Passage of the

Transport (Scotland) Bill 2004

SPPB 84

Volume 2
Passage of the

Transport (Scotland) Bill 2004

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

SPPB 84

Volume 2: Stages 2 and 3

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Transport (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 4
- Schedule 1
- Sections 5 to 15
- Schedule 2
- Sections 16 to 31
- Schedule 3
- Section 32
- Schedules 4 and 5
- Sections 33 to 35
- Schedules 6 and 7
- Sections 36 to 46
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Michael McMahon
Supported by: Paul Martin

41 In section 1, page 1, line 17, after <constitution> insert <and membership>

Michael McMahon
Supported by: Paul Martin

42 In section 1, page 1, line 17, at end insert <in accordance with subsection (2) below>

Nicol Stephen

4 In section 1, page 1, line 19, leave out <a councillor (but only one councillor)> and insert <one or more (but not more than four) councillors>

Nicol Stephen

5 In section 1, page 1, line 21, after <region> insert <; or
( ) if that region is coterminous with a council’s area, that council,>

Nicol Stephen

6 In section 1, page 1, line 23, after first <council> insert <or, as the case may be, that council>

Nicol Stephen

7 In section 1, page 1, line 23, after <a> insert <or the>

Chris Ballance

43 In section 1, page 1, line 24, leave out from beginning to end of line 5 on page 2
Paul Martin  
44 In section 1, page 2, line 11, leave out <each> and insert <only councillor members may vote and that each councillor> 

Paul Martin  
45 In section 1, page 2, leave out lines 12 to 20 

Chris Ballance  
46 In section 1, page 2, line 13, leave out <councillor> 

Chris Ballance  
47 In section 1, page 2, line 15, leave out <councillor> 

Chris Ballance  
48 In section 1, page 2, leave out lines 16 to 22 

Paul Martin  
Supported by: Michael McMahon  
49 In section 1, page 2, line 21, after <provide> insert <for the appointment and remuneration of office holders of the Transport Partnership and in particular may provide> 

Chris Ballance  
50 In section 1, page 2, line 23, leave out <councillor members (but only councillor members)> and insert <members> 

Paul Martin  
Supported by: Michael McMahon  
51 In section 1, page 2, line 30, at end insert— 

<( ) may make provision allowing for—

(i) the establishment of committees by the Transport Partnership;

(ii) the delegation of functions by the Transport Partnership to a committee established under sub-paragraph (i) above, or to the convener of such a committee;> 

Paul Martin  
52 In section 1, page 2, leave out subsection (4) 

Section 2 

Nicol Stephen  
8 In section 2, page 2, line 40, at end insert <or council>
Nicol Stephen
9 In section 2, page 2, line 40, at end insert—
   
   (2A) On dissolving a Transport Partnership, the Scottish Ministers may, by order, provide for any function of the Partnership to be carried out by the person who carried it out immediately before the coming into effect of—
   
   (a) the order under section 10 below which transferred it to the Partnership; or
   
   (b) if there have been two or more orders under that section transferring that function, the first of those orders.

Section 3

Nicol Stephen
10 In section 3, page 3, line 3, after <by> insert—
   
   (a)

Nicol Stephen
11 In section 3, page 3, line 4, at end insert <; or
   
   (b) where there is only one, that council>

Nicol Stephen
12 In section 3, page 3, line 5, leave out <(1)> and insert <(1)(a)>

Nicol Stephen
13 In section 3, page 3, line 10, at end insert—
   
   Only councillor members may vote on a question arising under subsection (2)(a) above.

Section 4

Nicol Stephen
14 In section 4, page 3, line 22, leave out from <as> to end of line and insert <further as to Transport Partnerships and their members>

Schedule 1

Michael McMahon
Supported by: Paul Martin

53 In schedule 1, page 31, line 38, after <functions> insert <and in order to implement its strategy>
Michael McMahon
Supported by: Paul Martin

54 In schedule 1, page 32, line 13 leave out <purchase land compulsorily under sub-paragraph (1)(b)> and insert <acquire or purchase land under sub-paragraph (1)>

Michael McMahon
Supported by: Paul Martin

55 In schedule 1, page 32, leave out lines 15 to 17 and insert—

<(  ) A Transport Partnership may dispose of land or an interest in land.
(  ) Subsections 74(2) to (2H) of the Local Government (Scotland) Act 1973 (c. 65) apply to a Transport Partnership as they apply to a local authority.>

Michael McMahon
Supported by: Paul Martin

*56 In schedule 1, page 32, line 17, at end insert—

<(  ) For the purposes of its functions or business or in relation to the implementation of its strategies, a Regional Transport Partnership may—

(a) develop land in such manner as it thinks fit;

(b) develop for use by other persons any part of its land not required for the purposes of its business;

(c) where the use of its land for the purposes of its functions or business can be combined with its use for other purposes, develop the land by constructing or adapting buildings thereon for use wholly or partly by other persons;

(d) acquire land adjacent to its land, by agreement, for the purpose of developing it together with its own land; and

(e) sell or otherwise dispose of land or buildings assembled or developed.>

Nicol Stephen

15 In schedule 1, page 32, line 20, at end insert—

<(2) The power conferred by sub-paragraph (1) above on a Transport Partnership includes power to continue the promotion or opposition of private legislation in the circumstances set out in sub-paragraph (3) below.

(3) Those circumstances are—

(a) where the function in pursuance of which the legislation was first promoted or opposed was transferred to the Transport Partnership under section 10 above after the introduction of the Bill for the legislation;

(b) in a case where that function was transferred to the Scottish Ministers under section 12 above after the introduction of that Bill, where the Scottish Ministers have directed that the Transport Partnership specified in the direction is to continue the promotion or opposition of that legislation; or

(c) a combination of the circumstances set out in sub-sub-paragraphs (a) and (b) above.>
In schedule 1, page 32, line 29, at end insert—

<Forming companies

A Transport Partnership may (whether alone or with others, who need not be Transport Partnerships) form or promote companies within the meaning of the Companies Act 1985 (c.6).>

In schedule 1, page 34, line 11, at end insert—

<Expenses of non-councillor members and observers

A Transport Partnership may pay to—

(a) those of its members who are appointed by virtue of sub-paragraph (i) or (ii) of paragraph (b) of subsection (2) of section 1 above;

(b) persons who are, as respects the Partnership, appointed as observers under paragraph (g) of that subsection, such expenses as the Partnership determines.>

Section 5

In section 5, page 3, line 29, after <including> insert <improving transport links between all inhabited parts of the region, and>

In section 5, page 3, line 30, at end insert <, including changes in population and land use>

In section 5, page 3, line 32, after <affect> insert—

<( ) the meeting of statutory equal opportunities obligations;

( ) the provision of transport services to a wide range of different users (including the socially excluded); and>

In section 5, page 3, line 33, after <there> insert <, the promotion of sustainable economic growth,>
Dr Sylvia Jackson  
Supported by: Margaret Smith

61 In section 5, page 3, line 33, leave out <environment> and insert <promotion of environmentally sustainable transport policies>

Dr Sylvia Jackson  
Supported by: Margaret Smith

62 In section 5, page 3, line 37, at end insert—
<(  ) the promotion of road safety and of safe public transport;>

Nicol Stephen

18 In section 5, page 4, line 18, after <councils> insert <or council>

Fergus Ewing

63 In section 5, page 4, line 20, at end insert—
<(2A) A Partnership’s transport strategy must include plans for the development or improvement, within the region, of—
(a) transport—
(i) by road;
(ii) by rail;
(iii) by air;
(iv) on inland waterways; and
(v) by any other mode of transport identified by the Partnership,
(b) access to, and usage of, all forms of public transport;
(c) transport services used, in particular, by persons experiencing social exclusion through unemployment, poverty or other economic factors, homelessness, geographical remoteness, ill health, or religious or cultural mores;
(d) the non-trunk road network; and
(e) any other matters identified by the Partnership.

(2B) Separate plans must be produced for each of the modes of transport mentioned in subsection (2A)(a) and for each of the matters referred to in subsections (2A)(b) to (e).

(2C) Each plan mentioned in subsection (2B) must include—
(a) a statement of the overall objectives of the plan;
(b) a list of the specific projects and initiatives relating to each plan which the Partnership considers should be implemented in order to meet the objectives of the plan; and
(c) an order of preference for each of the projects and initiatives, indicating how the Partnership considers they should be prioritised.>
Michael McMahon
Supported by: Paul Martin

64 In section 5, page 4, line 23, at end insert <and to any current national transport strategy established by the Scottish Ministers>

Section 6

Nicol Stephen

19 In section 6, page 4, line 26, after <councils> insert <or council>

Nicol Stephen

20 In section 6, page 4, line 28, at beginning insert <subject to subsection (1A) below>

Paul Martin
Supported by: Michael McMahon

65 In section 6, page 4, line 29, at end insert <for approval>

Nicol Stephen

21 In section 6, page 4, line 29, at end insert—

<(1A) The Scottish Ministers may—

(a) at the request of a Transport Partnership made to them within 8 months of the creation of the Partnership; and

(b) if satisfied that there are good reasons for doing so,

authorise the Partnership to submit its transport strategy to them later than the time limit specified in subsection (1)(b) above but not later than such date as is specified in the authorisation.

(1B) A Transport Partnership making a request for the purposes of subsection (1A) above shall, if so required by the Scottish Ministers, provide them with reports or information of such kind and in such form as they, for the purposes of that subsection, specify in the requirement.>

Nicol Stephen

22 In section 6, page 4, line 38, after <councils> insert <or council>

Nicol Stephen

23 In section 6, page 4, line 40, after <them> insert <or, as the case may be, it>

Section 9

Michael McMahon

66 In section 9, page 5, line 29, at end insert—
In drawing up joint transport strategies, Transport Partnerships shall have regard to improving transport between any cities or other major centres of population within the area covered by the Partnerships.>

Michael McMahon

67 In section 9, page 5, line 29, at end insert—

<( ) In drawing up joint transport strategies, Transport Partnerships shall have regard to the transport policies of the Scottish Ministers.>

After section 9

Paul Martin
Supported by: Dr Sylvia Jackson

68 After section 9, insert—

<RTP / Health Board transport strategies>

(1) It shall be the duty of each Transport Partnership to prepare a strategy jointly with each Health Board whose area is covered wholly or partly by the area of the partnership.

