collecting random samples.

12:00

Jim Mather: Have lessons been learned from elsewhere? Are there mechanisms in place, such as precalculated statistical parameters within which you expect councils to fall?

Jonathan Pryce: I confess that I do not know the precise details. However, I am confident that my colleagues who lead on concessionary fares have spoken to people who operate schemes in other parts of the country. I do not know whether there are baseline data that would show when there is an exception when something unexpected happens. I will speak to my colleagues about that.

Ms Alexander: The scheme involves additional funding of £196 million. Since the Executive does not have the power to administer the scheme, how will that be done? What is the distribution mechanism? Has there ever been an example of an operator not getting the full amount it applied for as a result of a faulty claim or a fraud investigation?

Jonathan Pryce: I am sorry to say this but, on the question of distribution, the Minister for Transport will make an announcement on the development of concessionary fares. That will happen before Christmas, probably.

Ms Alexander: It is scheduled for tomorrow.

Jonathan Pryce: You will hear more at that point and it may be that the situation that you are describing is not really an issue.

On the second point, it is probably fairest if I check whether there has been an example of the situation you describe and write to you or get a colleague to write to you with that information. There have been examples in which, following discussion, the paid claim has not been as high as the original claim, but I do not know whether that was the result of fraud.

The Convener: In that £196 million, what is the breakdown between the continuation of the existing schemes and new provision or development of the scheme? That might be affected by the minister’s statement tomorrow, but it would be helpful if the committee could get a clear breakdown. We have asked that question before but have not received a response. Do you think that that information could be made available to us?

Jonathan Pryce: I will need to think through exactly what you are asking for. It might not be possible to break down the national element of the scheme from the local elements. We know what is spent on the local scheme at the moment, so you will be able to get information to that extent. If you are asking about how the £196 million breaks down into the extension to the national scheme and additions over and above that, I can tell you that that will become more apparent when announcements on the national scheme are made.

The Convener: I am interested in how much each specific extension might cost and in how the costs are increasing or changing in the context of experience of the scheme and what the anticipated payments are. Those are the most pertinent issues that I am interested in. If we need to write to you for that information, we can do so,
and you would receive the letter after the minister’s announcement.

Jonathan Pryce: That would be helpful.

The Convener: I will now move on to what might be seen as a lack of parity of treatment. You have identified a substantial projected increase in the Scottish Executive’s transport budget to deal with some of the issues that were referred to earlier. What is not clear to me is what the cost will be of the additional staffing and other resources that will be required by the Scottish Executive, either directly or through the proposed agency, to administer that increased budget and to deliver the projects and programmes. Can you give us any information on that? How many civil servants will be involved? What sort of budgets are we talking about to deliver the transport agency and the various things that are put in place by the bill?

Jonathan Pryce: I do not think that I can give any detailed additional information today. I can refer you to what is set out in the draft budget, where there is a line for the transport agency development fund. That is a reflection of anticipated expenditure up to 2007-08, so there is a line there that shows £1.2 million this year, £2.8 million next year and £3.3 million in 2006-07 and 2007-08. That is, at the aggregate level, what we are expecting the additional activity to relate to. That is not necessarily just staff costs for civil servants, of course. It is also for recruiting in professional skills and for funding the resource infrastructure that needs to go with that.

The Convener: You have identified substantial amounts at the central level. Can you project what additional staffing and overhead resources local government will require to meet its share of the delivery objectives—not just for the five extra staff? How much of that resource will be provided directly through the proposed regional transport partnerships, or by councils, as a consequence of the statutory regional transport plans and of the framework that needs to be put in place by the bill?

Jonathan Pryce: It is difficult for us to project that at the moment. Picking up on something that we discussed a little earlier, we are open to consideration of a case put to us by local government about increased expenditure on delivering for transport. The key is to demonstrate the benefits. We are not proposing, as a result of the legislation, simply to increase the resource just because we have put a framework in place. However, there may be opportunities to increase resource if there is demonstrable delivery going on as a result. If we take specific projects, it is quite common for the additional staffing resource that is required to deliver those projects to be met as part of the project costs. For example, a good proportion of the support that the Executive has provided to date and will provide in the future for the Edinburgh tram proposals, certainly in the early days, will be to fund the staff to do the delivery.

There is significant increased activity in the south-east region, much of which is being carried out by Transport Initiatives Edinburgh Ltd. Where there is a project that has made its case and secured support, there is the resource to enable that project to be delivered. We will continue to take that approach. That said, I should point out that one source of such funding is the £35 million per annum that has been written into spending plans from 2006-07 onwards for regional transport partnership capital projects.

The Convener: I am struggling with the two opposing views that seem to be emerging, the first of which is that the process is relatively cost-neutral for local government. I find that hard to accept, because the proposed legislation will place on local authorities some very clear responsibilities and duties that will not be systematically funded.

The second aspect is the bill’s content, which seeks to make quite significant changes to local authority structures. At one level, the changes do not appear to have been given a complete cost-benefit analysis in order to find out whether they are necessary to deliver the required outcomes. I suppose that I am testing the matter at both ends. Are you properly costing these changes? Are they indeed necessary to deliver significant outcomes?

Jonathan Pryce: The bill’s proposals are driven by our belief that the existing structure of 32 local councils makes it very difficult to deliver significant regional projects and that the framework is necessary to deliver the significant outcomes that you mentioned.

The Convener: But you are prepared to put in only very limited, one-off resources to deliver the change.

Jonathan Pryce: We are prepared only to put in transitional resources upfront to get the framework up and running. The proof of the pudding will then be in the eating. If regional transport partnerships devise good regional transport strategies that make strong cases for projects, they should be able to access some of the increased Scottish Executive spend on transport that will be available through the spending review as well as any additional resource that they might need for staffing in order to deliver those good strategies. However, we are not going to spend considerable sums of money on staffing up a structure without any proof that it will deliver.

Alasdair Morgan: Given the Minister for Transport’s earlier comments, are you saying that the partnerships’ other on-going running costs will
be charged against specific projects that are successful via a STAG appraisal?

Jonathan Pryce: Yes, that is one of the options that is available to partnerships. Indeed, that reflects the current situation with projects in different parts of the country.

Alasdair Morgan: I know that it is one of the available options. Given that the other option is to fund things through council tax, are you saying that it is the most likely option?

Jonathan Pryce: It is the most likely option in the short term. As the partnerships start up and find their feet, they will be funded on a project basis. As their expertise builds, there might be a stronger case for increasing the level of core funding that we already provide to existing partnerships.

The Convener: You are committing to a major policy change in order to deliver a more ambitious transport programme. Indeed, that is what the minister said and what the bill is supposed to be about. Our difficulty is that although such a major non-statutory change will significantly increase central Government staffing and other resource costs, you seem to be in denial about the impact on local government beyond the transitional year.

Jonathan Pryce: We are not saying that there is no impact on local government. I emphasise that it is inevitable that an increase in transport activity and project delivery at local government level will lead to additional spending by local government. There will therefore be scope for local government to secure the necessary resources from the Executive. If the Executive is going to fund the projects, it will be prepared to provide those resources. There is no comparison with what the Executive is doing. We are not funding ourselves in relation to specific projects; we are having to skill up to monitor the delivery of the existing major projects and ensure that they run smoothly, even though, except in the case of trunk roads, we are not the primary delivery agent.

12:15

John Swinburne: The correspondence that we have from the Executive states:

“The Bill proposes that the net expenses of a regional transport partnership, that is any expenses which are not met from other sources … will be met by its constituent councils.”

However, it also says:

“The financial memorandum also provides a clear statement that the Scottish Executive will continue to provide existing funding in support of the core costs of the partnerships.”

You cannot have your cake and eat it. You cannot have it both ways, so which way is it? Are the councils or the Executive providing the on-going funding?

The Convener: We just asked that question. Do you have anything to add to the answer?

Jonathan Pryce: There is an element of both. The Executive is providing core running costs and it will continue to do so. The second statement to which you referred is about the running costs of the planning body—the new statutory regional partnerships. The first statement is about the overall global costs of a partnership that, for example, takes on the operation of transport services on behalf of the councils. If subsidised bus services were provided at regional level rather than at council level, the council would still get the support for subsidised buses through the local government finance settlement. The regional partnership would then access those resources through requisition from the constituent councils. The first statement that you quoted is very much about the overall running costs of the partnership, including service delivery. The second statement is about what we have just discussed, which is the core running costs of the partnerships to enable them to prepare a regional strategy and monitor and deliver it in future.

The Convener: We might need technical clarification of points, but we will seek it in writing. I thank Jonathan Pryce and his colleagues for coming along to give evidence.
MEMORANDUM TO THE SUBORDINATE LEGISLATION COMMITTEE BY THE SCOTTISH EXECUTIVE

TRANSPORT (SCOTLAND) BILL

Purpose

This memorandum has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.6.2 of the Parliament’s Standing Orders, of provisions in the Transport (Scotland) Bill conferring power to make subordinate legislation. It describes the purpose of each such provision, explains why the matter is to be left to subordinate legislation and the reasons for seeking the proposed powers.

Outline and Scope of the Bill

The Bill fulfils the commitments in the 2004 White Paper, Scotland’s transport future, to put in place new delivery structures for transport that will bring a strong regional approach to transport infrastructure and services; to improve the regulation of road works carried out by utility companies; to enable the Scottish Ministers to operate concessionary travel schemes at their own hand; and, to take forward a number of minor provisions in relation to other transport areas.

The Bill is in four parts:

- Part 1 provides a statutory basis for regional Transport Partnerships.
- Part 2 makes provision to improve the co-ordination and quality of road works.
- Part 3 makes provision to enable the Scottish Ministers to run concessionary travel schemes. It also makes a range of miscellaneous provisions.
- Part 4 deals with citation, commencement and interpretation. It also makes general provision about orders and regulations proposed by the Bill including provision about parliamentary procedure.

Delegated Powers

The Bill confers powers on the Scottish Ministers to make orders and regulations in relation to a range of matters dealt with in the Bill. Whilst a number of the powers contained within the Bill are new, such as those relating to regional Transport Partnerships, others, particularly those in respect of road works, emulate or update powers which already exist within the Traffic Management Act 2004, the New Roads and Street Works Act 1991 and the Roads (Scotland) Act 1984. The powers conferred by the Bill are, for the most part, either of a technical and procedural nature or relate to matters which because of their nature require a flexible procedure and thus are more appropriate to be dealt with by subordinate legislation.
In deciding whether to adopt negative or affirmative resolution procedure, careful consideration has been given to the degree of parliamentary scrutiny that is felt to be required for the regulations or orders, balancing the need for the appropriate level of scrutiny with the need to avoid using up parliamentary time unnecessarily. Affirmative procedure is used where the order or regulation making powers allow for the modification of any enactment or where there is significant public interest. The Commencement Order, which is made by the Scottish Ministers does not require procedure in the Scottish Parliament. All other enabling powers are deemed not unusual or significant enough to justify affirmative procedure and therefore the negative procedure will apply when those powers are exercised. Where a provision amends, or is closely based upon, a provision in the New Roads and Street Works Act 1991 the approach has been to follow the model provided by the existing statute.

The Bill provides the Scottish Ministers with powers to make supplemental, incidental, consequential, transitory, transitional or savings provisions. This allows the Scottish Ministers to make provision for ancillary matters and to enable unforeseen circumstances to be addressed which may arise following the enactment of the Bill without having to have recourse to primary legislation. The scope of the power is restricted in two respects. Firstly, it can only be used to make provisions which are supplemental, incidental, consequential, transitory, transitional or savings in relation to the order or regulations which are being made. In addition those provisions must be for the purposes of or in consequence of the provisions of the Bill. There are also stand alone provisions in sections 2, 10 and 12 that enable orders made under these sections to modify any enactment.

The power has been taken as the Bill is making significant changes to an existing complex body of law namely the law that governs transport and for Transport Partnerships that which governs local authority bodies. It is not possible to predict the precise transitional and other arrangements that will be needed as a result of the proposals made by this Bill.

**The Bill**

**Section 1: Establishment of Regional Transport Partnerships**

- **Relevant provision:** Section 1(1)
- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Order made by Statutory Instrument
- **Parliamentary procedure:** Affirmative resolution by the Scottish Parliament

Section 1(1) provides the Scottish Ministers with the power to make provisions by order about the establishment and constitution of Transport Partnerships.

Section 1(2) expands on what must, and what might, be contained in an order made under section 1(1). The particular matters listed are: councillor and non-councillor membership, manner of appointment, duration and termination of membership, use of voting, the weighting of votes, the offices to be held by certain members, proxies and role of observers.

Section 1(2)(b) and 1(3) provides that non-councillor members are initially appointed by the Scottish Ministers but that after the local authority elections in
2007 the non-councillor members will be appointed by the Transport Partnerships, but subject to the consent of the Scottish Ministers.

Reason for taking power
Consultation is ongoing with local authorities and others on the delineation of the regions. When the consultation concludes a draft illustrative framework order will be produced to assist scrutiny by the Local Government and Transport Committee at Stage 2 of the Bill process.

It is acknowledged that though the broad constitution of each Transport Partnership will be similar, the detailed nature of these provisions and in particular the definition of boundaries and voting arrangements for the Transport Partnerships makes it more appropriate for them to be provided for in subordinate rather than primary legislation. The affirmative procedure however ensures that the substance of the order will be subject to parliamentary scrutiny and approval. The Scottish Ministers believe that it is appropriate for Parliament to approve the establishment and constitution of new statutory bodies.

Section 2: Dissolution of RTPs

Relevant provision: Section 2(1)
Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Affirmative resolution by the Scottish Parliament

Section 2(1) provides the Scottish Ministers with power to dissolve Transport Partnerships.

Section 2(2) places a duty on the Scottish Ministers to consult relevant parties prior to making an order.

Section 2(3) provides for the order, as the Scottish Ministers consider necessary, to modify any enactment.

Reason for taking power
The order made under this power will make provision as to the detail of dissolution. The reasons for dissolution may be various but might, for example, be to permit two or more Transport Partnerships merging or a single Transport Partnership being recast as two or more Transport Partnerships. The exact form of the dissolution will depend on decisions taken by the Scottish Ministers in the light of consultation with affected parties. These matters will be particular to those affected and therefore are more appropriately dealt with under secondary rather than primary legislation.

It is necessary for the order to modify any enactment since Transport Partnerships are being created with administrative functions that apply to councils and other public bodies (Section 4 refers). It is not possible to predict the precise incidental and other arrangements that will be needed should dissolution take place. The
affirmative procedure however ensures that the substance of the order will be subject to parliamentary scrutiny and approval.

**Section 3 – Funding and borrowing**

Relevant provisions: Section 3(2)(b)

Power conferred on: The Scottish Ministers

Power exercisable by: Order by Statutory Instrument

Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 3(2)(b) provides the Scottish Ministers with the power to determine, when the Transport Partnership is unable to decide, the share of expenses to be paid by a constituent council to a Transport Partnership.

*Reason for taking power*

The power will only apply if the Transport Partnership cannot reach a decision. The amount of the contribution will be informed by the needs of the Transport Partnership i.e. the funding that the Transport Partnership requires to execute particular functions in pursuit of its strategy objectives. The Scottish Ministers will not know the Transport Partnership’s requirements until it is established and therefore it is appropriate for this matter to be addressed by secondary legislation. The expectation is that this power, though necessary, will be rarely used.

Relevant provisions: Section 3(3)

Power conferred on: The Scottish Ministers

Power exercisable by: Order by Statutory Instrument

Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 3(3) provides the Scottish Ministers with the power to determine the means by which constituent councils provide funding to their Transport Partnerships and how Transport Partnerships will repay loans.

*Reason for taking power*

The accounting procedures and administrative arrangements associated with the transfer of funds and repayment of loans are necessarily detailed in order, amongst other matters, to safeguard the use of public funds. These procedures and arrangements are subject to revision and refinement. By using secondary legislation the Scottish Ministers have the flexibility to adjust the administrative arrangements to accord with prevailing accounting and administrative practices.

**Section 8 – Duty of constituent councils and other public bodies as respects transport strategies**

Relevant provisions: Section 8(2)

Power conferred on: The Scottish Ministers

Power exercisable by: Order by Statutory Instrument

Parliamentary procedure: Negative resolution by the Scottish Parliament
Section 8(2) places a duty on specified public bodies to act consistently, in the performance of their transport-related functions and activities, with the transport strategy.

Section 8(3) provides the Scottish Ministers with the power to specify which public bodies should act consistently with the transport strategy of a Transport Partnership.

**Reason for taking power**
This allows the Scottish Ministers to define and place a duty on those public bodies that are affected by transport strategies to ensure that, in respect of transport, they operate in a manner that is consistent with the transport strategy. The order will define the public bodies and the strategies of the relevant Transport Partnerships with which they must act consistently.

It is not appropriate to place a duty in primary legislation on all public bodies since not all will be affected by transport strategies. In addition, strategies are subject to revision and therefore for these reasons it is considered that this matter is more appropriately dealt with under secondary rather than primary legislation. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.

**Section 10 – Other transport functions of RTPs**

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<thead>
<tr>
<th>Relevant provisions:</th>
<th>Section 10(1)</th>
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<tbody>
<tr>
<td>Power conferred on:</td>
<td>The Scottish Ministers</td>
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<tr>
<td>Power exercisable by:</td>
<td>Order by Statutory Instrument</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative resolution by the Scottish Parliament</td>
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</table>

Section 10(1) provides the Scottish Ministers with the power to confer transport functions on a Transport Partnership.

Section 10(3) provides that the order can be made by Scottish Ministers in response to an application by a Transport Partnership.

Section 10(5) provides that the Scottish Ministers have a duty to consult prior to creating the order.

Section 10(6) provides for the order, as the Scottish Ministers consider necessary, to modify any enactment.

**Reason for taking power**
Transport Partnerships may require transport functions to execute their transport strategies. These functions will not be known until the strategies have been produced and have been received by the Scottish Ministers. The functions will be specific to each Transport Partnership and in addition as the strategy develops in its execution the functions may be subject to review. The Scottish Ministers recognise that the conferment of a function on a Transport Partnership that was previously undertaken by a council will be of interest to Parliament. It is necessary
for the order to modify any enactment as the transfer may not make any sense legally unless the legislation containing the transport function is amended to remove any anomalies or difficulties that arise from the transfer. The affirmative procedure ensures that the substance of the order will be subject to parliamentary scrutiny and approval.

Relevant provisions: Section 10(7)
Power conferred on: The Scottish Ministers
Power exercisable by: Order by statutory instrument
Parliamentary procedure: Affirmative resolution by the Scottish Parliament

Section 10(7) provides the Scottish Ministers with the power to confer any transport function of Strathclyde Passenger Transport Authority and Strathclyde Passenger Transport Executive on a Transport Partnership.

Reason for taking power
The purpose of the power is to enable conferment of functions on a Transport Partnership to occur without the need of the Transport Partnership to produce a transport strategy first. A Transport Partnership has up to a year from its establishment to produce a transport strategy (section 6(1) refers). The Scottish Ministers, however, wish to ensure continuity of service in the west of Scotland and therefore propose conferring the transport functions of Strathclyde Passenger Transport Authority and Strathclyde Passenger Transport Executive on the successor Transport Partnership by April 2006. This date may be in advance of the date of production of the Transport Partnership’s transport strategy. There will be no requirement to exercise the power if the Transport Partnership completes its strategy and it is accepted by the Scottish Ministers before April 2006.

This conditional element means that this matter is more appropriately dealt with by secondary rather than primary legislation. The affirmative procedure, however, ensures that the substance of the order will be subject to parliamentary scrutiny.

Section 12 – Transport functions of Scottish Ministers
Relevant provisions: Section 12(1)
Power conferred on: The Scottish Ministers
Power exercisable by: Order by statutory instrument
Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 12(1) provides the Scottish Ministers with power to make an order to enable them to carry out any transport function of Strathclyde Passenger Transport Authority and Strathclyde Passenger Transport Executive.

Reason for taking power
An order under section 30(2) of the Scotland Act 1998 has been laid before both the Scottish Parliament and Westminster to extend the legislative competence of the Scottish Parliament to enable the transfer of the rail powers presently exercised by Strathclyde Passenger Transport Executive or Strathclyde
Passenger Transport Authority (SPTE/A) to the Scottish Ministers. The Scottish Ministers require this power to confer the rail powers on themselves. The detail that will need to be specified lends itself to subordinate legislation.

Section 13 – Transfer of staff, property and liabilities

Relevant provisions: Section 13(4)
Power conferred on: The Scottish Ministers
Power exercisable by: Order by statutory instrument
Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 13(4) provides the Scottish Ministers with power to transfer the properties and liabilities of one body to another.

Reason for taking power
The Scottish Ministers want to ensure that when a transfer of functions occurs between two bodies that there is also an associated transfer of properties and liabilities. The transfer of functions will occur by order and it is therefore appropriate that the transfer of properties and liabilities transfers in a similar manner. The Scottish Ministers recognise that the conferment of a function on a Transport Partnership that was previously undertaken by another body will be of interest to Parliament and therefore the affirmative procedure as detailed in section 10 ensures that the substance of the order will be subject to parliamentary scrutiny. As the transfer of properties and liabilities is conditional on the transfer of functions it is believed that a negative resolution by Scottish Parliament is sufficient.

Section 16 – Duty of road works authority and undertakers to provide Commissioner with information

Relevant provisions: Section 16(3)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 16(3) provides the Scottish Ministers with the power to prescribe by regulations the method of settlement of a disagreement, relating to information that the Scottish Road Works Commissioner has requested, between a road works authority or an undertaker and the Scottish Road Works Commissioner.

Reason for taking power
The regulations under this power will provide the Scottish Ministers with the flexibility to determine the appropriate means to seek a solution with respect to the nature of the disagreement. The matter may be settled by arbitration (as per section 158 of the 1991 Act) or by such other means as laid out in regulations. The Scottish Ministers wish to consult with Scottish Road Works Commissioner, on appointment, as to the detail of the regulations. It is appropriate for this matter to be addressed by secondary legislation.
Section 17 – The Scottish Road Works Register

Relevant provisions: Section 17(1), 112A(2) and 112A(5)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 17(1) inserting section 112A(2) to the 1991 Act provides the Scottish Ministers with power to prescribe the form and manner of keeping of the Scottish Road Works Register. The inserted section 112A(5) provides the Scottish Ministers with power to apply a restriction to the communication of certain information within the register.

Reason for taking power
In section 163 of the 1991 Act “prescribed” means prescribed by the Scottish Ministers by regulations. In section 17 et seq. of this Bill “prescribed” has that meaning.

Section 17 imposes a duty on the Scottish Road Works Commissioner to keep a register. The form and the manner of keeping the register are matters of detail that are appropriate to subordinate legislation. Section 112(2) of the 1991 Act, which is now deleted by the provisions in this Bill, had a similar provision.

Relevant provisions: Section 17(1), 112B(1) to (4)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 17(1) inserting section 112B(1) to the 1991 Act provides the Scottish Ministers with power to prescribe the road details that a road works authority shall enter in the Scottish Road Works Register.

Section 17(1) inserting section 112B(2) to the 1991 Act provides the Scottish Ministers with power to prescribe the information that a road works authority shall enter in the Scottish Road Works Register relating to permissions and directions issued by the road works authority in certain circumstances.

Section 17(1) inserting section 112B(3) to the 1991 Act provides the Scottish Ministers with power to prescribe the information that a road authority shall enter in the Scottish Road Works Register relating to permissions, notices and consents issued by the roads authority in certain circumstances.

Section 17(1) inserting section 112B(4) to the 1991 Act provides the Scottish Ministers with power to prescribe how information will be entered in the register.

Reason for taking power
The regulations impose a duty on a road works authority to enter information as may be required to ensure that the register operates effectively. The information set is a matter of detail that is appropriate to subordinate legislation. Similar provisions within the original section 112 of the 1991 Act were also subject to regulations. It is appropriate that these regulations are subject to a similar level of parliamentary scrutiny.

**Relevant provisions:** Section 17(2)(b), 113(3A)

**Power conferred on:** The Scottish Ministers

**Power exercisable by:** Regulations by statutory instrument

**Parliamentary procedure:** Negative resolution by the Scottish Parliament

Section 17(2)(b) inserting section 113(3A) to the 1991 Act provides the Scottish Ministers with power to prescribe the notice period for works to be entered in the Scottish Road Works Register.

**Reason for taking power**
The Scottish Ministers accept that different notice periods will be required in different circumstances. The detail of the information required will be informed by discussions with the Scottish Road Works Commissioner. The use of regulations is appropriate to ensure that the information required and the timeliness of its input remains relevant. This power amends the existing power to make regulations conferred by section 113(2) of the 1991 Act. This is a matter of detail that is appropriate to secondary legislation and subject to parliamentary scrutiny by negative resolution.

**Relevant provisions:** Section 17(3)(b), 114(3A)(a)(ii)

**Power conferred on:** The Scottish Ministers

**Power exercisable by:** Regulations by statutory instrument

**Parliamentary procedure:** Negative resolution by the Scottish Parliament

Section 17(3)(b) inserting section 114(3A)(a)(ii) to the 1991 Act provides the Scottish Ministers with power to prescribe the information that an undertaker has to contain within a notice advising any bodies with apparatus in the road that road works are to commence.

**Reason for taking power**
The regulations under this power will provide the detail of any additional information that ought to be provided by the undertaker within the notice. This power amends the existing power to make regulations conferred by section 114(1) of the 1991 Act. It is not a new set of regulations. It is not appropriate for primary legislation to contain such detail.

**Relevant provisions:** Section 17(4)(b), 116(3A)(a)(ii)

**Power conferred on:** The Scottish Ministers

**Power exercisable by:** Regulations by statutory instrument

**Parliamentary procedure:** Negative resolution by the Scottish Parliament
Section 17(4)(b) inserting section 116(3A)(a)(ii) to the 1991 Act provides the Scottish Ministers with power to prescribe the information that an undertaker has to contain within a notice advising the body specified in section 114 that road works for emergency purposes are to commence.

**Reason for taking power**
The regulations under this power will provide the detail of any additional information that ought to be provided by the undertaker within the notice. It is not appropriate for primary legislation to contain such detail.

**Section 19 - Directions as to placing of apparatus in roads**

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<thead>
<tr>
<th>Relevant provisions:</th>
<th>Section 19(1), 115A(4)</th>
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<td>Power exercisable by:</td>
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Section 19(1) inserting section 115A(4) to the 1991 Act provides the Scottish Ministers with power to prescribe the procedure for the giving of directions by the road works authority to the undertaker on the placing of apparatus.

**Reason for taking power**
The regulations under this power will provide additional information to road works authorities to assist them with procedures to be followed when giving directions to undertakers. In essence, it will establish the manner by which the road works authority will exercise its power. These are new regulations. It is not appropriate for primary legislation to contain such detail and Scottish Ministers will be seeking to work with road works authorities to design appropriate procedures.

<table>
<thead>
<tr>
<th>Relevant provisions:</th>
<th>Section 19(1), 115A(5)</th>
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Section 19(1) inserting section 115A(5) to the 1991 Act provides the Scottish Ministers with the power to make provision for appeals by undertakers against directions given by road works authorities regarding the placement of apparatus in the road.

**Reason for taking power**
The regulations under this power will provide the detail of the procedure that ought to be followed by the undertaker and the road works authority. These are new regulations. The Scottish Ministers do not believe that it is appropriate for primary legislation to contain such detail.
Section 23 – Enforcement of section 119 of 1991 Act
Relevant provisions: Section 23(2), 119A(1)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 23(2) inserts section 119A(1) to the 1991 Act to enable the Scottish Ministers to make regulations about the notification, enforcement, level and payment of penalties as well as the appeals process against the imposition of penalties by the Scottish Road Works Commissioner.

Reason for taking power
The Scottish Minister may make regulations to give the Scottish Road Works Commissioner the power to impose financial penalties on undertakers who are failing in their duty under section 119. These are new regulations rather than amendments to existing regulations within the 1991 Act. The details are such that the matter ought to be addressed via regulation rather than primary legislation.

Section 24 – Qualifications of supervisors and operatives
Relevant provisions: Section 24(2), 126(1A)(b)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 24(2) inserts section 126(1A)(b) to the 1991 Act to provide the Scottish Ministers with the power to prescribe the evidence to be supplied by undertakers to a road works authority to substantiate the qualifications held by the undertakers’ supervisors.

Reason for taking power
The Scottish Ministers want to be assured that those persons supervising road works on behalf of undertakers are suitably qualified. Section 126 of the 1991 Act contains the power to prescribe circumstances i.e. create regulations. The new powers amend those regulations and are therefore not new regulations. The details of the information required and the manner by which it is transmitted to the road works authority are such that the matter ought to continue to be addressed via regulation rather than primary legislation.

Relevant provisions: Section 24(3), 126(2A)(b), (2B) and (2C)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 24(3) inserts section 126(2A)(b), (2B) and (2C) to the 1991 Act to provide the Scottish Ministers with the power to prescribe the evidence to be supplied by
undertakers to a road works authority to substantiate the qualifications held by the undertakers’ operatives.

**Reason for taking power**
The Scottish Ministers want to be assured that those persons (operatives) engaged in road works activities on behalf of undertakers are suitably qualified and that their presence on site is notified. This power amends the existing power to make regulations as conferred under section 126 of the 1991 Act. The details of the information required and the manner by which it is transmitted to the road works authority are such that the matter ought to continue to be addressed via regulation rather than primary legislation.

**Section 26 – Duty of undertaker to notify completion of road works: form and procedure**

<table>
<thead>
<tr>
<th>Relevant provisions:</th>
<th>Section 26(c), 129(5A)(a)</th>
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Section 26(c) inserts section 129(5A)(a) to the 1991 Act to provide the Scottish Ministers with power to prescribe the information that ought to be contained within the notice, supplied by the undertaker to the Scottish Road Works commissioner, stating that reinstatement has been completed.