(2) A strategy prepared under subsection (1) above must set out measures to secure the effective provision of public transport to persons using hospitals and other NHS facilities in the Health Board area.>

Section 10

Nicol Stephen

24 In section 10, page 5, line 35, leave out from <by> to <strategy> in line 37 and insert—

<( ) as respects a Transport Partnership; and

( ) by order,

provide for any statutory function relating to transport they>

Michael McMahon
Supported by: Paul Martin

69 In section 10, page 5, line 35, after <function> insert <or power>

Nicol Stephen

25 In section 10, page 6, line 3, at end insert—

<( ) In making an order under subsection (1) above after the coming into effect of the Transport Partnership’s transport strategy, the Scottish Ministers shall have regard to that strategy.>

Fergus Ewing

70 In section 10, page 6, line 4, at end insert—
The Scottish Ministers must transfer to each Transport Partnership transport functions conferring—

(a) the power to—
   (i) enter into quality partnership schemes;
   (ii) enter into quality contract schemes;
   (iii) enter into ticketing arrangements and ticketing schemes; and
   (iv) provide information about bus services;

as provided for in the Transport (Scotland) Act 2001 (asp 2)

(b) the duty to—
   (i) secure best value; and
   (ii) participate in community planning;

as provided for in the Local Government in Scotland Act 2003 (asp 1)

(c) the power to make agreements under section 20 of the Transport Act 1968 (c. 73);

(d) the power to specify which rail services should be included in rail franchises;

(e) the power to make capital grants to third parties for public transport facilities;

(f) the power to make capital grants to adapt transport infrastructure in order to facilitate improved travel by people with disabilities;

(g) the power to make revenue grants for public transport facilities on services not requiring a Public Service Vehicle license; and

(h) the power to make agreements in relation to the purchasing, hiring or letting of rolling stock for rail services.

Fergus Ewing

In section 10, page 6, line 4, at end insert—

But any function transferred under subsection (2A) can only be transferred with the agreement of the Partnership.

Michael McMahon

Supported by: Dr Sylvia Jackson

In section 10, page 6, line 4, at end, insert—

Functions referred to in an order under subsection (1) above may include—

(a) the planning, co-ordinating and implementation of measures to introduce road user charging;

(b) those functions of a Roads Authority within the meaning of the Roads (Scotland) Act 1984 (c.54)—
   (i) to secure strategic planning across the Transport Partnership’s area;
   (ii) to enhance the efficiency and effectiveness of arrangements for roads maintenance;

(c) responsibility for tolled road bridges;
(d) developing and taking measures to support the development of rail services within the Transport Partnership’s area;

(e) planning and co-ordinating ferry services; and

(f) responsibility for any airport having a strategic regional transport function within a Transport Partnership’s area.

26 In section 10, page 6, line 6, after <councils> insert <or council>

27 In section 10, page 6, line 7, at end insert—

⟨( ) Only councillor members may vote on a question whether to make such a request.⟩

28 In section 10, page 6, line 14, after <councils> insert <or council>

29 After section 10, insert—

⟨Alteration of RTP’s functions⟩

(1) The Scottish Ministers may, by order, provide for any function of a Transport Partnership to be carried out by the person who originally carried it out—

(a) instead of the Transport Partnership; or

(b) concurrently with the Transport Partnership.

(2) In so providing, the Scottish Ministers shall have regard to the Transport Partnership’s transport strategy.

(3) Subsections (3) to (6) of section 10 above apply to an order under this section as they apply to one made under that section.

(4) In subsection (1) above, the reference to the person who originally carried out a function is a reference to the person who carried out the function immediately before the coming into effect of—

(a) the order under section 10 above which transferred it to the Transport Partnership; or

(b) if there have been two or more orders under that section transferring that function, the first of those orders.

30 In section 11, page 6, line 29, at end insert—

Section 11
Where a function of a Transport Partnership falls to be carried out before its transport strategy comes into effect, the Transport Partnership shall carry out the function in accordance with such directions as the Scottish Ministers may give it.

Nicol Stephen

In section 11, page 6, line 29, at end insert—

<(3) A Transport Partnership shall carry out its functions in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.

(4) In subsection (3) above, “equal opportunities” and “equal opportunities requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46).>
In section 12, page 7, line 1, leave out <transport> and insert <the provision or regulation of rail services>

In section 12, page 7, line 2, after <was> insert <immediately before the provision referred to in subsection (1) above>

In section 12, page 7, line 2, leave out <under any enactment>

A Transport Partnership may enter into arrangements with the Scottish Ministers, a council or any other person having statutory functions relating to transport being arrangements under which the Partnership—

(a) does, on behalf of the Scottish Ministers, the council or that other person, such things relating to transport as are specified in the arrangements;

(b) provides such services for the purposes of, or in connection with, transport as are so specified.

Where the Scottish Ministers wholly transfer any function carried out by a Local Transport Authority under the 2001 Act—

(a) to a Transport Partnership under section 10(1) above; or

(b) to themselves under section 12(1) above,

any arrangement, scheme or proposal made, or any process commenced, in respect of that function shall continue to have effect; except that any reference in that arrangement, scheme, proposal or process to the Local Transport Authority shall be construed as a reference to the Scottish Ministers or, as the case may be, to the Transport Partnership.

“the 2001 Act” means the Transport (Scotland) Act 2001 (asp 2).

“Local Transport Authority” has the meaning given to it by section 82(1) of the 2001 Act.
Section 13

Michael McMahon
Supported by: Paul Martin

*78* In section 13, page 7, line 8, at end insert—

<(  ) Where, by virtue of sections 2, 10 or 12 above, any function is transferred, the Scottish Ministers shall ensure that the order transferring the function also provides for the transfer of staff appropriate to that function in compliance with subsections (2A) to (2E) below.>

Michael McMahon
Supported by: Paul Martin

79 In section 13, page 7, line 12, leave out from beginning to <above> in line 16 and insert—

<(2) Where a member of staff (the “employee”) transfers from the body who was carrying out the function immediately before the transfer (the “present employer”) to a new body who will be carrying out the function after the transfer (the “new employer”)—

(a) the contract of employment between the employee and the employee’s present employer continues to have effect but as if originally made between the employee and the new employer; and

(b)>

Michael McMahon
Supported by: Paul Martin

80 In section 13, page 7, line 19, at end insert—

<(2A) Any order transferring functions under section 2, 10 or 12 which would involve the transfer of staff must also make provision for the establishment of a staff board for the purposes of carrying out such functions in relation to the staff as the Scottish Ministers consider appropriate.

(2B) Before making an order of the sort mentioned in subsection (2A) above, the Scottish Ministers must consult such persons as they think fit.

(2C) Without prejudice to the generality of subsection (2A), such an order may confer on the staff board the functions of—

(a) considering and keeping under review the arrangements for the recruitment of staff by new agencies and Transport Partnerships and for the transfer of any staff from the present employer to the new employer;

(b) considering any staffing problems arising out of, as a consequence of, or in connection with any transfer of functions under sections 2, 10 or 12;

(c) advising the Scottish Ministers of the steps required to safeguard the interests of transferred staff; and

(d) advising the bodies from whom and to whom functions are transferring on what steps are required in relation to the interests of transferred staff.

(2D) The Scottish Ministers may give directions—

(a) to any staff board as to its procedure and to the carrying out of its functions;
(b) to any body from whom and to whom staff or powers are being transferred in respect of information required by the staff board; and

(c) to any body described in subsection paragraph (b) above with respect to the implementation of any advice given by the staff board.

(2E) The Scottish Ministers shall provide for the funding of all costs and expenses incurred by any staff board.

Nicol Stephen

37 In section 13, page 7, line 29, after <property> insert <, rights>

Nicol Stephen

38 In section 13, page 7, line 31, after <property> insert <, rights>

After section 37

Chris Ballance

1 After section 37, insert—

<Transport management strategies

(1) The Scottish Ministers shall, no later than one year after the day on which this Act comes into force, and at least once every two years thereafter—

(a) publish a target for reducing—

(i) the total distance travelled annually by road vehicles in Scotland; or

(ii) the annual rate of growth of that amount; and

(b) lay before the Scottish Parliament a report setting out—

(i) the measures which the Scottish Ministers propose to take; and

(ii) the progress, if any, made,

to achieve the target.

(2) The Scottish Parliament must debate whether to approve the report within 28 sitting days of it being laid.

(3) If a report debated under subsection (2) is not approved, the Scottish Ministers must, within six months, lay a revised report before the Parliament.

(4) Subsection (2) applies to a revised report as it applies to a report.

Fergus Ewing

2 After section 37, insert—

<Rail Passengers’ Committee for Scotland

(1) The Scottish Ministers shall establish a Rail Passengers’ Committee for Scotland (“the Committee”).

(2) The Committee shall consist of—

(a) a convener appointed by the Scottish Ministers; and
(b) such other members, being not less than ten nor more than twenty in number, as the Scottish Ministers may from time to time appoint after consultation with the convener.

(3) The convener and other members of the Committee established under subsection (1) above shall hold and vacate office in accordance with the terms of the instruments appointing them and shall, on ceasing to hold office, be eligible for re-appointment.

(4) The provisions of schedule (Rail Passengers’ Committee for Scotland) shall have effect.

(5) It shall be the duty of the Committee to investigate any matter which relates—

(a) to the provision of rail transport services; or

(b) to the provision of station services by any person in a case where the operator of the station in question is authorised by a station licence, if the condition specified in subsection (6) below is satisfied in relation to the matter in question.

(6) The condition mentioned in subsection (5) above is satisfied if the matter—

(a) is the subject of a representation made to the Committee by a user or potential user of railway passenger services and does not appear to the Committee to be frivolous or vexatious;

(b) is referred to the Committee by the Scottish Ministers; or

(c) appears to the Committee to be one which it ought to investigate.

(7) If, on investigating any matter, the Committee considers it appropriate to do so, the Committee shall make representations to—

(a) the person providing the service in question; and

(b) in the case of a service provided under a franchise agreement, the franchisee, about the matter, or any matter to which it relates or which appears to the Committee to be relevant to the subject of the matter investigated.

(8) Where the Committee—

(a) having made representations under subsection (6) above, is of the opinion that it is unable to achieve a satisfactory resolution of the matter by that means; or

(b) on investigating any matter, has reason to believe that the holder of a passenger licence or a station licence is contravening, or is likely to contravene, any condition of the licence, it shall refer the matter (or, if it was referred to the Committee by the Scottish Ministers, refer it back) to the Scottish Ministers with a view to the Scottish Ministers exercising such of their powers as they consider appropriate in the circumstances of the case.