**Reason for taking power**
The Scottish Ministers want to ensure that the Scottish Road Works Commissioner has up to date records within the Scottish Road Works Register. The Scottish Road Works Commissioner needs to know whether the reinstatement performed by the undertaker is permanent or temporary and if the latter the date by which permanent re-instatement will take place. The manner in which information is recorded and supplied to the Commissioner is a matter of detail and therefore appropriate to secondary legislation. The use of regulations permits the commissioner to vary requirements in accordance with any future enhancements to the Scottish Road Works Register.

**Section 27 – Notices requiring remedial works relating to reinstatements**

<table>
<thead>
<tr>
<th>Relevant provisions:</th>
<th>Section 27(1), 131(3)</th>
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Section 27(1) amends section 131(3) and inserts section 131(3A) to the 1991 Act to give power to the Scottish Ministers to prescribe the periods within which undertakers must perform remedial work as a consequence of a re-instatement.

**Reason for taking power**
The Scottish Ministers recognise that different types of work require a different time period to remedy. It is not appropriate to state that all works must be remedied within, say, 7 days. It may be that certain works are of such extent or complexity that the remedial action will take longer to complete. These are new regulations rather than amendments to existing regulations within the 1991 Act. The Scottish Ministers believe that by having regulations more circumstances can be addressed and that more specific time periods can be provided for particular circumstances taking in to account, for instance, the road materials.

**Relevant provisions:** Section 27(2)(a), 149(2)
**Power conferred on:** The Scottish Ministers
**Power exercisable by:** Regulations by statutory instrument
**Parliamentary procedure:** Negative resolution by the Scottish Parliament

Section 27(2)(a) amends section 149(2) of the 1991 Act to give power to the Scottish Ministers to prescribe the periods within which undertakers must perform remedial work in the case of road works which necessarily involved the breaking up or opening of a sewer, drain or tunnel under the road.

**Reason for taking power**
The Scottish Ministers recognise that different types of work require a different time period to remedy. It is not appropriate to state that all works must be remedied within, say, 7 days. It may be that certain works are of such extent or complexity that the remedial action will take longer to complete. This is a new regulation. The Scottish Ministers believe that by having regulations more circumstances can be addressed and that more specific time periods can be provided for particular circumstances.

**Section 28 – Power of road works authority to require undertaker to resurface road**
**Relevant provisions:** Section 28(1), 132A(1), (2)(c), (3), (4) and (5)
**Power conferred on:** The Scottish Ministers
**Power exercisable by:** Regulations by statutory instrument
**Parliamentary procedure:** Affirmative resolution by the Scottish Parliament

Section 28(1) inserts section 132A to the 1991 Act to give power to the Scottish Ministers to prescribe circumstances in which a road works authority may require an undertaker to resurface the road.

**Reason for taking power**
Undertakers affected by this power are those who have given notice under section 113 or section 114 of the 1991 Act, are carrying out road works at the same time the road works authority issues the requirement, or are still within the notice period for the completion of road works.

The circumstances in which a road works authority issues the requirement will be set out in regulations, and will enable the road works authority to require a part of
a road to be resurfaced which has not directly been broken up by the undertaker. Equally, the regulations may restrict the extent of the resurfacing works which undertakers are required to carry out.

It is inappropriate to provide in primary legislation for all the circumstances that might apply, Scottish Ministers will therefore engage in consultation with undertakers, road works authorities and the Scottish Road Works Commissioner to determine the appropriateness and content of regulations. This matter, therefore, is more appropriately dealt with by secondary rather than primary legislation, however, in recognition of the importance of the provisions and consequences for all parties the first regulations under this section will be by affirmative resolution. Subsequent regulations will be subject to a negative resolution of the Scottish Parliament.

Relevant provisions: Section 28(1), 132B(2)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Affirmative resolution by the Scottish Parliament

Section 28(1) inserts section 132B(2) to the 1991 Act giving power to the Scottish Ministers to require a road works authority to consult an undertaker before the making of a notice and provide a date no earlier than the date of issuing a notice for the beginning, execution or completion of works.

Reason for taking power
The time taken to resurface roads will be influenced by the type of materials used in the original surface. It is therefore proposed that extensive consultation will be undertaken with undertakers and road works authorities on the content prior to the making of the regulation.

This matter is more appropriately dealt with by secondary rather than primary legislation however in recognition of the importance of the provisions and the consequence of the regulations for undertakers and road works authorities the first regulation under this section will be by affirmative resolution. Subsequent regulations will be subject to a negative resolution of the Scottish Parliament.

Relevant provisions: Section 28(1), 132C(1) and (2)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Affirmative resolution by the Scottish Parliament

Section 28(1) inserts section 132C(1) and (2) to the 1991 Act imposing a duty on an undertaker to comply with material and workmanship requirements as specified in regulations.

Reason for taking power
Undertakers and road works authorities will be consulted prior to drafting regulations. The regulations will contain considerable detail in respect of the use of materials and the standard of workmanship to be deployed in completing resurfacing work. This matter therefore is more appropriately dealt with by secondary rather than primary legislation however in recognition of the importance of the provisions and the operational consequences for undertakers the first regulation under this section will be by affirmative resolution. Subsequent regulations will be subject to a negative resolution of the Scottish Parliament.

Section 29 - Resurfacing: regulations and guidance

Relevant provisions: Section 29, 132D(1)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Affirmative resolution by the Scottish Parliament

Section 29 inserts section 132D to the 1991 Act and provides the Scottish Ministers with power to make regulations which in particular supplement sections 132A, 132B and 132C. These provide the powers to require an undertaker to resurface a road and the time by which that resurfacing should be executed as well as the materials to be used and standard of workmanship to be observed in performing the resurfacing. The regulations may also create offences punishable on summary conviction with a fine.

Reason for taking power

Undertakers and road works authorities will be consulted prior to drafting regulations regarding the information to be contained in a resurfacing notice and in particular the prescribed circumstances in which an undertaker is entitled to pay a sum (and the calculation of that sum) to the roads works authority instead of executing the works specified in a resurfacing notice. The provisions as listed at section 132D(2)(a)-(g) refer to matters of detail that are more appropriate to secondary legislation. The provisions (a) to (d) refer to operational matters. The provisions (e) and (f) refer to right of appeal and the manner and persons engaged in appeals or dispute resolution. The Scottish Ministers require the flexibility afforded by regulations to create and set the level of fine for offences in respect of resurfacing. There is public interest, particularly in respect of offences and fines, and therefore it is proposed that any initial regulations created by these provisions must be subject to an affirmative resolution by the Scottish Parliament. Subsequent regulations should be by negative resolution.

Section 30 - Contributions to costs of resurfacing by undertaker

Relevant provisions: Section 30(1), 137A(1)(a) and (b), (3), (4) and (5)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Affirmative resolution by the Scottish Parliament
Section 30(1) inserts section 137A to the 1991 Act and provides the Scottish Ministers with the power to make regulations to determine how much road work authorities should contribute when they have issued a resurfacing notice or how much another undertaker should contribute if they carry out work on the same stretch of road. The section also provides the Scottish Ministers with the power to make regulations for the resolution of prescribed disputes.

Reason for taking power
The section addresses detailed issues pertaining to the manner, contribution and apportionment of costs between an undertaker and a road works authority and indeed, if appropriate, between undertakers in resurfacing a road. These are detailed issues that are best addressed by regulations. These are new regulations, they will need to be detailed in respect of how costs will be apportioned and the manner of payment and will require extensive consultation prior to drafting.

The section also makes provision to establish a dispute resolution mechanism for prescribed disputes. The appeal and dispute resolution mechanism will necessarily be detailed and may involve the Scottish Road Works Commissioner. This matter is more appropriately dealt with by secondary rather than primary legislation however in recognition of the importance of the provisions and the consequences for undertakers in particular the first regulations under this section will be by affirmative resolution, subsequent regulations will be subject to a negative resolution of the Scottish Parliament.

Section 32- Fixed penalty offences:
Relevant provision: Section 32(1), 154A(3)
Power conferred on: The Scottish Ministers
Power exercisable by: Order by statutory instrument
Parliamentary procedure: Affirmative resolution by the Scottish Parliament

Section 32(1) inserts section 154A to the 1991 Act and provides the Scottish Ministers with the power to modify by order Schedule 6A of the 1991 Act (as inserted by this section).

Reason for taking power
It is appropriate that certain offences should be fixed penalty offences. This means that a person receiving a fixed penalty notice has an opportunity of discharging any liability to conviction by payment of a penalty. Any alteration to that schedule is of such importance that it should be subject to affirmative resolution by the Scottish Parliament.

Section 33 -Civil penalties for certain offences under 1991 Act
Relevant provision: Section 33, 154B(1)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 33 inserts section 154B to the 1991 Act and provides the Scottish Ministers with the power to make regulations in respect of the imposition and payment of charges for certain offences that will be subject to civil penalties.

Reason for taking power
The detail of the provision is such that it is more appropriate for secondary rather than primary legislation. The Bill sets out the framework and the issues that will be addressed by the secondary legislation: the offences subject to a penalty charge; payment of the charge; proof that an offence has taken place; level of charge; and appeals. The regulations will necessarily be detailed and may vary over time if and when various offences are decriminalised. The approach for decriminalised offences will be similar to the decriminalised regime in operation in respect of parking offences.

Section 34 – Method of settlement of certain disputes under the 1991 Act

Relevant provision: Section 34, 117(7), 120(6), 121(5), 133(2), 143(3), 155(3) and 157A and paragraphs 2(1) and 12(2) of Schedule 6

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations by statutory instrument

Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 34 amends sections 117(7), 120(6), 121(5), 133(2), 143(3), 155(3) of, and paragraphs 2(1) and 12(2) of Schedule 6 to, the 1991 Act by substituting “by arbitration” with “in the prescribed manner” and inserts section 157A. The effect is to confer power on the Scottish Ministers to prescribe the manner in which certain disputes under the 1991 Act are to be settled.

Section 34 also inserts section 157A to the 1991 Act. This section provides that in prescribing the manner in which disputes are to be settled under any of the powers, the Scottish Ministers may provide for settlement by way of arbitration or the Commissioner.

Reason for taking power
Taking power to prescribe the manner of dispute resolution allows that matter to be done flexibly and in a way which is tailored to the particular circumstances of the type of dispute under consideration. Regulations will allow emendation to occur in the light of experience if it proves that certain matters, for example, are better addressed by the Scottish Road Works Commissioner rather than through arbitration, or vice versa. Section 158 of the 1991 Act specifies the method of arbitration.
Section 35 - Fixed penalty offences under the Roads (Scotland) Act 1984
Relevant provision: Section 35(1), 130A(1)(b)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 35(1) inserts section 130A(1)(b) to the Roads (Scotland) Act 1984 to provide powers for regulations to be made by the Scottish Ministers to create fixed penalties for certain offences as prescribed in schedules 8A and 8B of the Roads (Scotland) Act 1984 (or in this Bill schedules 6 and 7).

Reason for taking power
It is appropriate that certain offences should be fixed penalty offences. This means that a person receiving a fixed penalty notice has an opportunity of discharging any liability to conviction by payment of a penalty. By utilising regulations changes to the list of fixed penalty offences, if necessary, can be made expeditiously.

Section 36 – Civil penalties for certain offences under the Roads (Scotland) Act 1984
Relevant provision: Section 36, 130B(1)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 36 inserts section 130B(1) to the Roads (Scotland) Act 1984 to provide powers for regulations to be made by the Scottish Ministers in respect of the imposition and payment of charges for certain offences that will be subject to civil penalties.

Reason for taking power
The detail of the provision is such that it is more appropriate for secondary rather than primary legislation. The Bill sets out the framework and the issues that will be addressed by the secondary legislation: the offences subject to a penalty charge; payment of the charge; proof that an offence has taken place; level of charge; and appeals. The regulations will necessarily be detailed and may vary over time if and when various offences are decriminalised.

Section 37 – National travel concession schemes
Relevant provision: Section 37(1)
Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Affirmative resolution by Scottish Parliament

Section 37 provides the Scottish Ministers with the power to make national concessionary schemes by order. The schemes may be new or may modify or
revoke existing local authority concessionary schemes established under section 93 of the Transport Act 1985.

Reason for taking power
The powers for the Scottish Ministers to make concessionary travel schemes are discretionary. If the Scottish Ministers decide to use the powers to make national concessionary travel schemes then a range of issues in relation to the scheme will need to be set out in detail. These will include provisions in respect of the administration of the scheme, the reimbursement of operators, the rate of travel concession and to whom it will apply, the right of operators to participate, the right of the Scottish Ministers to require participation and provisions on appeal by operators about compulsory participation. These are all matters of operational detail which are appropriate to secondary legislation. However, the affirmative procedure ensures that the substance of the order is subject to parliamentary scrutiny and approval.

Relevant provision:

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<td>Parliamentary procedure:</td>
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Section 37(7) provides the Scottish Ministers with the power to define further or to expand, by order, the definition of eligible person and eligible service contained in the Bill.

Reason for taking power
The Scottish Ministers believe that it is appropriate to further define eligibility for concessionary travel by means of secondary legislation. This includes provision of a definition of disability for the purposes of concessionary travel, provision to make additional classes of person eligible for concessions and provision to specify the types of service on which concessions are offered. These are matters of operational detail which, in the case of local authority travel concession schemes, are either specified in secondary legislation subject to negative resolution or left to the discretion of local authorities themselves. Therefore, the Scottish Ministers believe that orders made under this section should be subject to negative procedure.

Section 43 – Minor amendments of Transport (Scotland) Act 2001

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<th>Relevant provision:</th>
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Section 43(4) inserts section 64(1A) and (1B) into section 64 of the Transport (Scotland) Act 2001 to provide the Scottish Ministers with powers to make regulations in respect of the appointment of persons to determine disputes and appeals and the payment arrangements in respect of the expenditure incurred in consequence of the appointment.
Reason for taking power
The detailed arrangements lend themselves to secondary legislation rather than primary legislation. The regulations will set out the appointment process of the persons to determine disputes and hear and determine appeals as well as the arrangements by which charging authorities will make payment for the expenditure incurred by those persons appointed to determine disputes and those persons appointed to hear and determine appeals.

Section 46 – Short title and commencement
Relevant provision: Section 46(2)
Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: No parliamentary procedure

Section 46 provides for the short title and commencement arrangements for the Bill.

Reason for taking power
Section 46(2) provides for the Scottish Ministers to determine when the provisions of the Bill are to come into force on a specified date. This decision is due to a need to stage or control commencement. This order making power is required for commencement of the Bill. It is standard procedure for such commencement provisions to be dealt with by subordinate legislation. Whilst the order is not subject to any parliamentary procedure as such, the Subordinate Legislation Committee will have the opportunity to consider the instrument in terms of its remit.