(9) Where the Committee investigates any matter pursuant to subsections (5) to (7) above, it may prepare a report of its findings and lay it before the Scottish Parliament.

(10) At the request of the Scottish Ministers, the Committee shall make a report to them on such matters relating to the quality of railway passenger services and station services as may be specified in the request.

(11) The Scottish Ministers may arrange for the publication of any report under subsection (10) above in such manner as they consider appropriate.
(12) If the Scottish Ministers so request, the Committee shall assist the Scottish Ministers, to such extent and in such respects as may be specified in the request, in ascertaining whether, in the case of any franchise agreement, the franchise operator is attaining the standards set for the provision of the franchised services.

(13) Where the Committee has investigated any matter pursuant to subsections (5) to (7) or subsection (10) above, it shall neither—

(a) include in any report or representations a proposal for any steps to be taken by any person in relation to that matter, nor

(b) refer the matter under subsection (8) above by reason only of the failure of any person to take any steps in relation to that matter,

unless, balancing the cost of taking those steps against the benefits which the Committee considers will be enjoyed by any person in consequence of the taking of those steps, the Committee is of the opinion, on the basis of the information available to it, that the expenditure involved represents good value for money.

(14) In this section—

“franchise agreement” means an agreement with the Scottish Ministers under which another party undertakes either—

(a) to provide; or

(b) to secure that a wholly owned subsidiary of that party provides, throughout the franchise term those services for the carriage of passengers by railway to which the agreement relates;

“passenger licence” means a licence authorising a person—

(a) to be the operator of a train being used on a network for the purpose of carrying passengers by railway; and

(b) to be the operator of a train being used on a network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in paragraph (a) above;

“railway passenger service” means any service for the carriage of passengers by railway, and includes bus substitution services required to be provided in place of any such services;

“station licence” means a licence authorising a person to be the operator of a station;

“station service” means any service which consists of, or is comprised in, the provision or operation of a station.

Paul Martin

2A As an amendment to amendment 2, line 3, leave out <Rail Passengers’> and insert <Public Transport Users’>

Paul Martin

2B As an amendment to amendment 2, line 14, at end insert—

<( ) to the provision of bus services;

( ) to the provision of ferry services;>
Paul Martin

2C  As an amendment to amendment 2, line 22, leave out <railway passenger services> and insert—
    <( ) bus services;
    ( ) ferry services; or
    ( ) railway passenger services,>

Paul Martin

2D  As an amendment to amendment 2, line 44, after <of> insert—
    <( ) bus services;
    ( ) ferry services;
    ( )>

Paul Martin

2E  As an amendment to amendment 2, line 62, at end insert—
    <“bus service” means any regular scheduled service for the carriage of passengers
    by bus or coach;
    “ferry service” means any transport service by water (including such a service by
    means of a hovercraft) which carries passengers and operates regularly between
    two or more points,>

After schedule 7

Fergus Ewing

3  After schedule 7, insert—
    <SCHEDULE
     (introduced by section (Rail Passengers’ Committee for Scotland))
     RAIL PASSENGERS’ COMMITTEE FOR SCOTLAND

Remuneration of, and allowances for, members

1  There shall be paid to the convener and other members of the Committee such
    remuneration, and such travelling and other allowances, as the Scottish Ministers may
determine.

2  The Scottish Ministers shall make arrangements for the Committee to be provided with
    office accommodation and with such services as they consider appropriate to enable
    them to carry out their functions.

Proceedings

3  (1) Subject to the following provisions of this paragraph and paragraph 4 below, the
    Committee may regulate its own procedure, including quorum.

    (2) The Committee shall meet when convened by the convener, and in any case shall meet
    at least twice a year.
Without prejudice to the discretion of the convener to call a meeting whenever he or she sees fit, he or she shall call a meeting when required to do so by any three members of the Committee.

Minutes shall be kept of the proceedings at every meeting of the Committee; and copies of those minutes shall be sent to the Scottish Ministers.

The Committee shall have regard to any general recommendations which the Scottish Ministers may from time to time make with regard to any matter affecting the procedure or functions of the Committee.

The validity of any proceedings of the Committee shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

Admission of public to meetings

Subject to sub-paragraph (2) below, meetings of the Committee shall be open to the public.

The public shall be excluded during any item of business where—

(a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the Committee by the Scottish Ministers would be disclosed in breach of the obligation of confidence;

(b) the Committee has resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded;

(c) it is likely, were members of the public to be present during that item, that there would be disclosed to them—

(i) any matter which relates to the affairs of an individual; or

(ii) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate; or

where public disclosure of that matter would or might, in the opinion of the Committee, seriously and prejudicially affect the interests of that individual body;

(d) the circumstances are such as are specified in, or determined by resolution of the Committee in accordance with, an order made by the Scottish Ministers.

The Committee shall give such notice—

(a) of any meeting of the Committee which is open to the public; and

(b) of the business to be taken at that meeting (other than items during which the public is to be excluded);

as it considers appropriate for the purpose of bringing the meeting to the attention of interested members of the public.

Sub-committees

The Committee may—

(a) establish local and other sub-committees through which it may carry out such of its functions as it may determine;

(b) appoint such persons (including persons who are not members of the Committee) to be members of any such sub-committee as they may determine; and

(c) regulate the procedure of any such sub-committee.
(2) Persons appointed under sub-paragraph (1) above who are not members of the Committee may be reimbursed for their travelling expenses and such of their out-of-pocket expenses as do not relate to loss of remuneration.

Financial provisions
6 (1) There shall be paid by the Scottish Ministers—
(a) any sums payable to or in respect of any person under paragraph 1 or 5 above; and;
(b) any expenses incurred by the Committee (provided that the Committee complied with its financial duties in incurring them).

(2) The Scottish Ministers may determine the financial duties of the Committee; and different determinations may be made for different functions of the Committee.

(3) The Scottish Ministers shall give the Committee notice of every determination of its financial duties; and such a determination may—
(a) relate to a period beginning before, on or after the date on which it is made;
(b) contain supplementary provisions; and
(c) be varied by a subsequent determination.

Section 44

Nicol Stephen
39 In section 44, page 29, line 34, after <2(1)> insert <or (2A)>

Nicol Stephen
40 In section 44, page 29, line 34, after <(7),> insert <(Alteration of RTP’s functions)(1),>
Transport (Scotland) Bill

Groupings of Amendments for Stage 2 (Day 1)

Membership etc of RTPs
41, 42, 4, 43, 44, 45, 46, 47, 48, 49, 50, 52, 13, 14, 17, 27

RTPs comprising a single council
5, 6, 7, 8, 10, 11, 12, 18, 19, 22, 23, 26, 28

Committees established by RTPs
51

Transport functions
9, 24, 69, 25, 70, 71, 72, 29, 30, 74, 75, 76, 31, 36, 39, 40

Acquisition, development and disposal of land by RTPs
53, 54, 55, 56

RTPs and private legislation
15

RTPs forming or promoting companies
16

Transport strategies of RTPs
57, 58, 59, 60, 61, 62, 63, 64,

Procedure before and after drawing up of transport strategies
20, 65, 21

Joint transport strategies
66, 67

RTP / Health Board transport strategies
68

RTPs’ duty to participate in community planning
73

Transport functions of Scottish Ministers
32, 33, 34, 35

Continuation of schemes etc under Transport (Scotland) Act 2001 where transfer occurs
77

Transfer of staff, property and liabilities
78, 79, 80, 37, 38
Transport management strategies
1

Rail Passengers’ Committee for Scotland
2, 2A, 2B, 2C, 2D, 2E, 3
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

EXTRACT FROM THE MINUTES

13th Meeting, 2005 (Session 2)

Tuesday 19 April 2005

Present:

Bruce Crawford JP MSP (Deputy Convener)  Mr David Davidson (Committee Substitute)
Fergus Ewing MSP  Dr Sylvia Jackson
Paul Martin  Michael McMahon
Bristow Muldoon (Convener)  Margaret Smith

Apologies: David Mundell MSP and Tommy Sheridan MSP

Transport (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to without division: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.

The following amendments were agreed to by division:

41 (For 7, Against 1, Abstentions 0)
44 (For 7, Against 1, Abstentions 0)

Amendment 51 was moved and, with the agreement of the Committee, withdrawn.

Amendments 42, 43, 45, 46, 47, 48, 49, 50 and 52 were not moved.

Sections 1, 2, 3 and 4 were agreed to as amended.

The Committee ended consideration for the day, section 4 having been disposed of.
Scottish Parliament

Local Government and Transport Committee

Tuesday 19 April 2005

[THE CONVENER opened the meeting at 14:02]

Transport (Scotland) Bill: Stage 2

The Convener (Bristow Muldoon): The first item on our agenda is our initial consideration of the Transport (Scotland) Bill at stage 2.

We have timetabled amendments up to approximately 3.30 pm. At that point, we will take stock of where we are—my intention is to complete the grouping that is under way at that point, after which we will conclude our consideration. In any case, we will not go much beyond 3.30 pm to leave time for the other items on our agenda.

Before we move on to consider the first grouping of amendments, Fergus Ewing has a brief comment to make.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I thank the convener for the opportunity to make a general observation, the subject of which I notified him of in advance of the meeting. Before we commence stage 2, I want to highlight the fact that a substantial part of our work relates to matters concerning the composition, powers and responsibilities of the proposed regional transport partnerships. Although those matters were the subject of an Executive consultation exercise, in this instance, the consultation ran concurrently with stage 1. Therefore, instead of having the evidence of bodies such as Strathclyde Passenger Transport and other witnesses on the powers, responsibilities and composition of the RTPs at stage 1, we are having to proceed to stage 2 without the benefit of evidence that, in normal circumstances, we would have considered.

I put on the record the Scottish National Party view that there is a strong case for the committee to take evidence before we proceed to our consideration of stage 2 amendments. To do so would give us a factual basis on which to do the work with which we are entrusted.

The Convener: For the benefit of other members, I confirm that Fergus Ewing raised that issue with me in advance of the meeting. My judgment is that many of the organisations that are concerned with the regional transport partnerships—from whatever perspective—had the opportunity to give evidence to the committee at stage 1 and to make comments about the RTPs.

The range of amendments that members of all parties have lodged gives the committee the opportunity to hold a substantive debate at stage 2 on the powers and functions of the regional transport partnerships. Any organisation that wants to submit comments to a member of the Scottish Parliament or to give their view for or against the approaches in the bill can do so. Indeed, a number of organisations have taken advantage of that opportunity. For those reasons, my judgment is that it is not necessary for us to hold further formal evidence-taking sessions.