Schedule 5 – Schedule 6B to the New Roads and Street Works Act 1991
Relevant provision: Paragraphs 2, 4(1), 5(2), 11 and 12
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Negative resolution by Scottish Parliament

Paragraph 2 provides the Scottish Ministers with the power to make regulations specifying the time limits within which the road works authority has to apply a fixed penalty notice for an offence.

Paragraph 4(1) provides the Scottish Ministers with the power to make regulations specifying the amount of the penalty for a fixed penalty offence.

Paragraph 5(2) provides the Scottish Ministers with the power to make regulations specifying the discounted amount of the penalty for a fixed penalty offence.

Paragraph 11 provides the Scottish Ministers to with the power to make regulations specifying the accounting process to be used by road works authorities in respect of fixed penalties.
Paragraph 12 provides the Scottish Ministers with the power to make regulations specifying circumstances when fixed penalties may not be issued, the ability to vary the period within which the penalty should be paid and the method or methods by which penalties should be paid.

Reason for taking power
The Scottish Ministers wish to consult with the Scottish Road Works Commissioner, road work authorities and undertakers prior to the creation of the regulations to ensure that the regulations are workable and achieve the desired output. The detail that is required to address particular circumstances and define procedures in respect of the accounting provisions lends itself much more to secondary legislation.

Schedule 7 – Schedule 8B to the Roads (Scotland) Act 1984
Relevant provision: Paragraphs 2, 4(1), 5(2), 11 and 12
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Negative resolution by Scottish Parliament

These provisions duplicate those made for the New Roads and Street Works Act 1991 and relate then to the Roads (Scotland) Act 1984.

Reason for taking power
The reasoning for these powers is the same as that explained above in respect of schedule 5.
Section 1: Establishment of Regional Transport Partnerships

1. The Committee asks the Executive for clarification as to how it intends section 1 to work in conjunction with section 2. In particular, the Committee seeks comment from the Executive in relation to the full effect of section 1 subsection (1) when read with section 2. The Committee wishes to establish whether once a regional transport authority (RTP) is dissolved under section 2, by virtue of section 1 subsection (1) Ministers must establish a new RTP.

2. The Committee has concerns that section 2 could enable Ministers either directly, or indirectly as read with section 1, to repeal section 1 and render the other provisions of Part 1 ineffective by dissolving all the RTPs. The Committee seeks comment from the Executive in relation to this point.

Section 5: Formulation and content of regional transport strategies

3. The Committee asks the Executive for comment on whether any of the guidance issued under subsection (3) should be laid before the Parliament or subject to some form of Parliamentary scrutiny, given that Partnerships are to be under a duty to have regard to such guidance when preparing their transport strategies.

Section 6: Procedure before and after the drawing up of transport strategies.

4. The Committee asks the Executive for comment on what it considers is the best way to secure proper publication of transport strategies and to ensure that the appropriate level of scrutiny is applied to the approval of a strategy and whether it should be incorporated in a statutory instrument.

Section 8 – Duty of constituent councils and other public bodies as respects transport strategies

5. The Committee asks the Executive which public bodies might be included in an order under this section.

Section 10 – Other transport functions of RTPs

Section 10(1)
6. The Committee notes that the power conferred by section 10(1) is a Henry VIIIth power of considerable width. The Committee asks the Executive whether it considers that some form of super-affirmative procedure might be more appropriate.

7. The Committee also notes that the transfer of functions is one-way only to an RTP. There would not appear to the Committee to be anything in the bill that would allow for functions once transferred to be transferred back unless RTPs are dissolved under section 2. The Committee asks the Executive if this is the policy intention.

**Section 11: Manner of performance of RTPs’ functions**

8. The Committee notes that paragraph (b) obliges the RTP to comply with the directions of the Scottish Ministers. As such the Committee considered these Ministerial directions, when general directions, to have a degree of legislative effect and asks the Executive for its view on these requirements being incorporated into a more formal legislative document.

**Section 17 – The Scottish Road Works Register**

Section 17(1), 112B(1) to (4)

9. The Committee notes that Section 112 of the 1991 Act enabled regulations under that section to provide for the charging of a fee for registration. In the absence of an express provision in this section it would not be possible to provide in the regulations for the charging of such a fee. The Committee seeks clarification from the Executive as to whether this omission was intended.

**Section 18 - Directions as to timing of road works**

10. The Committee notes that section 115 does not contain any provision equivalent to section 115A(5) relating to appeals. The Committee asks the Executive whether this is a deliberate omission.

**Section 19 – Directions as to placing of apparatus in roads**

Section 19(1), 115A(5)

11. The Committee notes that while section 115 is amended by section 18 of the bill to bring that section partly into line with new section 115A, it is not amended to include a provision on the lines of subsection (5) of section 115A. The Committee asks the Executive whether this is a deliberate omission.

**Section 23 – Enforcement of section 119 of 1991 Act**

12. The Committee asks the Executive how it intends that this section will operate in practice and asks for the Executive’s views as to why it considers that penalties should be set out entirely in subordinate legislation.
**Section 29 - Resurfacing: regulations and guidance**

**Section 29, 132D(1)**

13. The Committee notes that new section 132D(3) allows criminal offences to be created in regulations rather than by the Act itself. The Committee is of the view that no power is conferred on Ministers to alter the level of the fine, only a power to create an offence. The Committee asks the Executive whether this was the intention in respect of this provision.

**Section 29, section 132E**

14. Given that road works authorities and undertakers must have regard to the code of practice when carrying out their functions and that breaches of regulations made under the relevant new sections may attract criminal sanctions, the Committee considers that the code of practice may have some legislative effect. The Committee believes there is a case for the code of practice to be subject to some form of procedure and asks the Executive for comment.

**Section 32 - Fixed penalty offences:**

15. The Committee notes that the new section appears to be defective in that it does not state that an order under the section will be made in the form of a statutory instrument. Section 163 which makes general provision in relation to instruments under the 1991 Act provides only that regulations under the Act are to be statutory instruments. The only order making power (the commencement power) is not of general application. The Committee asks the Executive whether it intends to make an appropriate amendment.

**Section 33 - Civil penalties for certain offences under 1991 Act**

16. The Committee notes that this provision allows Ministers in effect to decriminalise offences under Part IV of the 1991 Act by subordinate legislation and has the effect of a Henry VIIIth provision. The Committee considers that this should be subject to affirmative procedure rather than negative procedure and asks the Executive for comment.

**Section 35 - Fixed penalty offences under the Roads (Scotland) Act 1984**

17. The Committee notes that this section is similar in purpose to section 32. However, unlike that section it does not seem to provide for the amendment of the schedule of offences that may be created, rather it permits the Ministers by regulations to select relevant offences from those listed in new Schedule 8A. The Committee considers that this should be subject to affirmative procedure rather than negative procedure and asks the Executive for comment.
Section 36 – Civil penalties for certain offences under the Roads (Scotland) Act 1984

18. The Committee considers that this provision raises issues similar to those raised under section 33. The Committee considers that this is a very wide power and therefore asks the Executive for comment as to whether this should be subject to affirmative procedure rather than negative procedure.

Section 37 – National travel concession schemes

19. The Committee asks the Executive for clarification in relation to the interaction of subsections (409e) and (6). The Committee appreciates that the two provisions are not identical; that subsection (6) goes wider than subsection (4)(e) and that “enforcement” in subsection (4)(e) would not necessarily encompass prosecution. Nevertheless there does seem to be some overlap between the provisions and the Committee seeks the Executive’s comments.

The Scottish Executive’s response is as follows:

Section 1: Establishment of Regional Transport Partnerships

Section 2: Dissolution of RTPs

The policy intention is that RTPs will be created to cover the whole of Scotland and that flexibility is retained to ensure that they are effective in their task of delivering improvements to transport provision. Once RTPs are created it may prove necessary to amend the regional structure in the light of experience this would necessitate the existing RTP being dissolved and recreated for the new regions. The duties in section 1 to divide Scotland into regions and to create for each an RTP are continuing duties. The mandatory division of Scotland into regions does not admit of any part of Scotland not being, or not being in, a region; and the mandatory creation of an RTP for each region does not admit there being a region without an RTP. The Executive refers the Committee to paragraph 9 of Schedule 1 to S.I. 1999/1379-

“9.- (1) Where an Act of the Scottish Parliament … imposes a duty it is implied, unless the contrary intention appears, that … the duty is to be performed … from time to time as occasion requires.”.

It is not intended, nor does the Executive believe it would be competent, to use section 2 to dissolve all transport partnerships with the knock-on effect that Part 1 of the Bill becomes ineffective. The provision conferring that power is limited to the restricted administrative, technical purpose of dissolving a particular body or bodies.

Section 5: Formulation and Content of Regional Transport Strategies
It is not intended to lay the guidance issued under section 5 before the Parliament. Although it is not the intention that the guidance will be subject to parliamentary scrutiny it will be published and a copy lodged with SPICE.

**Section 6: Procedure before and after the drawing up of Transport Strategies**

The manner of publication of a transport strategy is to be left to the individual transport partnerships other than publication being an obligation that the proposed legislation will place on them. The Executive considers that this is appropriate as it is the transport partnership itself that will know how best to make the contents of its strategy available to the public and to those persons affected by the strategy. The Executive wishes to ensure that transport partnerships have a sufficient amount of flexibility in the conduct of all aspects of their business including in relation to the preparation and publication of their strategies. There is a requirement for transport partnerships to consult its constituent councils and other persons as it thinks fit and the Executive is satisfied that this will ensure that the strategy reflects its own regional transport priorities. Approval of the strategy will be for the Scottish Ministers who will consider it in light of any guidance issued and in terms of the strategy’s contribution to the achievement of national policies. The requirements for the approval of the strategy are considered to be a matter for the Executive taking account of any guidance issued and any national transport policies.

**Section 8: Duty of Constituent Councils and other Public Bodies in respect of Transport Strategies**

The type of public body envisaged is any public body which carries out any legislative or other function in relation to transport. A list of public bodies is available on the Executive’s website. Relevant examples could include nationalised industries, national parks, or public bodies whose activities involved transport such as those related to health care, tourism or business development.

**Section 10: Other Transport Functions of RTPs**

The order making power in section 10(1) is subject to affirmative procedures. The Committee has asked whether some form of super affirmative procedure might be more appropriate. This procedure would involve a preliminary stage whereby a draft instrument would be laid before the Parliament with an opportunity to comment on the proposals. If the instrument is to be proceeded with then the normal affirmative procedure would thereafter be followed together with a statement of whether and how the comments have been reflected in the draft. Section 10(5) already contains a statutory requirement for the Scottish Ministers to consult prior to an order under section 10(1) being made. The request for the order under section 10(1) is expected to come from the transport partnership itself and before making the request the transport partnership is also required to also consult its constituent councils by virtue of section 10(3). Section 10(1) also requires that the order is grounded in the regional transport strategy which will itself have been subject to consultation under section 6(1). There are therefore already 3 consultation processes before an order can be made under section 10.
It is considered that the only addition that the super affirmative procedure would make is in relation to the lodging of a statement detailing the extent to which any comments obtained through the consultation process had been reflected in the draft. The Executive believes that the normal affirmative process can achieve the same ends through slightly different and less cumbersome means. Both the nature of any consultation and the outcome of this consultation will be reflected in the Executive Note that will be lodged with the draft affirmative instrument. Given that the request for the order is expected to come from the transport partnership itself the Executive does not believe that any additional safeguard in the form of a statement detailing the consultation responses is necessary or appropriate.

The Executive is grateful to the Committee for its comments in relation to the transfer of functions in section 10 and is considering this point further.

Section 11: Manner of Performance of RTPs Functions

The Executive is grateful to the Committee for highlighting this point but does not believe that any directions issued require to be contained in a more formal legislative document.

Section 17: The Scottish Roadworks Register

The Executive is grateful to the Committee for highlighting this point and will bring forward the appropriate amendment to make provision for the charging of a fee for registration.

Section 18: Directions as to timing of roadworks

The Executive is grateful to the Committee for highlighting this point and will bring forward the appropriate amendment.

Section 19: Directions as to placing of apparatus in roads

This raises the same point as in section 18.

Section 23: Enforcement of section 119 of 1991 Act

The imposition of a penalty by the Road Works Commissioner under section 119 is intended as a last resort provision. This penalty would apply to a statutory undertaker when long term systematic failure to comply with a road works authority, has occurred. Penalties under this provision will be set out under subordinate legislation. A Working Group has been formed with expert representation from both statutory undertakers and road works authorities: with a part remit to look at section 119 enforcement. This will include a recommendation from them as to the most appropriate method for calculating the penalties to be imposed.

Section 29: Resurfacing: Regulations in Guidance

Section 29, 132D(1)
The Executive is grateful to the Committee for raising the point and is considering this further.

In relation to section 29, section 132E the Executive notes the Committee’s point that there is a case for the Code of Practice to be subject to some form of procedure. The Code of Practice issued in respect of this section is in addition to other Codes of Practice issued under the 1991 Act some of which already attract criminal sanctions in respect of failures to follow the Code of Practice (see sections 124(3), 130(4)). The Codes of Practice currently contained in the 1991 Act are not subject to any form of procedure. The Executive does not believe that the Code of Practice which is to be issued under section 132E should be treated any differently from the other Codes of Practice already issued under the 1991 Act.

Section 32: Fixed Penalty Offences

The Executive is grateful to the Committee for highlighting that section 32 which incorporates section 154A into the 1991 Act does not provide that the order to be made under this section will be made in the form of a statutory instrument. An amendment to the 1991 Act will be considered to clarify this.

Section 33: Civil Penalties for certain offences under the 1991 Act

The Executive is grateful to the Committee for its views in relation to whether affirmative rather than negative procedure would be more appropriate for decriminalising offences under Part IV of the 1991 Act. The Executive is aware that for other decriminalised regime such as the regime for decriminalised parking offences negative procedure is used and there may be some argument in favour of a fully consistent approach. The Executive is however considering the point raised and may amend the form of procedure outlined in section 33.

Section 35: Fixed Penalty Offences under the Roads (Scotland) Act 1984

The Executive is still considering whether affirmative rather than negative procedure is more appropriate.

Section 36: Civil Penalties for certain offences under the Roads (Scotland) Act 1984

This raises the same point as contained for section 33.

Section 37: National Travel Concession Scheme

The Committee has asked for clarification of the interaction between section 37(4)(e) and (6). These provisions are intended to address different circumstances. Subsection (4)(e) relates to the fact of participation by an operator in a national travel concession scheme. Under this subsection, a scheme will include provision about voluntary or compulsory membership of a scheme by operators. Subsection 6 relates to compliance with a scheme by operators which
are part of the scheme. Prosecution is encompassed in this subsection to address the possibility that an operator might seek to evade its obligations and thus negate the objectives of the scheme.
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 2, No. 54       Session 2

Meeting of the Parliament

Wednesday 2 March 2005

Note: (DT) signifies a decision taken at Decision Time.

Transport (Scotland) Bill – Stage 1: The Minister for Transport (Nicol Stephen) moved S2M-2351—That the Parliament agrees to the general principles of the Transport (Scotland) Bill.

After debate, the motion was agreed to (DT) by division: For 73, Against 18, Abstentions 31).

Transport (Scotland) Bill - Financial Resolution: The Minister for Transport (Nicol Stephen) moved S2M-2338—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Transport (Scotland) Bill, agrees to —

(a) any expenditure of a kind referred to in paragraph 3(b)(ii) of Rule 9.12 of the Parliament's Standing Orders;
(b) any increase in expenditure of a kind referred to in paragraph 3(b)(iii) of that Rule; and
(c) any payments in relation to which paragraph 4 of that Rule applies, arising in consequence of the Act.

The motion was agreed to (DT).
Transport (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Murray Tosh): The first item of business is a debate on motion S2M-2351, in the name of Nicol Stephen, that the general principles of the Transport (Scotland) Bill be agreed to.

14:33

The Minister for Transport (Nicol Stephen): First, I thank those who were involved in preparing the stage 1 report on the Transport (Scotland) Bill. I thank in particular Bristow Muldoon and the other members of the Local Government and Transport Committee and members of the Finance Committee, the Enterprise and Culture Committee and the Subordinate Legislation Committee. I would also like to express my thanks and appreciation to the many individuals who provided oral and written evidence. Finally—and not least—I thank my officials for all their hard work. I am sure that there is more to come. The report is considered and balanced. I am grateful to the committee members for the constructive tone of the report and for their endorsement of the principles of the bill.

Before I discuss in detail my response to the report, I will set out the context of the bill. There was an extensive consultation leading to the bill, including a full consultation paper in summer 2003 and a transport white paper last year. The many views that were expressed during the consultation process have been helpful in shaping the bill that lies before Parliament today and I am grateful to all who have taken part. As a result, we have a bill that reflects the issues and interests of a range of stakeholders. It has received broad support from a range of people who are interested in transport in Scotland and it will make a significant difference to transport in Scotland.

Members of the Local Government and Transport Committee and Parliament will be interested to know that our hard work can sometimes lead to successful changes in transport in Scotland. I have just received figures from First ScotRail, the rail passenger franchise holder, that indicate that from February 2004 to February 2005 we have seen an increase of 11.5 per cent in passenger numbers in Scotland, which is an extra 60 million passengers on Scotland’s rail network. So—it is worth working hard to improve transport in Scotland and to encourage greater investment in public transport.

We will continue that drive. For the first time we will have a national transport strategy for Scotland. We will create a national transport agency—which we have agreed to locate in Glasgow—to focus on delivery of major transport projects. We will, over the next 10 years, invest £3 billion in new transport projects including new rail links, new tramlines and new bus priority initiatives. However, changes at national level are not enough on their own. We need to unleash the potential that exists for transport improvements at regional level.

The bill has three main parts. The first deals with the new regional transport partnerships, the second with better road works, and the third with a range of important issues, including powers to introduce free national bus travel for all disabled and older people in Scotland.

Part 1 will create the new statutory regional transport partnerships to improve the planning and delivery of transport throughout Scotland. Those partnerships, which will build on the skills and hard work of local government and on the success and experience of Strathclyde Passenger Transport and the existing voluntary partnerships, will develop new regional transport strategies to tie in with the national transport strategy. Partnerships and councils will also be able to choose to deliver transport services on a regional basis where they believe that that would be more effective, which will allow for strong and powerful regional partnerships in areas that wish them. That will certainly be the case in the SPT area. Importantly, in the west as in other parts of Scotland, the bill will also provide the opportunity to bring together planning of roads and public transport.

Bruce Crawford (Mid Scotland and Fife) (SNP): I am interested to hear the minister refer to “strong” transport powers. Bruce Crawford is right that, as a minimum, the new regional partnerships will be required to produce a regional transport strategy, which will not have to transfer powers across to the regional partnership. However, there is the option—which will be followed in the west of Scotland—for significant and strong powers to be given to the new partnership to match the powers that SPT holds in transport at the moment, with the exception of the changes in the rail powers that are proposed as a result of the significant shift of new responsibilities to Scottish ministers through UK legislation.

Those changes of approach can bring about significant improvement in co-ordination and delivery of transport throughout Scotland. I am currently considering the responses to the recent consultation exercise on the membership, voting rights, boundaries, functions and funding of
regional transport partnerships. Many detailed and constructive comments have been received, which I will consider along with the Local Government and Transport Committee’s stage 1 report. The committee identified some specific issues, including that of ensuring that the voting system is fair to both large and small local authorities. Greater flexibility in partnership boundaries has also been called for and I am sympathetic to concerns on that. I emphasise that I have an open mind on the issues that the committee has raised, and I look forward to constructive discussions during stage 2.

The purpose of today’s debate is not to provide a definitive response to all the points that have been made, but when I have fully considered the consultation responses and reflected on the committee’s report and the points that are made in today’s debate, I will, in advance of stage 2, make available draft orders to provide additional detail on the constitution of the regional transport partnerships.

Today’s debate is about the general principles of the bill which have, in the main, received broad support. However, I am pleased to respond to another of the committee’s requests by making it clear that although statutory powers in relation to rail issues will rest with the Scottish ministers, the west of Scotland regional transport partnership will have a key role in the rail franchise in its area. I am examining whether legislative measures will be required to ensure that transport partnerships can execute the Scottish ministers’ powers on an agency or delegated basis.

As I am running out of time, I will truncate my remarks and omit my comments on road works. However, I will mention the national concessionary bus travel scheme, which is a key element of the bill. The committee’s support for the new concessionary scheme is welcome. We are determined that the scheme should be up and running by April 2006, but that can happen only if the bill is supported today. Let us remind ourselves of the key advantages of the new scheme: it will sweep away not only the regional boundaries, but the current time restrictions—we will have free travel, anywhere in Scotland, all day.

The bill will deliver better transport through the creation of regional transport partnerships. It will also create the post of road works commissioner and a new statutory road works register and it will increase opportunity throughout Scotland through the creation of a national concessionary travel scheme. The bill will provide the framework for a dramatic increase in Scotland’s commitment to transport. The resources are now in place to back that commitment, which must be good news for our economy and for every community in Scotland.

I move,

That the Parliament agrees to the general principles of the Transport (Scotland) Bill.

14:42

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): The Rev Fraser Aitken, in his amusing time for reflection speech today, pointed out that we may seek paradise, even if we do not necessarily arrive there. Certainly, our aim in Parliament is to increase the store of happiness in Scotland. In general, the Local Government and Transport Committee tried to find a way forward by consensus on the main proposals in the bill. I thank the clerks and the extensive list of witnesses who helped us in our work.

Undoubtedly, the main element of the bill is the proposed creation of regional transport partnerships. I was pleased that, at paragraph 9 of its report, the committee reached a clear conclusion that “the ability of RTPs to deliver transport improvements will depend largely on the RTPs having strong powers and the required level of funding.”

In evidence, Dr Iain Docherty pointed out that the Executive hinted in the early days that RTPs would have strong powers, but now that the bill has made its public appearance, there is nothing in it to show what those powers will be; there is only the duty to create a strategy within 12 months. Therefore, in that respect, the bill is little more than a blank page.

I hope that the minister will, in his concluding remarks, say clearly whether he accepts the committee’s recommendation that the draft statutory instruments that contain the meat of the proposals be produced at least 14 days before the start of stage 2. Indeed, that procedure should happen with any bill that does not contain the meat of the matter for us to consider.

The Scottish National Party’s position is clear. Yes, there is a trend in Scotland towards regional government. Yes, transport policy should be delivered as far as possible from the bottom up rather than by diktat from the top down. Yes, RTPs should have strong powers. However, if RTPs do not have strong powers or secure funding, the problem is that they may simply represent another layer of quangos in an already over-cluttered governmental terrain. It is for that reason that the SNP will abstain in today’s vote. Sharp-eyed members who have read the committee’s deliberations closely will know that we made that position clear at the end of those deliberations.

The SNP supports the concessionary travel scheme but, logically, our position is that we will abstain from voting until we know what is going to happen at stage 2 and what powers are going to
be introduced. For example, what exactly is the “key role” that SPT is to play? We have all—in the past 24 hours and previously—had lengthy deliberations with SPT, which is worried that its ability to deliver the Glasgow airport rail link will be constrained by various technical aspects of the bill. Perhaps the minister can say whether its fears are groundless. If all he can say is that SPT should play a key role, is that clear enough to allay the fears of committee members who argued clearly and unequivocally for strong powers?

On the road works commissioner, the SNP is not convinced that the proposals will improve on the performance of the roads authorities and utilities committee (Scotland) at present. On concessionary travel, I would be grateful if the minister would simply confirm that the scheme—which the SNP welcomed in principle—is still on course for implementation in April next year, that he is confident that the problems that he referred to during the ministerial statement have been addressed and that the smart cards are capable of fulfilling the task. For those reasons, and given that the SNP opposes RTPs unless they have strong powers and secure funding but supports a national concessionary scheme, we shall be unable to support the measures as they stand.

14:48

David Mundell (South of Scotland) (Con):

Given the importance that the Executive states it gives to the bill and its importance to the Local Government and Transport Committee, judging by the amount of time and effort that it put into it and the number of witnesses that were brought before it, the fact that only an hour and a half has been allocated for the debate is disgraceful. It is contemptuous to the witnesses that such a short time has been allocated and it has resulted in the minister’s being unable to get through his speech—even had his opening address contained any answers to the questions that the committee raised on the bill.

The bill is not a full bill that details what the Executive proposes; rather, it is a skeletal measure that relies on future regulations that are to be introduced, which constrained the committee in its activities. The various panels of witnesses were unable to give their full views on a range of issues because there was no detail. Therefore, scrutiny to date has been inadequate and continues to be so today, particularly given the minister’s lack of answers so far and—given the limited time there will no doubt be at the end of the debate—the lack of answers later.

Because of the shortness of time, therefore, I want to focus briefly on one strong constituency interest. How will the minister respond to questions that were asked by Dumfries and Galloway Council about whether it should be forced to be a member of the west of Scotland transport partnership, of which it is not currently a member, and about whether, for the clear and coherent reasons that have been set out by Mr Stephen’s Liberal Democrat colleague Councillor Joan Mitchell, Dumfries and Galloway Council could have a partnership of its own? As the minister knows, that is not a boundaries issue. If that is to happen, changes will have to be made to the bill. I hope that in winding up, the minister will make it clear whether he will bring forward changes to allow that to happen.

The Conservative position on the bill has been clear from the start—we do not believe that there is a need for an additional layer of government. We believe that the role that will be ascribed to transport Scotland is the role that the minister should have. If he is not capable of making strategic decisions, drawing up strategic plans and banging heads together when required, how will a quango do it? Back in 2000 when the Executive previously considered the issue it stated:

“it would … be counterproductive to impose a new layer of government between the local authorities and the Executive”.

In my view, that remains the case.

The councils and various other bodies that gave evidence to the committee made it clear that voluntary arrangements had worked well, were working well and, with appropriate support from the Executive, could continue. The rest of the related issues, such as voting rights and the roles of third-party members, have not been thought through and we have not heard any more detail on them today.

On SPT, the amendment to the committee report that I suggested was rejected. I wanted us to take a much stronger line on SPT. We are not happy with the minister’s assurances; they are not even as robust as those that Anne McGuire gave at Westminster. Let us have a bit more clarity.

We welcome the concessionary travel scheme and we will wait to see the detail on the traffic tsar. We have a most unsatisfactory basis on which to proceed with what should be a serious and important issue for Scotland. If the Executive took
transport seriously, it would not hold only an hour-and-a-half debate on the bill.

14:52

Bristow Muldoon (Livingston) (Lab): The bill is one of the most important that we will consider in this session. There are many issues that I want to cover, but which I will find it impossible to cram into the available time, so I will concentrate on a number of key points. I hope that my Labour colleagues will cover the gaps that I will unfortunately have to leave. I record my thanks to the clerks, the members of three committees and all the witnesses who gave evidence for their input into stage 1 consideration of the bill.

My position and the position of the Local Government and Transport Committee is that the bill should be supported at stage 1. It covers three distinct areas of transport policy: the establishment of the regional transport partnerships, new provisions to govern road works and the powers to establish nationwide concessionary travel schemes.

So that I do not miss it out at the end of my speech, I will start by talking about part 3 of the bill, which is on concessionary travel schemes. In my view, the move to establish a nationwide free bus travel scheme for Scotland’s elderly and disabled people and a new concessionary scheme for young people is the most important aspect of the bill. Those enhanced travel initiatives were key Labour manifesto pledges in 2003 and will build on the success of the existing free local travel scheme for elderly and disabled people, which I believe is one of the major successes of the first four years of the Parliament, and is part of a package of measures that shows Parliament’s commitment to Scotland’s elderly people. The nationwide scheme includes other welcome developments, such as the removal of the peak-time restriction on free bus travel and the introduction of free ferry services. We must ensure that people who have disabilities not only have the right to free travel but have access to free travel through greater provision of accessible transport of all modes in the future.

The key point that I want to make at this stage is about the position of the two Opposition parties, the Conservatives and the SNP. The Conservatives intend to oppose the bill at stage 1 and the SNP proposes to sit on its hands and abstain. It is important for Parliament and the people of Scotland to understand that if the bill were to fall today, the powers that the minister seeks to acquire to introduce the new concessionary scheme for elderly people and the new scheme for young people would also fall. That means that anyone who abstains from voting or who votes against the bill is refusing to support the concessionary travel scheme.

Phil Gallie (South of Scotland) (Con): Will the member give way?

Bristow Muldoon: No, thank you; I have only four minutes. The two Opposition parties—the tartan Tory alliance—will find their position difficult to explain to the people of Scotland when they take their messages to them in the forthcoming general election.

Fergus Ewing: Since Mr Muldoon obviously did not hear what I said, I repeat that we support national concessionary schemes and that, if the bill goes ahead with just that element, we will support it. However, that is not what the bill is doing. It will introduce a variety of measures. Does Bristow Muldoon support the committee’s position that, unless there are strong powers and secure funding for RTPs, the committee should not support the bill either?

Bristow Muldoon: In the House of Commons, when the Labour Government was introducing the minimum wage, Mr Ewing’s party was absent. Today, when we are trying to introduce concessionary travel for Scotland’s elderly people, his party is sitting on its hands. Far from being Scotland’s party, the SNP is Scotland’s disgrace.

Regional transport partnerships are essential because the gerrymandering of the Conservatives in the 1990s disrupted Scotland’s ability to plan transport regionally. Although no one is, at this stage, proposing the re-establishment of regional councils, there is growing recognition that we need to plan our economy and transport systems regionally and nationally by building on the natural city regions that are Scotland’s main economic drivers and ensuring that the areas that surround our cities are hooked into the transport systems of those cities. The recent experience of Edinburgh is a good example of why we need to plan our transport regionally.

I believe that it is important to have strong regional transport partnerships and I look to the minister to articulate at stage 2 and beyond a clear message about the powers that each partnership will have.

The Deputy Presiding Officer: Mr Muldoon, you must close now.