We now move on to our stage 2 consideration of the bill. I welcome the minister and his supporting officials, who are Richard Hadfield, Jonathan Pryce, Caroline Lyon and Graham McGlashan. I also welcome two visiting members, Chris Ballance and Pauline McNeill, who have an interest in the issues. I am sure that they will want to participate in our discussions.

I want to check that all members have copies of the bill, the marshalled list that was published on Monday and the groupings, which will help them in following our consideration of amendments. Today’s process will finish at around 3.30 pm, although not necessarily right on the button. I point out that because 2 May is a public holiday and because the fact that we will lose a day would affect members’ ability to have advance notice of amendments and so on, the proposal is that we do not hold a stage 2 meeting on 3 May. The committee will still meet on that day to consider the Licensing (Scotland) Bill.

Section 1—Establishment of regional Transport Partnerships

The Convener: Amendment 41, in the name of Michael McMahon, is grouped with amendments 42, 4, 43 to 50, 52, 13, 14, 17 and 27.

Michael McMahon (Hamilton North and Bellshill) (Lab): Amendment 41 is a simple amendment in that it seeks to add only two words to section 1. That addition would broaden Scottish ministers’ role in respect of the establishment of regional transport partnerships by saying that they should provide information not only on the constitution of each transport partnership, but on its membership. I hope that the minister will accept that it is necessary for section 1(1)(c) to include the phrase “and membership”. It is a technical suggestion, but it would clarify ministers’ powers.

 Amendment 42 is consequential in that it says that ministers should provide for the constitution and membership of RTPs “in accordance with subsection (2) below”. 

which is about ministers’ role in defining the make-up of an RTP’s membership. I feel that those additions are necessary to ensure that everyone is clear about the potential make-up of any RTP and the powers that lie with ministers.

I move amendment 41.

The Convener: Before I invited Michael McMahon to speak, I should have pointed out that if amendment 45 is agreed to, amendments 46, 47 and 48 will be pre-empted, and that if amendment 48 is agreed to, amendment 49 will be pre-empted.

The Minister for Transport (Nicol Stephen): The committee’s stage 1 report invited the Executive to reflect on the proposals for membership and voting and, in particular, on the limits on the number of councillor members and the role in voting of non-councillor members. We have done that and, in moving our position, have responded to the committee’s suggestions, although not necessarily in full. I hope that committee members will regard the changes as significant.

I will take the opportunity to discuss amendment 4 and to comment on the other amendments in the group. Executive amendment 4 will allow for up to four councillor members per council. I intend to implement the provision in a manner that will be set out in schedule 1 to the establishment and constitution order. The detail has still to be finally agreed, but I hope that the principle of having up to four councillor members per council will be seen as a significant shift, which the committee and the current voluntary regional transport partnerships encouraged.

Amendments 43, 46 to 48 and 50 from Chris Ballance would remove all non-councillor members from transport partnerships. That would undermine the partnerships, which as a result would be nothing more than groupings of local authority representatives. I strongly urge the committee to reject those amendments.

Amendment 44 from Paul Martin would retain the external members but remove their voting rights. That would move us more towards a joint board approach. I recognise the concerns that several witnesses expressed at stage 1 about the role of non-councillor members. I am pleased to note that the committee’s report recognised that regional transport partnerships should not take a closed approach and did not recommend against including members other than councillors in the partnerships.

In their responses to the recent consultation, a wide range of interested parties voiced support for including external members on regional transport partnerships. It is important to emphasise that that view came not only from the business lobby, but from non-governmental organisations, public bodies and trade unions.

I am concerned that, without voting rights and the corresponding ability for people to be seen as full members of regional transport partnerships, it will be difficult to attract the right calibre of people and to keep them engaged for the long term. I understand that the issue is central for some committee members and involves a balanced judgment. However, I believe that if we ask people to play a full role in regional transport partnerships, when a vote happens, which should be rare, those people should normally have a vote.

After reflecting seriously on the concerns that the committee expressed in its report and on the feedback that was received through the consultation exercise, I have lodged amendments 13 and 27. Amendment 13 will prevent non-councillor members from voting on the power to requisition funds from constituent local authorities and amendment 27 will prevent them from voting on the transfer of functions to partnerships. Only councillor representatives will vote on functions that are to be moved from the Scottish Executive or local councils to regional transport partnerships. Those concessions are significant and address the concerns that have been put to me. I commend the amendments to the committee.

Amendments 45 and 52 from Paul Martin would remove the possibility of councillor members having weighted votes. I understand why that might be seen as a logical consequence of the concession—or move in position—to increase the number of councillor members, as proposed by the Executive in amendment 4. However, I would prefer to keep open two options for the partnerships. One option will be to have multiple councillor membership, under which each councillor member has a single vote—a one-member, one-vote approach, which I think most parts of Scotland will favour. The other option will be to have a single councillor member from each council with weighted voting.

The reason for keeping both options is that I understand that the Highlands and Islands strategic transport partnership and the councils in the Highlands and Islands would prefer to follow the second option, given the particular sensitivities of island councillors. In other words, the system that we had suggested until we made the concessions in the amendments that we are discussing today was what HITRANS was looking for. It would be unfortunate to create division in the HITRANS area by moving away from that approach because of understandable concerns from other areas. In the light of that explanation, I invite Paul Martin to consider not moving amendments 45 and 52.
Michael McMahon’s amendment 41 would improve the bill’s readability and make it consistent with other legislation by adding the words “and membership” after the word “constitution”. I accept the amendment. The same cannot be said for amendment 42 in its current form, although I would be prepared to consider a similar amendment with different wording.

In its current form, amendment 42 would be too restrictive. For example, it would restrict the creation of the powers of the new regional transport partnerships and could conflict with the powers that members seek to include in the bill to form committees or to adopt standing orders, because those issues are not specifically referred to in section 1(2). I can explain the issue further if necessary, but the legal advice that we have received is that amendment 42, which would insert the phrase “in accordance with subsection (2) below”, would have a restrictive effect and would mean that the appropriate powers and constitution and establishment orders could not be created in relation to issues that fell outwith the list in section 1(2).

Amendment 14 is a minor technical amendment that will ensure that the bill describes better the intention and content of schedule 1.

As members will have noted from the financial memorandum, the Executive will fund the expenses that the transport partnership members incur as part of the partnerships’ start-up costs. Amendment 17 will enable the partnerships to continue to pay expenses to non-councillor members beyond the start-up period. The power relates only to non-councillor members because, as members are aware, provision already exists under the Local Government (Scotland) Act 1973 for the payment of allowances for travel and subsistence to councillors who attend conferences or meetings. The provision on the payment of expenses is consistent with previous legislation—the National Parks (Scotland) Act 2000 contains a similar provision.

Amendment 49 would make explicit provision in the order-making power in section 1(2) for the appointment of office-holders. However, that is unnecessary because the appointment of office-holders falls within the order-making power in section 1(1)(c) to "provide as to the constitution of each Transport Partnership."

Amendment 49 would also make provision in relation to remuneration. There has never been a policy intention to remunerate councillors or other members of the partnerships for their services. At present, a council can choose to award councillors a special responsibility allowance if their duties are over and above what might normally be expected. However, the Local Governance (Scotland) Act 2004 made provision for an independent committee to examine all issues related to councillors’ remuneration, especially salaries and allowances. That committee will report its findings before the 2007 elections, but at this stage we can only speculate on them. Therefore, it might be best to retain flexibility on remuneration. I ask Paul Martin not to move amendment 49 to allow the Executive to consider appropriate drafting. Once I have given the matter of remuneration further consideration, I undertake to come back at stage 3 to make provision on it in the bill.

Chris Ballance (South of Scotland) (Green): Amendments 43, 46 to 48 and 50 are principally about democratic accountability and keeping accountability with elected rather than selected members. As the minister has acknowledged, a wide range of evidence on the issue of external members of regional transport partnerships was presented at stage 1 by TRANSform Scotland, central belt local authorities and various other organisations. Strathclyde Passenger Transport has objections to the proposal in the bill, and Charles Gordon of Glasgow City Council has said that it would severely restrict the democratically accountable element of the regional transport partnership.

The secondary question, which the minister has acknowledged but has not really addressed, centres on the possibility of business interests voting on the spending of public money. He has accepted that such concerns are valid in relation to dissolving the RTPs; however, I suggest that they are also valid when it comes to spending the very considerable amounts of money that will pass through the transport partnerships.

The other danger is that the inclusion on RTPs of external members, in particular from the business community, could lead to the distortion of transport policy in favour of companies’ private interests rather than the public interest. It is notable that the bill contains absolutely no requirement for representation from passengers or user groups, which I believe will prove to be a real lack in transport planning. Passing the bill as it stands would almost certainly mean that RTPs would listen only to the business community’s views and not at all to the views of the travelling public. My amendments, which seek to delete various elements of section 1, would be extremely important in ensuring that the RTPs run smoothly and that any decisions on transport policy, which are some of the most important decisions that local authorities make, remain where they should be: in the hands of elected local representatives.
Paul Martin (Glasgow Springburn) (Lab): On amendment 44, I welcome the minister’s commitment to ensuring that external members play a part in RTPs. After all, we are looking to extend such partnerships. I say to Chris Ballance that the Scottish Executive has never committed itself to giving business people the capacity to vote in the Scottish Cabinet or in any other part of Government. Amendment 44 makes it clear that, although partnership with the business community is welcome, business should be excluded from such roles in Government, particularly if they come with the ability to vote.

Mr Ballance’s experience differs from mine. I have found that the business community has made a valuable contribution to several layers of Government without having been given the right to vote in the process. We should not only value the role that elected members can play and ensure that they are able to vote, but value those who share their business experience. Moreover, we should acknowledge that elected members can also represent business communities, and have done so well at various levels of Government. As a result, although I welcome some of the minister’s comments, I will still move amendment 44.

I acknowledge the minister’s concerns about amendment 45 and take on board his points about the importance of weightings in larger authorities. Perhaps I will return at stage 3 with other wording, but for the moment I will not move amendment 45.

I lodged amendment 49 to ensure that there are opportunities for appointments to the transport partnerships to be made and opportunities to provide remuneration for those who will play a significant role in the partnerships. I welcome the fact that the minister will revisit the issue at stage 3 and so I will not move amendment 49.

Amendment 52 is consequential on amendment 49, so I will not move it, but I look forward to hearing the minister’s comments at stage 3.