Bristow Muldoon: I have one final point to make. The minister has said that he will consider whether there is a legislative issue around the powers of SPT. I would ask him to give further consideration to that and to tell the committee whether he intends to give legislative effect to commitments that he has given previously and today.
The Deputy Presiding Officer: I invite members who are taking part in the open debate to stick to the four-minute limit.

14:57

Margaret Smith (Edinburgh West) (LD): I support the Transport (Scotland) Bill. It is unfortunate that we have been unable to get consensus on the bill today, which might be to do with the fact that a general election is on the way.

There has been extensive consultation on improving transport in Scotland. Two key points seem to have come through. First, we need a more strategic approach to planning and delivery of transport. I agree with Bristow Muldoon that an example of that need was seen in Edinburgh in the recent past. Secondly, we need to build organisational capacity to deliver the massive programme of transport investment that is planned by the Scottish Executive. Delivery is the key issue. The Transport (Scotland) Bill will lead to a national transport strategy and regional transport partnerships, it will improve management of road works and, crucially, it will deliver nationwide free travel for older and disabled people. All those elements are welcome steps towards improving transport in Scotland and towards improving the quality of life of our older and disabled people.

The national transport agency will deliver key Liberal Democrat policies and major national projects that are contained in the partnership agreement, improvements in transport infrastructure and better co-ordination of the national concessionary fares schemes. The historic bias towards roads spending that has been demonstrated by Governments in the United Kingdom will be ended because, crucially, we have the funding in place to deliver on public transport.

Phil Gallie: Will the member give way?

Margaret Smith: I am sorry, Mr Gallie, but I have only four minutes, so I will not.

The committee has supported regional transport partnerships, provided that they will have the necessary strong powers and the required level of funding—that is stated clearly in our report. However, the committee has a number of reservations. Some of those concerns arose because of the lack of detail about how the new structures will work in practice, which is why we have asked for draft guidance and regulations to be with us in good time before stage 2.

The committee wants to hold on to issues relating to accountability of councils in the new bodies by limiting voting powers to elected members. We also want recognition of the need for fairness for large and small councils. There is also a need for flexibility in relation to boundaries. The committee agreed with the point that David Mundell made about the case that has been made by Dumfries and Galloway Council, for example. As we have heard, SPT also has concerns; we agree that greater clarity is needed about some of its responsibilities. Although we welcome the minister's assurance about the west and southwest of Scotland RTP's role in respect of rail policy—he strengthened that assurance in his comments today—some concerns remain. It seems that it would be sensible to give that RTP a strong role, given the current situation in that area and the expertise that has been built up there.

I strongly support part 2 of the bill, which will establish a Scottish road works commissioner. It is crucial that the commissioner will be independent and have the teeth and the resources to enforce decisions. A balance must be struck that acknowledges the need for utility companies to dig up our roads, but we need greater co-ordination and more enforcement powers. We need to ensure that people benefit from what utility companies and councils do instead of paying for it afterwards through their council tax or by replacing broken glasses after they have tripped because of a pothole in the pavement or the road.

I am delighted that the minister's announcement in December backed up the bill's provisions on extension of the concessionary fares scheme and removal of regional boundaries and time restrictions. I am keen to hear what he has to say about the possibility of extending that level playing field to cover rail. There was a certain amount of sympathy in the committee for such an extension. A related question arose at the meeting of the Waverley Railway (Scotland) Bill Committee in the Borders on Monday: if we give concessionary fares for bus travel, how can we ensure that we get the required number of passengers to make a new railway viable? We would like to see some meat on the bones in relation to those issues. I am also keen to hear details of the scheme’s extension to young people, which will have a massive impact throughout Scotland.

Fergus Ewing asked whether the bill is on course for spring 2006. If people such as him vote for it today, it will be.

15:01

Brian Adam (Aberdeen North) (SNP): I will focus on some of the more minor proposals in the bill and I hope that the minister will give some answers—if not today, then in writing.

My reading of the proposals on pedestrian crossings is that local authorities will make decisions without reference to ministers. I assume that ministers will not set the criteria for decisions
to install pedestrian crossings in proximity to schools and sheltered housing. Also, I ask the minister to clarify in his response whether decisions about pedestrian crossings on trunk roads in urban areas will come under the remit of local authorities.

I note that there is a definition of road, but in relation to road user charging schemes. In my constituency—and, I am sure, in the minister’s—there are problems about the adoption of roads and the consequences of that for householders. This might be an opportune moment to legislate to govern the adoption of roads and to provide appropriate funding, particularly where the developer happens to be an offshoot of the Executive and has failed to live up to its responsibility to bring roads up to standard before it hands them over to the council. The bill represents a missed opportunity to do that and I ask the minister to address that matter, either today or in writing.

I move on to more substantive provisions. Concern has been expressed about representation on the regional transport partnerships, particularly in relation to the north-east Scotland transport partnership, which is the current voluntary body. The new RTP could well have a three-person board, but that would be not so much a board as a clique. There could be one councillor from Aberdeen, one from Aberdeenshire and one person representing other interests. That would not be satisfactory.

We should bear in mind other legislation that the Parliament has passed. We will move to the single transferable vote system for local elections in 2007 and as a consequence local government will perhaps no longer have such clear-cut administrations. One of the strengths of the voluntary arrangements has been the consensus that has existed for the most part—the consensus that Margaret Smith sought. Such consensus will be particularly important in relation to RTPs. In the likely situation after the introduction of STV for local elections, it will be important to take the maximum opportunity to reach consensus, because delivery is better when consensus is achieved. That will not necessarily result from having one representative of one political party from one council. The minister may wish to address that, especially in relation to the regional transport partnership that is proposed to involve only two councils. I know that the Strathclyde situation is different.

I share Fergus Ewing’s concerns about the detail. In presenting the proposals, the minister has asked us to trust him. He will forgive us if we do not give that trust on the general principles today, because some of those principles are not spelled out as well as they might be. By and large, we have no difficulty with the national concession scheme, but concerns have been expressed elsewhere about other general principles.

15:06

Pauline McNeill (Glasgow Kelvin) (Lab): I have always believed that the minister who delivers a solution to Scotland’s transport problems will have enduring popularity with the nation, because transport is one of the services of which just about everybody has experience. We have all heard complaints—and we, too, have complaints—about our experience of the transport system in trying to get to work and do our jobs. We all say that we want an integrated transport system and we all want it to work, but what do we think about how to achieve that? The answer to that is what makes today’s debate crucial.

As Bristow Muldoon said, who would have thought that the Scottish Executive, with the Parliament’s support, would deliberate the implementation of a free fares scheme for Scotland’s elderly and disabled? As the minister said, that scheme will apply all over Scotland, all day. That is no mean achievement and we should take it seriously.

Phil Gallie: We all agree on that, but we disagree about the restructuring. The member’s Labour colleagues in Strathclyde do not agree, either. Does the member acknowledge that part 1 of the bill is deeply flawed?

Pauline McNeill: I will describe my concerns later. If the Conservatives and the SNP oppose the motion, that will tell me that they have no faith that the committee system can deliver a better bill. I will talk about that, because I share some of SPT’s concerns. I have faith in my colleagues from all parties to deliver a better bill, so I ask those members who plan to oppose the motion seriously to consider what they are doing.

I commend the Local Government and Transport Committee for its work on the bill and on its other work on transport—particularly buses. Commendation is due.

A central matter is the development of a single transport agency, with which I have some issues. There are always pros and cons to centralising any power, which ministers must address. The bill contains many important provisions. It is important that ministers show the value of the intended centralising of resources and powers in the single agency. As Phil Gallie said, SPT has expressed concerns about that. SPT has had successes and has delivered for Glasgow, although naturally we have criticisms of it. The removal of a successful body and the incorporation of its functions in a central body must be justified. I would like the minister to talk about that.
I have had a special interest in buses for some time. I strongly agree with the committee’s recommendation that regional transport partnerships must have a statutory power to determine bus provision in their areas, because the bus industry has for too long been singularly unregulated. The provisions in the Transport (Scotland) Act 2001 have not been used and the Parliament cannot let that lie. The bill should have strong provisions, which is why it is important to consider amendments. We must ensure that Scotland has a bus industry that delivers for communities. There are too many communities, including in my constituency, that have lost bus services without consultation because the routes are not profitable. That is not acceptable. If the minister can stand on his feet today and tell me that a single transport agency can deliver a better and fairer bus service, I will put my name to that.

15:10

Chris Ballance (South of Scotland) (Green): The Green party whole-heartedly supports elements of the bill, such as the section on concessionary fares and travel. However, as a whole, the bill represents a missed opportunity. It is a depressing statement of failure by the minister. It does nothing to address the real issues that make MSP’s mailbags as clogged as the M8 in rush hour.

Bruce Crawford: If the member and his Green colleagues feel so strongly about this, why did none of them turn up to the committee, hear the evidence and make their points?

Chris Ballance: I have certainly read the evidence and I will put my points.

The bill has nothing to say about road traffic reduction or about making public transport operate more effectively. It misses the point when it comes to public sector reorganisation.

Bruce Crawford: Why did no Green members turn up to the committee?

Chris Ballance: We do not have a seat on that committee, Mr Whatever-your-name-is.

The policy memorandum says that the overarching objective is “to promote economic growth, social inclusion, health and protection of our environment”. That is precisely where the bill fails.

The issue for transport planning is the fact that our road system is choked by the inexorable annual rise in road traffic. The Executive predicts that traffic levels are set to rise by 27 per cent by 2021. City journeys will be slower than they were in 1891. It is already quicker to cross a city on a bicycle than in a car. Two thousand deaths per year are attributed to the effects of traffic fumes; 525 children were killed or seriously injured in Scotland in 2002, part of a total of 19,248 casualties, including 305 deaths. Congestion in Edinburgh alone is estimated to cost the economy £47 million per annum. Poor public transport combined with centralisation of services means that those people without access to a car—at least 2 million Scots—are excluded from society.

If the SNP members will not listen to me, I will quote the results for the Scots public of a YouGov survey. The survey asked whether people agreed that “There is too much traffic on Britain’s roads” and 85 per cent said yes. It asked whether people agreed that “The Government should take measures to reduce traffic”; 73 per cent said yes. It asked whether people agreed that “The Government should increase spending on public transport” and 67 per cent said yes. Those are the issues that the bill should address. They are the issues that Scots face every day.

The Executive has made a solemn promise to reduce road traffic to 2001 levels by 2021. That is the minister’s pledge. I know that the minister is an optimist, but even he will agree that the chances are remote that he will still be in office in 2021 to carry the can for his failure.

Fergus Ewing: Will the member take an intervention?

Chris Ballance: I do not have time.

The pledge is meaningless waffle without short-term targets against which to measure progress. That is a matter of simple Government accountability. In committee this morning, the minister agreed that it would be appropriate for him to set short-term interim targets. Will he agree in principle to put that requirement on his successors by including it in the bill? If not, how will he ensure that it happens?

The bill is almost bereft of detail. It wrests power for railway development from the most successful transport planner in Scotland—SPT—while the Westminster Railways Bill could prevent those powers being given to ministers.

The bill gives communities no extra powers over their buses. It enshrines the current situation where it is much easier for a local authority to promote road building and improvements than rail or bus improvements. As it stands at the moment, the bill will not deliver.
Christine May (Central Fife) (Lab): Good transport provision in its broadest sense is good for the economy, health, social inclusion and tourism. I congratulate the Scottish Executive on its £3 billion investment in transport—the largest commitment to the sector for as long as I can remember.

The bill must be seen in the context of the need for an integrated transport policy. For many of those for whom good regional transport links are important, such a policy means enabling the movement of goods and people over longer distances. We need to see the bill in the context of the wider national interest.

As time is short, I will not go over the reasons why I broadly support the formation of regional transport partnerships and the proposals for the better management of road works, but I will speak to the bill’s provisions on a national travel concession scheme. I am proud that the bill will meet a key Labour manifesto commitment by providing for concessionary fares, which older residents in Fife have enjoyed for a long time not only for travel within Fife but for journeys by rail to Edinburgh and other cities. The bill will extend existing concession schemes by providing for concessions across the country to older and disabled people and—crucially—to young people. The concessionary fares element is an important measure for those whose economic circumstances require them to undertake long journeys to work for relatively low pay, as many of my constituents must do in travelling at considerable expense from Glenrothes to Edinburgh.

However, as Bristow Muldoon and Pauline McNeill pointed out, public transport must be available if people are to be able to take advantage of the concessions. I must tell the minister that I have serious concerns that quality contracts simply will not happen without firm and decisive ministerial direction. Access to jobs, social stimulation, health care and retail is provided by bus rather than by rail in many isolated communities in our constituencies, whether or not those are in rural areas. I ask the minister to give serious consideration to introducing such measures at stage 2.

I share my colleagues’ disappointment at the stance that has been taken by the Conservatives, the nationalists and the Greens. Not only did the Greens not turn up to the Local Government and Transport Committee—the meetings of which every member can attend even if they cannot vote at them—but they declined a place on one of the tram bill committees. If the Greens are serious about creating a better Scotland through a range of policies, they must be prepared to put in the necessary work. There is no point in sitting on the sidelines and shouting in the hope that someone else will do the work.

I urge Scottish National Party members to reconsider their intention to abstain in the vote on stage 1 of the bill. Given all the opportunities for changing the details of the bill at later stages, it makes no sense for them not to agree to the principles of the bill just because they do not like one part of it. I hope that, having heard today’s debate, they will listen to the pleas of those of us who are serious about getting transport in this country right and reconsider their position.

The Conservatives are perhaps a lost cause, so I will not pursue the issue with them any further. I support the bill in principle, even though I have outlined some concerns. I hope to make representations to ensure that those concerns are dealt with and I hope that others will do the same.

John Scott (Ayr) (Con): In this stage 1 debate on the Transport (Scotland) Bill, one feels almost a sense of déjà vu, even weariness, at the Government’s proposals. As oftentimes before, the proposals in the bill, especially in part 1, are driven not by a need for change but by a need to be seen to be doing something. Change for change’s sake is the tried and tested way of describing that tendency. When that is coupled with a centralising approach, we have a combination that is likely to produce unnecessary and poor legislation.

Such a sweeping statement is not lightly made. It springs from a genuine constituency concern for the future of SPT. As has already been said, the greater Glasgow and west of Scotland area has been served well by SPT. Its 800 staff run an efficient organisation that delivers for the west of Scotland and for my constituents. We should not lose sight of that.

The Local Government and Transport Committee’s stage 1 report calls on the Executive to show more, rather than less, flexibility on the areas that the regional transport partnerships will cover. The bill ignores the need for such flexibility. Perhaps rather than destroying SPT, the Government should consider rolling out the SPT model to other parts of Scotland.

Bristow Muldoon: Will the member give way?

John Scott: I do not have time to give way to Bristow Muldoon, but I thank him nonetheless.

In addition, the bill will throw out the existing democratically accountable system, which is easily understood and has worked well for years, and replace it with a system that is different but is certainly no better. Again, we are seeing change for change’s sake. Rather than throwing out the
baby with the bathwater, a continuing pragmatic approach needs to be provided by SPT, which needs to concentrate on delivering projects rather than on fighting Government proposals to diminish or destroy its sphere of influence.