Fergus Ewing: If we are to have regional transport partnerships, they should be provided with a wide range of strong powers. If they do not have such a range of powers, they will not be able to deliver. The minister himself said when he originally argued for RTPs that they must have powers to deliver.

The amendments on the composition of and who should serve on regional transport partnerships improve the position, allow flexibility and deal with the difficulty under the bill as introduced of being able to appoint only one councillor from large councils, which would create problems such as a lack of balance in the representation of the parties that are represented in large local authorities. I also accept the argument that the position of HITRANS and, in particular, the views that witnesses from the northern isles expressed at stage 1 have been taken into account. The Scottish National Party welcomes that and the flexibility that the amendments will allow for. We also support amendment 44, which would ensure that “only councillor members may vote”, and we hope that Mr Martin will move it.

On Mr Ballance’s points, it is important that a wide range of expertise should be represented on RTPs. Councillors have a great deal of experience, but we want to look more widely than councils alone: we want experts, business people, passengers and user representatives. We want a wide variety of skills, expertise and experience to be brought to bear on the regional transport partnerships’ tasks. To single out business people as always acting out of self-interest seems to me to argue from dogma rather than from experience and common sense.

Therefore, the SNP will not support Mr Ballance’s amendments 43, 46, 47, 48 and 50 but will support the minister’s amendments 4, 13, 14, 17 and 27, which start to put a bit of flesh on the skeleton of the Transport (Scotland) Bill.

Bruce Crawford (Mid Scotland and Fife) (SNP): I ask Chris Ballance to reconsider his position, because what Paul Martin will achieve with amendment 44, if it is successful, will introduce much of what Chris Ballance said he wanted to happen but with a lot more common sense.

I was involved in local government over a number of years, and the council in which I was involved had a leisure trust that ran its leisure facilities. Only councillors had a vote on that body, but a host of different interests, in particular users—I do not think that we want to deny the users an opportunity to be involved in future regional transport partnerships—were able to come to and participate in the trust’s meetings and to give us their expertise and knowledge. That brought much gravitas to the decision-making process, which worked well. People came along and contributed, but they were not remunerated as is envisaged in some of today’s discussion, because many of them were committed to the community and happy to impart their knowledge to improve services.

That balance is the right one. If Chris Ballance were not to move his amendments but get behind Paul Martin’s amendment 44, he would achieve much of what he wants to achieve but with a degree of balance that would enable us to draw on the expertise of others to help regional transport partnerships to deliver much-needed changes to Scotland’s infrastructure.
Mr David Davidson (North East Scotland) (Con): We are trying to ensure that we set up partnerships that include people who can play a part—that is the key issue—so we must involve service providers as well as users. We should not prescribe a standard model that must fit all, with no possibility for variation. We heard about the situation in the Highlands and Islands; if the region thinks that it has found the best way of running a partnership that can deliver, I cannot understand why there should be a problem. At this stage, I am not interested in considering in detail matters such as remuneration. At the start of the process, we must ensure that all stakeholders, including users' representatives, are involved.

The minister and I represent an area in which there is a successful partnership, which would have been cast out had not the minister lodged amendments that would support the north-east Scotland transport partnership, for which I am grateful. It is vital that we recognise excellence. If we can enhance the approach, that will be fine, but we should not take a prescriptive approach that implies that councillors know best, which is not necessarily the case. We must ensure that working models can be developed in which expertise is noted and used and in which people are welcome to state a view.

I am a former councillor, so I understand why councillors want to vote on money that would be requisitioned from their councils' budgets. However, non-councillors should not be excluded from serious votes about performance and plans, but should have full freedom to vote on such matters.

Pauline McNeill (Glasgow Kelvin) (Lab): I listened carefully to the debate, which is crucial. From a Glasgow perspective, I am interested to know what the new west of Scotland transport partnership would do that SPT already does. I looked at SPT's membership lists and considered the break-up of authorities and it struck me that the amendments in the minister's name would enable quite a small number of people to make the decisions that are currently made by a much larger group. I understand that there is a debate about waiting and about whether partnerships should include a maximum of four councillors. In his summing up, will the minister demonstrate the benefits of an approach in which a smaller group makes decisions, particularly in relation to the west of Scotland regional transport partnership?

Nicol Stephen: From the outset, the Executive's intention has been to ensure that the new regional transport partnerships will be effective decision-making bodies that can make a difference to regional transport throughout Scotland by developing and delivering regional transport strategies. That is why we are allocating £35 million per year to funding the new bodies. In general terms, I want the new partnerships to be smaller than some of the large existing bodies, to allow for speedier and more effective decision making.

The number of councillors on the new west of Scotland transport partnership will be roughly half the number on the Strathclyde Passenger Transport Authority, which includes 34 councillors, so about 17 councillors will be included on the new body and the inclusion of outside representatives will bring the number up to 24. It is a matter of judgment, but I think that a meeting at which 24 people sit round the table is about as large as I would want such a group to be if there is to be constructive discussion and engagement by all. I guess that there is about that number of people round the table at which we are sitting. Once a group starts to get bigger than that, it becomes more than a board or a committee and starts to feel like a council meeting or a full-sized council discussion.

When I attended meetings of the voluntary regional partnerships, it certainly struck me that in the bigger bodies—with all the members sitting round the table, often with officials alongside them—there is a relatively limited opportunity for everyone to get involved. If they do, it becomes much more like the round-table discussions that are held in the European Union, where everybody gets their say and contributes. It takes a long time to go round the table, which is not the best way in which to make decisions. That is not a criticism of what happens at the moment in SPT, but a reflection on how I would like the new bodies to operate. I hope that that is a reasonable explanation.

I thank Paul Martin for proposing not to press amendments on which he is prepared to come back at stage 3. I have given him reassurances and guarantees—I shall certainly address the issues to which I referred.

On the role of outside representatives, the first thing to remember is that about two thirds of the membership of the bodies will continue to be elected local government councillors, so local authorities will have a central role in the new regional transport partnerships. However, I believe that it is important that all users and all interests be involved in the bodies and that they are genuinely inclusive partnerships. There will be strict conflict-of-interest rules. If any individual—a councillor, somebody from one of the voluntary organisations or a business person—has a conflict of interests, there should be strict rules that will need to be strictly enforced.

It is appropriate that business interests be involved. Transport is vital to business and to
Scotland’s economy and future economic strength. Business interests have responsibility for large amounts of Government revenue at the moment; for example, decisions in local enterprise companies and in Scottish Enterprise are taken predominantly by business interests. In the case of the new partnerships, two thirds of the representatives will be from local authorities. In the current structure of government, there is a wide variety of situations in which business and other outside interests can be involved in decision making.

As is the case with the current voluntary partnerships, most of the outside interests will be individuals from representative bodies such as chambers of commerce, the Scottish Council for Development and Industry, the Confederation of British Industry Scotland and other business organisations, as well as members of voluntary groups. I hope that some of the voluntary groups to which Chris Ballance referred will be interested in being involved. User groups and passengers must also be involved in the new regional transport partnerships, so there will be a wide cross-section of representation.

I give the assurance that individual regional partnerships will be able to propose the outside representatives that they wish to include. There should be an open approach. After having made a choice about outside representatives, with ministers having been involved in the first stage of appointments, it will be very much for regional transport partnerships to take the lead. At the very least, I would want outside representatives on regional transport partnerships who are already able to vote to continue to be able to vote, if the RTP wished that to be the case. We are moving from voluntary partnerships to statutory partnerships and we want to strengthen the partnerships and give them more powers, so I cannot see the logic in removing the voting rights that some members of partnerships currently have.

I ask members of the committee to take that issue seriously and to think hard about the sort of structure that they want in the future. It is an important issue and one that goes to the heart of our objectives for the new regional transport partnerships. We want them to be effective new bodies and we want partners to be fully engaged in those new bodies and not to feel that they are in any way second class. At the important point in the life of a new regional partnership when it really comes to the crunch and there is a vote—that should be rare, but we must recognise that there will be votes from time to time—it would be unfortunate if the partners from outside local government were asked to stand back.

Michael McMahon: Based on the minister's response, I am happy to accept that he may be able to come up with a better form of words than I have done in amendment 42, and that he can address the issue that I tried to cover by coming back with an amendment at stage 3. I will not move amendment 42. It refers to an area that was of great concern to the committee during evidence taking. Although the minister is right to say that the regional transport partnerships should include expertise from as wide a range of organisations as possible—in principle, that is a sound basis on which to move forward—there are other principles with which that collides, such as accountability. On accountability, Paul Martin has got it right.

Chris Ballance suggested that no one other than councillors can make decisions, form policies or bring to the table anything that would help regional transport partnerships to work. I do not believe that, but I agree entirely with what Bruce Crawford said. There is a balance to be struck and Paul Martin has struck the right balance with amendment 44, which I hope he will press. Where principles collide, as they appeared to do in the earlier debate, we should favour accountability and allow councillors to make good decisions on transport spending, based on information that they draw from as wide a range of people in the community as possible. If we agree to amendment 44, and if we can agree on the basic principles in section 1, that—together with the minister's amendments—should mean that we strike the balance that Bruce Crawford seeks.

The Convener: I like the references to balance and the accusation that Chris Ballance is not achieving it.

The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

Against
Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Amendment 41 agreed to.

The Convener: Chris, were you trying to ask a question?

Chris Ballance: I was not sure whether you were going through all the amendments just now, and if so—
The Convener: We will go through them one by one when we reach the place in which they fall in the bill. When we reach your amendments, you will have the opportunity to say whether you wish to move them.

Amendment 42 not moved.

Amendment 4 moved—[Nicol Stephen]—and agreed to.

The Convener: Amendment 5, in the name of the minister, is grouped with amendments 6, 7, 8, 10, 11, 12, 18, 19, 22, 23, 26 and 28.

14:45

Nicol Stephen: The amendments are various and minor and are needed to clarify that regional transport partnerships may be created that consist of only one local authority plus other external partners. As I have said previously to the committee, I was not full of enthusiasm for such an arrangement because I believe that the partnerships will, in general, work best where more than one council is involved and where there is genuine partnership working among local government bodies. Nevertheless, I have listened to the representations that have been made by others—in particular, I have discussed the issue in some depth with Dumfries and Galloway Council and its partners—and I have noted the committee’s recommendation on the issue. As I explained to the convener in my letter of 5 April, I propose to create a separate single-authority regional transport partnership for the south-west of Scotland; the minor amendments in the group that is under debate are necessary to achieve that.

The agreement with Dumfries and Galloway Council is that it will create a model 3 partnership, which will involve transfer of the council’s current public transport powers, as happens at the moment in the west of Scotland in the SPT area. Those powers will move to the new Dumfries and Galloway regional transport partnership. That is an important step, which I welcome and which reflects the comments of the committee. The committee has generally felt that such bodies need to be as strong as possible as early as possible. The proposed Dumfries and Galloway regional transport partnership is, therefore, an important step forward.

I will leave it at that. If we are to have regional transport partnerships that cover only one local authority area, we must amend the legislation accordingly.

I move amendment 5.

The Convener: I acknowledge the Executive’s movement on the issue, which follows the recommendation in the committee’s report. I commend the Executive for its response to the issues that were raised in that report.

Mr Davidson: I, too, congratulate the minister on taking on board a very sensible recommendation.

Amendment 5 agreed to.

Amendments 6 and 7 moved—[Nicol Stephen]—and agreed to.

The Convener: Amendment 43, in the name of Chris Ballance, has been debated with amendment 41. I ask Chris Ballance to move or not move amendment 43.

Chris Ballance: I continue to have two concerns—

The Convener: I am asking you just to move or not move the amendment.

Chris Ballance: Can I briefly explain two concerns that I would like the minister to address at stage 3?

The Convener: I am sorry, Chris—we cannot enter into further debate at this stage.

Amendment 43 not moved.

Amendment 44 moved—[Paul Martin].

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Amendment 44 agreed to.

Amendments 45 to 50 not moved.

The Convener: Amendment 51, in the name of Paul Martin, is in a group on its own.

Paul Martin: Amendment 51 is a mainly technical amendment regarding the establishment of committees by the regional transport partnerships. I would welcome some indication from the minister of what mechanisms will be put in place in that respect. It is mainly a probing amendment to ensure that we put in place some guidance or—possibly—legislation to allow for the establishment of such committees.

I move amendment 51.
Fergus Ewing: I have some questions for the minister. Can he explain how he sees the RTDs operating in practice in relation to committees? Can he compare that with how SPT operates? Will the RTDs operate on a similar basis? Will there be a committee for each mode of transport in respect of which powers are conferred on the RTDs? Will there be separate committees for road, rail and planning issues and projects, for example? Can he give a flavour of how those bodies will operate in practice? It is clear that it would be difficult to do all the business in plenary meetings—that is, by one large committee.

Nicol Stephen: I will respond first to Fergus Ewing's questions. I have always seen the statutory regional transport partnerships as developing from the existing voluntary partnerships but having more authority, more funding and more power to make real differences in transport in their respective areas. I do not think that that will be achieved by my being prescriptive about how they should operate and whether they should all establish committees and sub-committees. Nevertheless, I hope that they approach the task in an integrated way, which may mean not having separate committees for each mode of transport. If they have separate committees, I hope that they will ensure that the integration of the different modes is central to all that they seek to do to in making public transport more attractive to passengers and others in their areas.

I am convinced that we must in the future shift the balance of investment towards public transport to make our buses, railways and tram systems—when we eventually have them—more attractive. Those are the challenges for all the regional transport partnerships. In addition, at least two of the regional transport partnerships will have significant ferry responsibilities, which they will also want to address appropriately.

The Executive can agree, in principle, to amendment 51. The first part of the amendment relates to the creation of committees. We do not require legislative back-up to allow the RTDs to create committees. For the avoidance of doubt, I refer the committee to paragraph 7 of schedule 2 to the draft Regional Transport Partnerships (Establishment and Constitution) (Scotland) Order 2005, which enables partnerships to establish committees and sub-committees and to refer matters to those committees.

The second part of amendment 51 relates to delegation. Having taken legal advice, we feel that there will be benefit in there being clear reference to delegation in the bill. If Michael McMahon is willing, I ask him to withdraw the amendment so that we can bring back appropriate wording at stage 3 to give effect to the second part of the amendment.

The Convener: Does Paul Martin want to respond to the debate and press the amendment?

Nicol Stephen: I am sorry; I should have said Paul Martin rather than Michael McMahon.

The Convener: I am sure that they will both take it as a compliment; you hold them in such high esteem.

Paul Martin: That comment aside, I am happy to accept the minister's commitment to consider the matter at stage 3 and I seek leave to withdraw amendment 51.

Amendment 51, by agreement, withdrawn.
Amendment 52 not moved.
Section 1, as amended, agreed to.

Section 2—Dissolution of RTPs

Amendment 8 moved—[Nicol Stephen]—and agreed to.

The Convener: Amendment 9, in the name of the minister, is grouped with amendments 24, 69, 25, 70, 71, 72, 29, 30, 74, 75, 76, 31, 36, 39 and 40. If amendment 24 is agreed to, amendment 69 will be pre-empted.

Nicol Stephen: There are many amendments in the group so I will try to move through the issues as swiftly as possible. However, inevitably perhaps, my speaking notes are fairly lengthy.

I have previously assured the committee that I strongly support its desire that regional transport partnerships should take on more functions from ministers as well as from councils, over time and where that is felt to be appropriate locally. I welcome the spirit of amendments such as 70 and 72, which seek to force the pace on the issue. However, I am sure that members appreciate that, as with the debate that we have just had about voting rights, there is a degree of caution among councils about the transfer of functions to a new body. As the regional partnerships develop and are seen to be successful, local views will change. There are several amendments in the group that seek to encourage the development of regional transport partnerships, and I welcome that.

The bill already includes the option of functions being exercised by a regional transport partnership concurrently, rather than the powers being transferred away from councils. That is one way in which councils' concerns can be addressed. Amendments 9 and 29 represent another.

It is possible that, over time and in view of changing circumstances or changes in the strategic focus of an RTP, the partnership and its constituent councils might decide that a function that was transferred to the RTP would be better
returned to the council. The same could apply to functions that were transferred from Scottish ministers. We do not expect that to happen often, or for such a decision to be taken lightly. I do not want transport functions to be moving backwards and forwards between the relevant bodies at the whim of a new set of councillors or, indeed, a new set of ministers. However, I am persuaded that to have no such provision—to transfer functions with no possibility of their return to the relevant body—would not be sensible and I am grateful to the Subordinate Legislation Committee for highlighting that omission, which we seek to address through amendment 29.

Amendment 39 requires that the order just described is added to the list of those to which the affirmative resolution procedure applies.

15:00

Amendment 9 is more technical: it clarifies that functions, once transferred from a particular body to a partnership, can be returned to the body that originally exercised the function, if one or more partnerships were to be dissolved—for example, to be reconstituted with different boundaries. We would expect most of the functions of the old partnerships simply to transfer to the new ones. However, a council might move from a partnership with a large number of transferred functions to one that has fewer functions. Without this provision, that council would have no way of regaining the powers that it had previously ceded to the partnership. You will see that we are trying to cover all possibilities and potential options for the future.

Amendment 40 requires that the order just described is added to the list of those to which the affirmative resolution procedure applies.

In the same spirit of wanting to empower regional transport partnerships, amendments 24, 25 and 30 aim to provide a means of moving more quickly on the conferring of functions. Under the current provisions of the bill, the only statutory function that an RTP will have from its creation will be that of drawing up a regional strategy. That is an important function and I am keen that it remains the focus of the efforts of the RTPs during the first year. However, as the committee heard during stage 1, the voluntary partnerships have been delivering and I do not want to interrupt the momentum that has been created. I propose therefore that certain functions should be given to all the RTPs at the time that they are created, or soon afterwards. However, it is clear that few local authorities would welcome passing on functions in their entirety to an RTP at such an early stage in the process and without a strategy having been agreed. I intend that the RTPs should receive only concurrent functions prior to the completion of their strategies. I do not expect the number of those functions to be large; exactly what they are will be the subject of further discussion. However, it is possible that implementing cross-boundary bus lanes or promoting regional park-and-ride facilities could be useful functions for an RTP to have.

Amendment 24 removes the requirement in section 10 that an order that confers functions is made only once a strategy is in place. Amendment 25 partially reintroduces the requirement by requiring that any functions order that is made once the strategy is in place is based on that strategy. Finally, section 11 requires an RTP to carry out its functions in accordance with its strategy and any directions that are issued to it by Scottish ministers. Amendment 30 clarifies that an RTP can nevertheless exercise those functions in the absence of a strategy but only until a strategy is put in place.

Although I have a significant amount to say about amendments 70 and 72, I will shorten and summarise my comments at this stage. Perhaps I will be able to pick up on some of the points that are in my speaking notes in my wind-up speech. In section 10, ministers have significant statutory powers to transfer powers to the regional transport partnerships. We have said that we want a strong partnership with significant powers in the west of Scotland and I repeat that comment this afternoon. Amendments 70 and 72 have a desire to spell out the sort of powers that ministers should be encouraged to transfer to the partnerships, but I do not want to be restrictive, as that might be a concern for the lawyers and those who are giving ministers drafting advice. It may be the case that we should bring back some of the wording of these amendments at stage 3 to make it clear that the Executive is in favour of considering the transfer of powers, but without prejudice to the generality—to the fact that we want to leave options open. If regional transport partnerships came forward with sensible proposals for the transfer of powers, we would be willing to respond positively to those proposals. I will leave it at that.

Without getting deep into the technicalities of it, we believe that amendments 69, 74, 75 and 76 are unnecessary. Section 126 of the Scotland Act 1998 defines the word “function” so as to include powers and duties. The word “powers” is already, by legislation, part of the word “function”. Therefore, it seems that those amendments would be unnecessary.

Amendment 31 gives effect to our commitment to ensure that public bodies act in a manner that encourages equal opportunities and that, in particular, they observe the equal opportunities requirements. The need for a specific provision in that regard was drawn to our attention by a
number of members of the Parliament as well as by the equalities co-ordinating group, which is an umbrella grouping of faith, race, gender and disability interests.

Amendment 36 will enable more flexibility in how RTPs, councils, the Scottish Executive and its transport agencies work together. The bill already provides for the transfer of functions from the councils and the Scottish ministers to regional transport partnerships and, in the case of rail functions, from SPT to the Scottish ministers. It also already provides for the conferring of functions on the RTPs to be exercised concurrently. This amendment will, therefore, be useful in a number of ways.

The amendment is a response to the committee’s recommendation that a clearer commitment be made on the face of the bill to the role of the RTPs in rail policy. I will use this provision to conclude formal arrangements for the continuing role of the west of Scotland transport partnership in the development, management and monitoring of the rail franchise in the west.