From a constituency perspective, the Government needs to upgrade services into and from Ayrshire. First, the Paisley Gilmour Street to Glasgow Central track needs to be upgraded to increase capacity. A 20-minute rail service to and from Ayr would further increase the usage of that already busy line and take more cars off the roads. Longer trains and longer platforms are needed in Ayrshire—we need to stop talking about those and to get on with providing them. The minister’s energies should be devoted to securing adequate capital and revenue funding for his rail system rather than to tinkering around the edges and rearranging structures, which will certainly cost more and will probably deliver less.

Christine May: Does the member accept that there is a case to be made for increasing track capacity, and that simply putting on longer trains and making longer platforms will not necessarily solve the problems?

John Scott: Indeed, I made that point in respect of the need to increase track capacity between Paisley Gilmour Street and Glasgow Central station. New administrative structures will not increase capacity by one train or one truck and the existing 2001 legislation is perfectly fit for purpose—indeed, it is only just beginning to bed in.

The health service has demonstrably not benefited from more ministerial direction and the Conservative party believes that the rail network will not benefit from more ministerial and civil service input and more quangos. Those who have a track record should be left to get on with the job. They should be allowed to deliver a link to Glasgow airport and the Glasgow crossrail project, and the proposed legislation should be adapted and amended to give our railways and those who run them a helping hand, rather than imposing the uncertainty and the dead hand of further ministerial interference and control.

The Local Government and Transport Committee and most members from Glasgow and the West of Scotland are unhappy with the bill—I cite Pauline McNeill among other members. I urge the minister to reconsider part 1 of the bill and to act on the advice that SPT and my colleague David Mundell have given him.

15:22

Des McNulty (Clydebank and Milngavie) (Lab): I want to concentrate on the process that has preceded this point and on some financial concerns that were identified by the Finance Committee and in the Local Government and Transport Committee’s report. Legislation has regularly been prepared and proposed when major elements are still out to consultation, which makes it virtually impossible for the lead committee, the Finance Committee and contributing organisations properly to discuss the associated costs of the legislation. The failure of that process is the source of considerable dissatisfaction with the financial memorandum and uncertainty about aspects of the bill.

The Executive’s guidance on the preparation of financial memoranda states:

“Where a Bill proposes powers, or implementation is dependent on the detail in secondary legislation (or further primary legislation), it may not be possible to be precise. In these cases, the Memorandum should say so. But this should be supported by an outline of what the current intentions of the Executive are, what the financial implications of these intentions will be, and what the effect of varying the major assumptions will be.”

That has not been achieved in this instance.

There are one or two more structured issues. It is difficult to reconcile the statement in paragraph 143 of the financial memorandum that

“No increased costs for local authorities are anticipated as a consequence of the establishment of Transport Partnerships”

with the fact that the Executive—as the minister has said—is committed to a very ambitious new transport programme that will impact on local government beyond the transition year. We can improve the process and ensure that the information is available for the committees to deal with and that the mechanisms are in place to ensure delivery.

A number of issues have been identified in that context, particularly by the SPTE, although not only by it. There are issues to do with the deliverability of the new concessionary travel scheme. I am absolutely in favour of that scheme and I am sure that everybody in the chamber agrees that rolling out a nationwide process is important. However, the timescale that has been put in place could lead to disproportionate expenditure if it is not effectively managed. We need further information from the minister and, during stage 2, we need to ensure that mechanisms are identified and put in place to ensure that effective management is delivered.

It is proposed to establish the new regional transport partnerships over 12 months. At the same time, however, those partnerships are required to develop regional strategies and to involve themselves in developing the new concession schemes. I am not sure that the financial costs that have been identified or the expertise that is required have been taken into
account. I support the intentions behind the scheme, but many detailed process aspects have not been got right. I hope that as we progress the bill through stage 2 and into implementation, those problems will be dealt with satisfactorily. It will be the Parliament’s role to scrutinise the bill and ensure that its intentions are properly realised.

15:26

Tommy Sheridan (Glasgow) (SSP): The bill has been roundly yellow-carded today, as it deserves. It is not complete and there are far too many gaps, ifs and buts.

The minister made a commitment in his statement on 16 June 2004 when he gave categorical assurances that SPT or its successor would continue to have a direct role in the “development, management and monitoring of rail services in its area.”

However, more than nine months later, we have absolutely no detail about how that will be delivered. The minister said today that he is looking at that matter and discussing whether he needs to introduce legislative changes to give effect to that commitment, but we are discussing the bill at stage 1. The minister’s discussion should have taken place before we got to this stage.

The bill’s general principles are the reason why it should get only a yellow and not a red card. We welcome the national travel concession scheme. I do not want to rain on the minister’s parade too much, but I remind those Liberal and Labour members who are so pleased about the bill because it was among their manifesto commitments that it was in their 1999 manifesto. We are now in 2005 and only just getting to the delivery of that commitment. Yes, let us be glad that the bill is here, but like far too many buses in Scotland just now, the bill is late and we must recognise that.

It is a general principle of the bill to tackle one of the banes of many Scots’ lives—unnecessary and complicated road works and road works on top of road works. Investigation found that the system of monitoring road works—essential or otherwise—throughout Scotland needs to be improved and the bill sets out to do that.

Section 5(2)(b) of the bill places an important duty on the proposed regional transport partnerships when formulating their plans to take account of how transport provision might affect social and economic well-being in their respective regions. The “Scottish Transport Statistics” report from 2004 indicates that 34 per cent of households have no access to a car, so when the proposed regional transport partnerships are formulating their plans and taking account of the social and economic well-being of the citizens in their area, they have a duty to actively promote public transport and access to buses and trains at local and regional levels. I say to the minister that the difficulty is that we do not yet know what powers the new regional transport partnerships will have.

I hope that, in summing up, the minister will reply to the committee’s serious concern that there is far too little detail on the partnerships’ powers and to its view that the partnerships’ make-up should refuse voting powers to any member of a partnership who is not an elected member. I am not prepared to support the idea that someone who is unelected should be spending taxpayers’ money, and I hope that the minister will address that point.

The bill deserves a yellow card today, not a red one, but it is a warning. If the bill does not come back at stage 2 with the necessary amendments, it will be red-carded.

15:30

Paul Martin (Glasgow Springburn) (Lab): Sometimes politicians can be a bit shy when we introduce measures that are universally popular, but I am delighted to overcome my shyness by saying that the Parliament and the Labour-Liberal Democrat coalition should be commended today for delivering universal free concessionary fares throughout Scotland. I echo Bristow Muldoon in saying that the people of Scotland should understand that if members do not vote for the bill today, the universal concessionary fares scheme will be rejected.

I would like to deal with two aspects of the bill on which I think the minister should reflect. Members have referred to the regional transport partnerships and to the minister’s proposal that we should consider business representatives or other non-elected members being involved and having voting rights in regional transport partnerships. I totally oppose such a proposal, in similar terms to those that Tommy Sheridan used in his speech. We should seriously consider the precious resource of our elected members, who represent their constituents, not shareholders. We should ensure that the status of elected members is retained and that we give them absolute priority. We should, of course, ensure that businesses are given the opportunity to form partnerships with the regional transport partnerships, but I think that it would be wrong to introduce a measure that would give them voting rights.

If we wanted to extend such a principle, why does the Parliament not give businesses voting rights in the Parliament? That would be equally wrong and I believe that we should oppose such a measure for the regional transport partnerships.
However, we should build on the existing principles of working with businesses throughout Scotland. Councils throughout Scotland have a proud record in that respect.

It was good to hear Phil Gallie and David Mundell supporting the Strathclyde Passenger Transport Executive. It is a pity that we did not hear from them in the 1990s, or people such as Des McNulty might still have been regional councillors. It would have been more fitting if Phil Gallie had been so vocal during that period, although he appears to be suffering a loss of memory in that respect today.

The most important aspect of the bill, and something that we must consider in introducing free concessionary fares, is accessibility. I raised that issue continually with the minister and other witnesses at stage 1. Organisations such as the Mobility and Access Committee for Scotland advised us that there is no purpose in delivering free concessionary fares if disabled people are not able to get access to the mode of transport in question—that is unacceptable. The Parliament has been successful in raising the profile of antisocial behaviour, homelessness and other issues that affect certain groups in Scotland, but it is time that it stood up to the transport providers, who are open about the massive amounts of money that they accrue from public subsidies, to demand that they give us something back. In particular, we should demand that they give something back to disabled people by delivering accessible transport and ensuring that people are able to use public transport in comfort.

We have delivered stage 1 of the bill. There is an issue concerning the detail of stage 1, which the minister will have to work on, and he must come back with more details in respect of some of the issues that we have raised. I look forward to stage 2, but I will support the bill on the basis that we await those further details at stage 2.

Alasdair Morgan (South of Scotland) (SNP): I echo the minister’s comments about the substantial increase in the number of rail passengers—on a couple of mornings last week I thought that they were all on the same train as me.

I will deal first with the shabby debating point that was made by Bristow Muldoon and others—it was clearly in the script that was given out to Labour back benchers today. They said that if we in the SNP abstain because of the partnerships, we are voting against concessionary travel. If members accept the logic of that argument, it is open to the Executive to gerrymander every bill that has anything controversial in it by including a motherhood-and-apple-pie section.

Bristow Muldoon rose—

Alasdair Morgan: I will not give way.

Let us be clear about this. That is a deeply undemocratic argument, but it is in no way surprising to hear it coming from the Labour Party, which is becoming more authoritarian in government by the day.

I will move on to a substantive point about the bill, which David Mundell discussed in some detail: the position of Dumfries and Galloway. The committee concluded that Dumfries and Galloway’s case not to be included in another RTP is a reasonable one. There appears to be very little justification, other than administrative convenience, for Dumfries and Galloway to be included within the Glasgow city-region.

I agree with what Iain Docherty said in his evidence to the committee, when he pointed out some of the anomalies that are bound to arise in such a scheme. He referred to the central and Tay regional partnership, which starts 10 miles north of Glasgow and stretches to well north of Montrose. That may not be totally logical in respect of transport planning, but we must accept that unless we do things on an all-Scotland basis, there will always be some anomalies. However, our argument in Dumfries and Galloway is that the position is so distinct and so sui generis that it requires special consideration. I think that the committee recognises that and it made the point well—the point has also been made by Dumfries and Galloway Council—that according to the Executive’s own criteria for regional partnerships, Dumfries and Galloway does not fit in.

The criteria include the need for the partnership to reflect the travel-to-work area, but 93.5 per cent of people who travel to work in Dumfries and Galloway go somewhere else in Dumfries and Galloway. The next biggest group—coming in at only 3 per cent—goes to Carlisle, so we are down to a tiny percentage before we come to people who go to another area in Scotland. Another of the criteria is “Capturing a regional boundary that would make sense to its inhabitants.”

I have not found any inhabitant of Dumfries and Galloway who thinks that it would be logical to be taken in with a city region centred around Glasgow.

Another of the criteria is “Bringing together local authorities with common interests”.

I do not see that Dumfries and Galloway has the necessary interests in common with the local authorities with which it would be included if it was in the west of Scotland partnership.
The fourth of the criteria is to ensure that partnerships have sufficient critical mass to deliver services, without becoming unwieldy. No one could argue that the west of Scotland authority does not already have critical mass; in fact, it may be on the way to becoming unwieldy. It certainly does not need to have Dumfries and Galloway added into it.

I will finish, as I have almost run out of time, by echoing the point that David Mundell and others have made. Why, especially when so many people have said that the bill is such an important one, do we have only an hour and a half to discuss it? Every member has to rush their speech and the minister could not even get past the first part of the bill in his speech.

The Deputy Presiding Officer: I am sorry, but I can give Mr Smith only a couple of minutes.

15:38

Iain Smith (North East Fife) (LD): Thank you, Presiding Officer. I also thank you for the very polite way in which you gave me advance warning of the fact that I would have only two minutes.

This is a valedictory speech for me as I now speak as a former member of the Local Government and Transport Committee. I thank the members and clerks of the Local Government Committee and the Local Government and Transport Committee committees over the past two sessions for their support over the four years during which I was a member of those committees.

I support the bill in principle. It is important in that it delivers on important partnership commitments on public transport and on manifesto commitments from both the partnership parties on concessionary fares. The bill addresses the long-held problems that are caused by badly planned and badly executed road works by utilities and others. It is also key in that it sets up a statutory footing for regional transport partnerships.

Unlike Chris Ballance, I will not stick my head in the sand or try to wave a magic wand and suddenly create a great new passenger transport network that will solve all congestion problems in a flash. That cannot be done without the structures being in place. We acknowledge that there is a need for structures that can deliver the record investment of £3 billion in transport in Scotland over the next 10 years. Some 70 per cent of that investment will be spent on public transport projects such as the Stirling-Alloa-Kincardine railway, the airport rail links, the Fife circle platform extensions, additional trains, the Borders rail link and the Edinburgh tramlines. Such huge investment will require an effective means of delivery.

We need a strategic transport authority to deliver national schemes, but we also need regional transport authorities to deliver regional transport strategies that are on a statutory footing, so that they have the backing that allows them to deliver on programmes. If the bill is not passed, the regional transport authorities that can deliver those programmes will not be put in place.

Congestion in Edinburgh will not be solved by the City of Edinburgh Council alone. Work is needed throughout the east Scotland region to deliver a solution. Regional transport partnerships can deliver that necessary solution in the east of Scotland.

The Deputy Presiding Officer: We come to closing speeches.

15:41

Michael McMahon (Hamilton North and Bellshill) (Lab): John Stuart Mill, the founder of utilitarianism, is not someone whom I would often quote in a debate, but it is worth noting that the father of minimalist government argued that even if government does nothing else, it must control education and transport. As a member of the Labour Party, I think that government must do an awful lot more than that. However, if John Stuart Mill was correct in identifying the importance at least of transport in the role of government, he served a purpose.

Members of the Scottish Parliament acknowledge the priority that transport should be given. There must therefore be good transport legislation and the bill has the potential to become a good piece of transport legislation. I stress the word “potential”, because of the concerns that members have expressed.

Most members and the minister identified that the creation of regional transport partnerships is a key element of the bill. It is unfortunate that the welcome for the establishment of RTPs was counterbalanced, if not negated, by the Opposition’s negativity about the measure. There are three main elements in the bill and RTPs represent only one element. It is good that RTPs are linked to an overall national strategy, which has not been properly addressed in the debate. Members have forgotten that RTPs will have a bigger role than can be ascertained by considering the minutiae of what the partnerships can do. The second element in the bill is road works management, but we did not widen the debate to consider those provisions. However, we spent a lot of time on concessionary travel.

I was heartened by the minister’s sympathetic response to the Local Government and Transport Committee’s concerns about the voting arrangements for RTPs and boundary flexibility.
and I am happy that he gave a clear indication that draft orders will be in place before we consider the bill at stage 2. I agree with David Mundell that the lack of detail caused the committee concern and prevented us from properly scrutinising the bill. Des McNulty’s contribution exemplified the problem in relation to the lack of detail about finance, which meant that there was a question about how we could assure everyone that the RTPs would be properly resourced to deliver everything that we want them to deliver. It is right that the committee took the opportunity to raise such concerns in its stage 1 report.

Early in the debate reference was made to a “store of happiness”, which should have set us off on the right track. However, it was Fergus Ewing who introduced the idea. He then forgot to identify any of the good aspects of the bill, at which point the debate started to go wrong. If we regard Fergus Ewing as an example of a hibernating Job’s comforter, we might find out where his store of happiness is.

Many members expressed concern about the amount of power that RTPs will have. I will not go into that, because I want to focus on the powers of the Scottish road works commissioner, which Tommy Sheridan mentioned. I started my speech by talking about utilitarianism, but Tommy Sheridan took the opposite approach and gave us utopianism.

If we can do anything in this bill, we can deliver a strong piece of transport legislation. Very few bills coming to the Parliament at stage 1 are already complete. Tommy was right to say that the bill deserved a yellow card, but I do not think that it will get a red card. I think that we can deliver.

If the minister responds positively to the points that have been made, we will achieve a very good bill—and I will be more than happy to go round the doorsteps during the forthcoming election campaign to tell people that neither the Tories nor the SNP could bring themselves today to endorse concessionary travel.

15:45

Murdo Fraser (Mid Scotland and Fife) (Con): For the avoidance of doubt, I should point out at the outset that I am standing at this particular desk not because I want to put any distance between me and my colleague Mr Mundell but because the console at the desk between us is not working. I say that, Presiding Officer, because I know that you would be deeply concerned at the prospect of Tory splits. I assure you that that is not what is happening this afternoon.

The Scottish Conservatives have mixed feelings about the Transport (Scotland) Bill. As David Mundell and John Scott have pointed out, we oppose part 1 because we do not believe that creating another set of quangos and more bureaucracy will lead to better public transport.

Bristow Muldoon: Will the member take an intervention?

Murdo Fraser: Not at the moment. I want to make some progress.

I want to consider part 2 of the bill and then come back to part 1. Part 2 contains some important provisions that we have not had time to address this afternoon. Some important points have to be made.

In principle, we support any reasonable measures to reduce the number of road works. We all know the frustration that is caused by utility companies and others digging up the road—especially as it seems that they can never agree among themselves when the road is to be dug up. No sooner has one company completed its work than somebody else comes along and starts digging up the same stretch. Of course, such road works cause congestion problems.

The bill proposes the creation of a Scottish road works commissioner to monitor national performance. We give that proposal a cautious welcome, although it may be that the commissioner’s powers will not differ significantly from those that are already held by the roads authority and utilities committee.

The key point about the new provisions—a point that was made forcibly in the part of the stage 1 report that was produced by the Enterprise and Culture Committee—is that the new powers are of little use if they do not apply equally to the private and public sectors. When there are road works, it is often public bodies such as local authorities or Scottish Water that are digging up the road. If there were a body with additional powers to coordinate road works, its powers would have to apply as much to the public sector as to the private sector. Road users do not care whether it is British Telecom or the local authority digging up the road. The effect is the same. It is therefore essential that we have a level playing field.

The powers of the new commissioner have to be proportionate. The Enterprise and Culture Committee heard from the UK Competitive Telecommunications Association that provisions that were introduced in England and Wales—to give roads authorities the power to require utility companies to resurface the road in certain circumstances—have caused widespread concern. Any additional cost to utility companies will simply be passed on to the customer.

Concerns have also been raised about a moratorium being put on a road on which road works have taken place, because such a
moratorium might restrict competition. We have to be careful that powers do not go too far and end up being anticompetitive.

The major concerns lie with part 1 of the bill. Tommy Sheridan and others have pointed out that one of the principal effects of the bill will be the abolition by the back door of Strathclyde Passenger Transport’s regional rail powers. SPT is a tried and tested model that works. In its written submission to the Local Government and Transport Committee, SPT said:

“It is difficult to avoid the conclusion that this part of the Bill is more about administrative change than about making a real contribution to improving transport policy delivery, in the west of Scotland or more generally.”

SPT has now gone further than that. Its latest briefing says:

“the case for the Bill is at best ‘not proven’.”

It goes on to say:

“Its implementation would seriously jeopardise existing transport delivery in the west of Scotland, and SPT therefore urges MSPs to oppose the Bill in the Stage 1 debate.”

It is a pity that the Executive has not listened to an effective deliverer of public transport such as SPT. The sad fact is that RTPs will be yet another tier of bureaucracy, drawing funds away from service delivery.

Another issue arises to do with the grouping of RTPs. For constituents living in an area such as Perth and Kinross, which I represent, the usual routes of access are on a north-south axis—up and down the A9, or the parallel rail routes, to Inverness or Stirling and Glasgow, or across Fife to Edinburgh and beyond. However, Tayside falls within the central and Tay RTP, which is orientated east-west and not north-south. It therefore does not reflect the journeys that people make. That situation has been repeated elsewhere, as we have heard from David Mundell and Alasdair Morgan. Dumfries and Galloway Council has made strong representations that its area should not be lumped in with the Glasgow city region.

The Scottish Conservatives want to see greater investment in transport in Scotland—in both public transport and our roads. However, instead of addressing the concerns of Scottish businesses and travellers, the bill misses the mark. It is for that reason that we must oppose it.

15:50

Bruce Crawford (Mid Scotland and Fife) (SNP): Like other members, I commend the committee for its work and for the detailed and forensic way in which it took evidence on the bill. I make clear at the beginning of my speech that the SNP supports concessionary fares. The Labour Party might be preparing its leaflets already and be ready to play a dishonest game, but what Labour members have said is neither a mature way in which to approach the bill nor the proper way in which to address people’s concerns. I am referring in particular to the central purpose of the bill, which is to develop regional transport partnerships. The SNP supports that proposal but thinks that if we are to make significant and extensive improvements to Scotland’s transport infrastructure, the RTPs need to have strong and meaningful powers.

In his response to my intervention, the minister was right in saying that there is a third option for the model, which is the transfer of significant public transport powers. Unfortunately, for the moment, that option is going only to the SPT area in the west and, in any case, the SPT will get no additional powers. Not a lot of new things will be happening in that part of the world in terms of the RTPs.

Bristow Muldoon: Earlier in the debate, Christine May put forward the idea that the SNP should support the bill at this stage because the minister should be allowed to address the committee’s concerns at stage 2. If Bruce Crawford remains dissatisfied, he has the option of opposing the bill later. Does he not accept that, by indicating that they will abstain at decision time, SNP members are leaving it to others to ensure that the bill can progress at all?

Bruce Crawford: Some members such as Tommy Sheridan choose to show the yellow card and some on the Labour benches choose to support that line. The SNP chooses to take a slightly different tack. Ultimately, all of us want to get to the same place and to have strong regional transport partnerships. If we can do that, that is all good and well. However, the SNP has a different strategy from that of other parties. We happen to believe that it is the correct one.

Phil Gallie: That is democracy.

Bruce Crawford: As the member said, that is democracy. Bristow Muldoon might not like it, but that is the reality.

The SNP is concerned that we are unable at this time to give the proposed RTPs the strong powers that we think they will need to have if they are to improve significantly Scotland’s transport infrastructure, which some commentators have likened to that of a third-world country. They will need to have strong powers if we are to ensure economic development and address Scotland’s footprint in the world. If the Greens had only turned up to the committee’s debates on the bill, perhaps they could have made some of their
that I should give up my vote on the Enterprise and Culture Committee in order to attend the Local Government and Transport Committee, which meets at the same time? Secondly, is he suggesting that reading the evidence has no purpose?

Bruce Crawford: We hear from Mark week in, week out about—[Interruption.] I am sorry, I should have said Chris—all the Greens look alike to me.

Green MSPs come to the chamber week in, week out and tell the rest of us how important transport is to them. There are seven of them; one of them could have come along to one of our evidence-taking sessions, but not one of them did. They made not one single point. All that we are getting from them in the debate is empty rhetoric and gestures.

If we could give RTPs the meaningful powers that they need, we could have a strategic, systematic and truly integrated focus that would allow us to bring about the changes that the people of Scotland and its businesses need. The minister is doing all that he can do to lever in the additional resources. He is also about to get powers over the railways. Frankly, unless we have the appropriate delivery mechanisms, no extra powers vested in the minister or additional resources thrown at the problems will be enough. It will take a lot longer to get what the SNP thinks is necessary or desirable.

From what I have heard of the RTPs, I feel that they will be a bit of a hybrid: they will grow organically and be different from one another—in other words, we will have a bit of a hotch-potch. How on earth will we get integration when that sort of approach is being taken to our public transport network?

I wish that the minister had learned from the “Transferability of Best Practice in Transport Policy Delivery” research, which was carried out by his own department. It leaned on the experience of small independent countries such as Finland, Sweden and Switzerland and showed that, because strong powers were given to regional transport authorities in those countries, they were able to make the difference. The minister should go back and read his own evidence, which is in front of him.

Iain Docherty said it all in his evidence to the committee when he said:

“there is general disappointment that the bill does not propose the strong regional authorities that many of us had hoped to see.”—[Official Report, Local Government and Transport Committee, 21 December 2004; c 1699.]

That is the position that we are in. I know that the minister tries to find the middle road a lot of the time but, although on most occasions that is the right way to go, sometimes we have to bite the bullet and do what is right. On this occasion, that is what the minister should do with RTPs.

15:55

Nicol Stephen: First, on the SNP’s abstention on the motion, I find it hard to believe that its objections this afternoon amount to fundamental objections to the principles of the bill. I agree with the comments of Bristow Muldoon and Margaret Smith on that issue.

Far be it for me to deplete Fergus Ewing’s store of happiness—which he hides so well—but on this issue it was he who introduced the negative element and it was he who challenged us by asking whether the national concessionary fare scheme will be ready by April 2006. clearly, he doubts that it will be ready. It is surely fair to point out that it will not be ready if the Parliament does not support the bill. We notice that on concessionary fares, but also on the creation of regional transport partnerships, the SNP has taken a tactical decision to sit on its hands, while it will be up to the Executive to get on and deliver a better transport system for Scotland.

Fergus Ewing: Will the minister give way?

Nicol Stephen: No, I will not give way, because I want to address the point that was made by David Mundell, who complained about the shortness of the debate. We would all like to see greater time in the chamber for our own subject portfolios, but it took him a whole one and a half minutes of his four-minute allocation to tell us how disgraceful it was that there was not enough time for the debate. I would take him more seriously if Mr Bill Aitken, the Tory business manager, had made the point in the Parliamentary Bureau that additional time should be allocated.

Fergus Ewing rose—

Nicol Stephen: As far as I am aware, he did not make that point. If he had done, I would have been willing to give way at this moment.

I am sympathetic to David Mundell’s substantive point about Dumfries and Galloway, as it is serious. I am looking seriously at the position of Dumfries and Galloway and I believe that a sensible and agreed way forward can be found. However, David Mundell took up his time telling us how the current system was working well. It would be viewed as working well if one was a member of
a Government that failed to invest in transport, as the Conservatives did. It would also be viewed as working well if one wanted to run down our rail system, as the Conservatives did, or if one wanted to oversee the decline of our bus system, as the Conservatives did.

We now have an increase in bus passenger numbers and, as I announced today, rail passenger numbers and we are investing record levels in transport—£3 billion over 10 years. If we want better investment, we need a better system, which is what the bill is about. We want better transport. We want new trams in Edinburgh, new rail lines and new airport rail links. We want investment in new road projects as well. To deliver all those on time and on budget, we will need a better system.

Fergus Ewing: The minister should bear in mind that the hundreds of people who have contributed to the process so far may be unimpressed by the number of people in the debate who have chosen to play the man, not the ball. Can he give an unequivocal assurance that there are no technical problems or barriers that might lead to a delay in the implementation of the proposed national concessionary scheme for older and disabled people by the planned date of April 2006? Can he give an unequivocal assurance that the scheme will be implemented on time?

Nicol Stephen: The member makes my point. The scheme will be introduced by 1 April 2006. The only impediment that I can see would be if the bill, which will become the necessary legislation to allow the scheme to happen, is stopped in its parliamentary progress. To prevent that, members should vote for it this afternoon.

Bristow Muldoon and other members raised the continuing concerns about SPT. I understand those concerns and I will certainly work hard with MSPs and SPT during the next few weeks to reach a sensible way forward on that important issue. I am also sympathetic to the issue that Brian Adam raised about the size of the regional partnerships. I do not want any regional board to be too small but, equally, I do not want boards that are too big. The issue is difficult and we must find the right balance, but I am prepared to make concessions on it.

Pauline McNeill asked about the new transport agency, which is to be based in Glasgow. The aim of creating the new agency is to decentralise power, which at the moment is centralised in the hands of the Minister for Transport and the Scottish Executive Enterprise, Transport and Lifelong Learning Department. Our whole approach is to decentralise power away from the minister and Edinburgh to the new agency and, wherever possible and appropriate, to the new regional transport partnerships.

I echo the points that other members made about Chris Ballance. I accept that the Green party does not have a seat on the committee, but if he cared enough, he could still attend. He chose not to attend, which undermines what he said today, though I am sure that he intended it to be sincere.

I strongly agree with Paul Martin on accessibility. More needs to be done on that and we are expanding our investment in it. However, as I have said, I have made certain that from now on no disabled person in Scotland will be forced to choose between a taxi-card scheme and free bus travel. Disabled people are entitled to both and should have access to both.

There is much to be done, but good work has been done by members of the committee, other MSPs and those who are involved in transport to get the bill right. If members support regional transport partnerships, concessionary fares and road works improvements in Scotland, I cannot understand why they would do anything other than support the bill. The bill is about improvement—if members want improvement, they should vote for the bill.
Decision Time

17:01

The Presiding Officer (Mr George Reid):
There are eight questions to be put as a result of today’s business.

The first question is, that motion S2M-2351, in the name of Nicol Stephen, on the general principles of the Transport (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craige, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Bailleieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kane, Rosie (Glasgow) (SSP)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Leckie, Carolyn (Central Scotland) (SSP)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
The result of the division is: For 73, Against 18, Abstentions 31.

Motion agreed to.

That the Parliament agrees to the general principles of the Transport (Scotland) Bill.

The Presiding Officer: The second question is, that motion S2M-2338, in the name of Tom McCabe, on the financial resolution in respect of the Transport (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Transport (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in paragraph 3(b)(ii) of Rule 9.12 of the Parliament’s Standing Orders;

(b) any increase in expenditure of a kind referred to in paragraph 3(b)(iii) of that Rule; and

(c) any payments in relation to which paragraph 4 of that Rule applies, arising in consequence of the Act.

AGAINST

Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Mundell, David (South of Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Murray (West of Scotland) (Con)

ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahaime, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
White, Ms Sandra (Glasgow) (SNP)