I have also explained to the committee that, although the RTPs will start by focusing on their regional strategies, it is my intention that they will take on more functions over time. I realise that that is not something that all councils are currently enthusiastic about and this amendment will provide the option of transferring certain functions to the partnerships and making certain arrangements for their delivery by the constituent councils. Policy decisions would be taken at a regional level but the operational capacity would be retained at a local level. That will not be appropriate in all cases and the efficiency of such an approach would need to be carefully considered. However, it gives some additional flexibility to RTPs and councils. In the same way, it would be possible for the Executive to make arrangements with RTPs for the exercise of some of the Executive’s transport functions if a full transfer were considered to be a step too far.

I move amendment 9.

Michael McMahon: I will deal with amendments 69 and 74 to 76 by saying that I accept the minister’s point about the word “powers” being included in the definition of the word “function” in the Scotland Act 1998. I will, therefore, not move those amendments. I lodged them in order to secure clarification and I accept the clarification that we have received.

However, I do not understand the minister’s concern about amendment 72. Having heard the comments of the witnesses who came to the committee, I am aware that a number of organisations would like to know exactly what the ministers mean when they talk about the powers that could be transferred to them and would like further clarification of how far the RTPs could go in developing strategies and what areas they would be concerned with. If that clarification is required, I do not see why it cannot be included in the bill.

The key word in amendment 72, which is fairly lengthy, is “may”. The amendment simply says that the ministers could, if they wished, transfer powers to the RTPs in relation to “the planning, co-ordinating and implementation of measures to introduce road user charging … strategic planning across the Transport Partnership’s area … responsibility for tolled road bridges … developing and taking measures to support the development of rail services within the Transport Partnership’s area” and so on.

Those are powers that the ministers may give to the RTPs. There is no harm whatsoever in saying to the RTPs that they can develop strategies along those lines and that is the purpose of amendment 72. I would like members to bear in mind that I am saying not that ministers must transfer those powers to the RTPs, but that they may do so. The minister has said that he has tried to indicate in other amendments areas in which the ministers have powers to give functions to the RTPs, but he has not specified what those functions are. The list is not definitive; I would be happy if the minister were to add to it or take away from it at stage 3. It would be useful to establish that it is not wrong for the bill to specify what powers the RTPs could have. I hope that members agree that amendment 72 usefully serves that purpose.

Fergus Ewing: In a way, it might have been better to discuss the strategies first, because the bill deals with the production of strategies before it addresses the powers that RTPs can exercise. However, that is not reflected in how the amendments are grouped.

I have a number of points on amendments 70 and 71, which are in my name. They are meant to complement amendment 72. Michael McMahon was correct to state that the RTPs should have powers to deal with, for example, any referendum on a congestion-charging proposal. It seemed that the proposal for Edinburgh had about as much chance of success as Robert Kilroy-Silk has of becoming Prime Minister after the general election. Those who proposed that toll would acknowledge that the referendum should have been conducted throughout the Lothians and that it was a fundamental flaw for one small council to make a proposal on which the council tax payers in other areas did not have a vote. Michael McMahon was correct to identify the need for such a power.

In addition, the functions of the roads authority should be in the hands of the regional body, as
should powers in relation to tolled road bridges and matters concerning the development of rail services and the planning and co-ordination of ferry services. I would be interested to hear how the minister thinks that that provision would relate to Caledonian MacBrayne and other ferry operators. The RTPs should also have a responsibility in respect of any airport.

The SNP will support amendment 72, which complements amendments 70 and 71. I hope that when the minister responds he will recognise that amendment 72 contains the word “may” and that it is capable of being further amended, should the Executive believe that, for technical reasons, it needs to be tidied up at stage 3. I hope that that will not be used as a reason to oppose the amendment, because we all know that it is possible to make technical mistakes in amendments, which often need to be corrected at stage 3.

On amendments 70 and 71, I agree with the minister’s assertion that the RTPs need more funding, more authority and more power if they are to be meaningful. That goes back to the basic argument that if Scotland is to have RTPs, they must have strong powers; they must have teeth, not dentures, and they must be tigers, not tabbies. If they fall into the category of the denture-fitted tabby, people will rapidly come to the conclusion that they are not worth having and that £35 million is far too expensive a price tag for the most useless pet in Scotland. That is our general argument.

On the specifics, I acknowledge SPT’s assistance in giving me a technical description of its powers. By setting out the powers that SPT has, the intention is to provide a model for the powers that all the RTPs should have in relation to public transport by bus, contracts, ticketing issues and projects. It would seem logical for such bodies to have powers in respect of major projects. There is an interesting interface between the responsibilities of Parliament, the national agency and the RTPs in that regard. It is difficult to envisage a project such as the Glasgow airport rail link going ahead entirely on a national agency basis, given that there would need to be strong local and regional input. Just as there is a strong argument for a regional body to decide about congestion charging, so major projects affecting parts of Scotland should also be largely in the hands of regional transport partnerships. That said, it would be a fine, difficult decision, because many such projects have implications for the whole transport network outwith the individual area. However, the focus requires to be at the most local level.

15:15

Amendment 75 seeks to serve those purposes. I hope that I am not guilty of technical infelicities here; I will not try to blame SPT for providing me with a technically flawed amendment if there are technical objections to it. The specific aim is to provide what the committee sought in its stage 1 report: strong regional transport partnership bodies to take our transport system forward into the future.

I turn finally, and briefly, to amendment 71. The RTPs may have stronger powers spelled out in the bill as I have described, but not all the existing voluntary partnerships throughout Scotland have had the experience of exercising powers at that level. Therefore, although amendment 71 is a probing amendment, which does not have my 100 per cent commitment and is not necessarily the right approach, it would provide a different framework for how to proceed.

The minister has said that powers will be considered later and that he is sympathetic to the wording of amendments 70 and 71, but he has not said what powers the bodies should have. We are arguing that they should have strong powers, but we acknowledge that not all the voluntary partnerships will be in a position to exercise the full power to carry out a major multimillion pound project in their area. It is unrealistic to expect that a body that has had no experience of such a task could go overnight from devising partnerships on a voluntary basis to running major projects. To encapsulate the difference between the positions that the minister and I have set out, the minister has said that the RTPs might acquire powers sometime later and we have said that they should acquire the right to have those powers unless they opt out.

The committee has always displayed a lot of good will in its deliberations and we never really want to get involved in party-political stuff. However, I have a more general criticism. If the meaning of provisions is not clear during the process of passing a bill, that paves the way for future problems. If we do not know at that time what the law is and what it is intended to do, the possibility of getting things wrong later is far greater. If we do not know exactly what the law that we are passing means, how can the public possibly understand what it means and know what we are trying to achieve with the RTPs? For that reason, it is important that we spell out the powers in the bill as Michael McMahon has argued quite correctly in his amendment 72, which we look forward to being moved and supported. I am concerned about leaving that to stage 3. Given that stage 3 proceedings can be pretty truncated—to put it euphemistically—there will not be the chance to have a full debate about the powers
then. I hope that the committee will be able to support the amendments in my name.

Margaret Smith (Edinburgh West) (LD): A number of committee members have a great deal of sympathy with many of the comments that Michael McMahon and Fergus Ewing have made about amendments 70, 71 and 72. There is a desire among committee members to see clearly spelled out in the bill exactly what powers are to be given to the RTPs, what powers are likely to be given to the RTPs and what the mechanisms are for doing that. We need that clarity if we are to believe that those organisations will have the powers that they will need to deliver the changes that we want. I ask the minister what specific problems he sees with addressing in the bill at least some of the issues that are raised in amendment 70. I am thinking about such things as quality partnership schemes and quality contract schemes—things that the committee looked at prior to my involvement with it. Those schemes are not functioning as the Executive hoped, and it is to be hoped that the RTPs will have some way of addressing that.

In relation to amendment 72, the point has already been made about road user charging. The minister will know that I was no supporter of the charging scheme that was the subject of a recent referendum by City of Edinburgh Council. Where it completely faltered was in the fact that there was no cross-party political support for it, not only in the city, but across the local councils. If that approach was to be taken elsewhere, it would seem sensible to secure, as a minimum, support for such a scheme at a regional transport partnership level, rather than have one council seeking to impose the scheme on its own. Having the Forth road bridge—which seems to be filling the pages of the Edinburgh Evening News nightly—in my constituency, I believe that responsibility for tolled road bridges is an important issue in regional transport delivery. It would, therefore, seem sensible to include that in the bill.

However, although I have sympathy for what Michael McMahon is trying to do through amendment 72, as it is currently drafted, would be open to legal challenge. That is not to say that I do not have sympathy with the views behind the amendment; it is simply that the amendment may need to be redrafted.

I would be interested to hear the minister’s comments on those two questions about amendments 70 and 72.

Bruce Crawford: We will not have many chances to get this right, as we will not have many chances to discuss a transport bill as we are doing today. I have found the Executive’s research into what happens in other European countries quite enlightening and salutary in many ways. It is clear about the amount of power that is required by regional transport authorities and partnerships to make the significant step changes. Many of the models that are described in the Executive’s research go beyond model 3, which is what was discussed in the consultation document, in the amount of power that they have. I am, therefore, grateful that Fergus Ewing’s amendment 70 seeks to enable transport partnerships to participate in community planning and that Michael McMahon’s amendment 72 seeks to secure a role for them in strategic planning across their areas. Such issues are crucial in making the huge changes that are required to be made to Scotland’s transport infrastructure. Many bodies on the continent have land use powers along the transport corridors, which enable them to make the decisions on acquisition and movement that are required to make the changes that need to be made.

We should welcome what Fergus Ewing is trying to do through amendment 70, which is to invest in all the transport partnerships at least the powers that are available to the existing SPT, and what Michael McMahon is trying to do through amendment 72, which is to add powers to their capacity. The amendments may not be technically bang on the button as far as the Executive’s draftsmen are concerned—I wait to hear what the minister says to Margaret Smith—but what members around the table are saying is a reflection of what was said in our committee report. The strong powers that the committee envisages for the regional transport partnerships go beyond what the Executive put out to consultation.

I hope that the minister can give us some sort of commitment that he is prepared to bring back to us something from the Executive that lays out how the partnerships will be able to take on stronger powers, beyond what is in the bill, so that we can deliver the bodies that will make the huge changes for Scotland; otherwise, as some commentators have said recently, we may be stuck with a third-world transport infrastructure that is not good
enough for our economy. The statistics that we have heard today say that we are going to lose 2 million people by 2073. How are we going to turn that around unless we have a successful economy? That is at the heart of the matter.

I have one final point to make about disability discrimination issues. Fergus Ewing’s amendment 70 proposes the insertion of new section 10(2A)(f) on the ability to adapt transport infrastructure “to facilitate improved travel by people with disabilities”. The longer-term ambitions of the Disability Discrimination Act 1995 can be achieved sooner if the money is made available, and we can even go beyond the requirements of the DDA and have a more inclusive public transport system in Scotland. I ask the minister to reflect on that point and on what further commitments he might be able to make in that respect.

The Convener: I assure Bruce Crawford that I will do my best still to be around in 2073, to prevent the Scottish population from dropping too much.

Mr Davidson: Earlier, the minister was talking about the generality of the transfer of powers and I got the impression that he was more concerned about procedures than about getting to the nitty-gritty of what the Executive, which introduced the bill, wants to achieve. I agree with other members that it is important that the bill makes clear exactly what is going on. We need to know clearly, and as early as possible, from the minister what powers he envisages are up for option. I agree that not every regional transport partnership will want to have all the powers, but, rather than having a series of discussions, we need to know at least what the framework will be. There will be situations in which several of the partnerships will have to work together anyway because of strategic routeing and so on.

Fergus Ewing’s amendment 70 is a bit of a curate’s egg: it is good in parts, but there are other parts about which I am not so sure. We all agree that the quality partnership exercise simply has not worked properly. I assume that, since the majority of members of the partnerships will be councillors, they will already be obliged to participate in community planning, so that part of the amendment is unnecessary. I agree with the provision on disability discrimination in proposed subsection (2A)(f), but I am not convinced by subsection (2A)(h), although it at least makes the effort to achieve a clarity that is distinctly lacking in the bill.

As for amendment 72, the example that Margaret Smith gave of the guddle in Edinburgh—when a council group tried to have its way on a matter that affected a region when the rest of the region did not agree—would not happen if the relevant power was transferred to a regional transport partnership. In my area, it is impossible to divide Aberdeenshire from the city of Aberdeen when considering the economy and the movement of people to and from work and going about their business.

I am a bit concerned that amendment 72 includes control of airports. I do not know how that could work. However, I can see a role for representation on RTPs of major airports such as Edinburgh, Dyce, Glasgow and Prestwick, so that there is better co-ordination. It is important to sort out not just who runs an air route, but how people access airports. Having used Prestwick, I know that it can be difficult to access. Whose responsibility is that? Aberdeen airport is within yards of a railway line but does not have a station that links with it. I am sure that everybody can think of similar examples. Airport membership of an RTP would be useful, but I do not support a move for RTPs to take over the running of such major businesses. However, airports and RTPs should co-operate more.

15:30

The Convener: I will make a few comments about four of the amendments. I agree with Fergus Ewing about Robert Kilroy-Silk’s limited chance of becoming Prime Minister. I would even go so far as to say that he has just the same chance as Alex Salmond has of becoming Prime Minister, but we will leave that to the electorate on 5 May.

As the minister outlined, amendment 36, which is in his name, attempts to address SPT’s concerns about having a role in the development, management and monitoring of the rail franchise agreement. The amendment would give the minister the power to allow for that. However, SPT has expressed concern that the bill does not contain enough to reassure it that that opportunity will continue. Amendment 36 is a move in the right direction and I will support it, but I ask the minister to consider whether further flesh needs to be put on the measure to reassure fully not only SPT, but members who represent the west of Scotland, that the new west of Scotland regional transport partnership will have sufficient powers at least to do as much as SPT can and—I hope—to achieve more.

Amendment 72, which Michael McMahon lodged, is permissive. As he said, it includes the word “may” and does not require ministers to transfer any of the functions listed to the new regional transport partnerships. That attempts to recognise Fergus Ewing’s point that some partnerships might want to take on more functions earlier than others, so they would not all be at the same stage early on.
Valid concerns have been raised about the airports provision in amendment 72. I believe that Michael McMahon’s intention was that functions relating to the Highlands and Islands Airports Ltd public sector operated airports might be transferred to the Highlands and Islands regional transport partnership. He will not be able to clarify that, because he will not have the chance to wind up, but I believe that that was his intention. I suggest to the minister that, if amendment 72 were agreed to, a stage 3 amendment could clarify the intention further. The broader liaison role with, as opposed to the transfer of functions from, the major central belt airports and Aberdeen airport could also be addressed at that point. Michael McMahon did not intend to suggest a transfer of functions from any major central belt airport. Other functions could be added to those listed in amendment 72 and there is potential to include a catch-all to make it clear that the list is not intended to be exclusive. If amendment 72 is agreed to, members and the minister should reflect on those matters before stage 3.

Although I understand Fergus Ewing’s position on a number of these issues, I urge him not to press amendments 70 and 71. They will not simply create regional partnerships with powers equivalent to those held by the existing SPT; in fact, those bodies would be much stronger. For example, they could decide to remove functions from Scottish ministers. Under the amendments, the Scottish ministers “must transfer” the functions set out in proposed subsection (2A)

“with the agreement of the Partnership”.

If the partnership in question said that it wanted a certain function, the Executive would be required to give it, even though the Parliament or ministers might have taken a different view. I do not recommend giving such powers to an organisation that would not have the direct democratic legitimacy of Scotland’s Parliament.

I am also concerned about the workability of the provision with regard to rail services. For example, amendment 70 refers to

“the power to specify which rail services should be included in rail franchises”.

Under the Westminster Railways Act 2005, Scottish ministers now have the power to sign off rail franchises, which is a sensible move for the Scottish passenger rail franchise. However, under amendment 70, up to six separate organisations would have to sign off the franchise at refranchising, which would make it very difficult to reach agreement on the shape of a future passenger rail franchise. It is quite right that such a power should lie with the Scottish ministers, but each of the bodies should have the opportunity to contribute to that process.

In that respect, I encourage the Executive to make a further response on these amendments in the way that I indicated when I referred to amendment 36. For those reasons, I encourage Fergus Ewing not to press amendments 70 and 71 at this stage and to consider setting out some of his proposals in subsequent amendments to amendment 72.

Do any other members wish to make a contribution at this point?

Dr Sylvia Jackson (Stirling) (Lab): I indicated earlier that I wanted to speak, convener.

The Convener: Sorry.

Dr Jackson: It is really nice to be at this committee instead of the Subordinate Legislation Committee, discussing the balance between what should be dealt with in a bill and in an order and following the issues through into the area of policy.

That said, I should note the Subordinate Legislation Committee’s concerns that, given the width of the power set out in section 10, the whole matter is to be dealt with “by order”. As Bruce Crawford has pointed out, all the evidence suggests that the functions of RTPs are a crucial matter, which we believe should be dealt with in the bill.

The question then is where one starts and stops putting things in the bill. In that respect, the phrase “may include” in amendment 72 probably gets over that problem. However, I remain unconvinced that an RTP should not have certain crucial functions. I will come back to that matter in a moment.

I took proposed paragraph (f) in amendment 72, which refers to

“responsibility for any airport having a strategic regional transport function”,

to mean that the RTP in question should have input into such an airport. I am not sure whether “responsibility” is the correct word to use, but I feel that amendment 72 contains enough for the minister to take the matter away and to consider putting something that we want into the bill. Indeed, the committee is unanimous on that matter.

On Fergus Ewing’s amendment 70, I take on board Bristow Muldoon’s point about the words “must transfer”. I am a bit concerned about the amendment, because the list in it involves some duplication, as the bill deals with community planning later on. There is perhaps too much detail in both amendment 70 and amendment 72. I think that amendment 72 would work at a broader, functional level, so perhaps we need to think about the matter again.
I ask the minister to consider amendments 72 and 70 and to lodge a stage 3 amendment based largely on amendment 72.

Nicol Stephen: I could pick over the detail of amendments 70 and 72 and give technical and legal reasons why they might be resisted, but I sense that that approach would not be productive. Having taken several bills through the Parliament, I have considerable experience of losing stage 2 votes and, on this occasion, I think that it would be particularly unfortunate if I was to encourage a vote to resist the amendments, particularly amendment 72, because I support the committee’s views—I want regional transport partnerships to take on new powers.

At times like this, I wish that there was a stage 2 ½ that would allow us to work together to develop good and sensible ideas and incorporate them into the bill. However, as the process stands, I suggest that, although the vote is unlikely to be this afternoon, we should accept amendment 72—there is wide support for it—but also consider some of the suggestions that are made in amendment 70. The Executive will consider everything in amendments 70 and 72 and try to draw up a stage 3 amendment that reflects the committee’s wishes and puts a greater onus on the RTPs so that, rather than having ministers approach individual councils to ask for the powers to be transferred, we encourage the partnerships to take on some of the least controversial of the powers fairly early in their lives.

I think that the Executive could draft an amendment that would get broad, if not unanimous, support from the committee, so I undertake to do that. Among the legal and technical reasons that have been given to me for rejecting amendments 70 and 72 are those that Margaret Smith described—for example, what would the implications be for airports that are in the control of BAA or of private operators if we were to pass amendments 70 and 72 in their current form? As Sylvia Jackson pointed out, paragraph 8 of schedule 1 already contains reference to community planning, which is mentioned in Fergus Ewing’s amendment 70. Assuming that amendment 72 is passed, I undertake to consider all the issues and, at stage 3, I will lodge an Executive amendment that tries to reflect the committee’s clear intention appropriately.

On amendment 36, the convener described exactly our policy intention on Strathclyde Passenger Transport, but I will continue to discuss with SPT how we can best achieve the policy intention that I have repeated clearly and strongly, I hope, on several occasions.

I will leave it at that for this afternoon, because I know that we are now over time. I hope that the intentions that we all have on the regional transport partnerships can be reflected in an appropriate amendment to the bill.

The Convener: As you point out, minister, it is unlikely that we will reach the decisions on most of those issues today, as we are already beyond the point at which I said that we would conclude. I propose that we take the decisions that take us to the end of section 4, after which we will move on to the next agenda item. We will continue our consideration of the bill at next week’s meeting.

15:45

Bruce Crawford: I seek clarification on one point. I am grateful for the minister’s positive comments, but I am slightly concerned that, if there is to be a stage 3 amendment, by the time the Parliament considers it we will be up against the wall. If members wanted to lodge an amendment to that amendment, the situation would start to get a bit messy. Will the minister write to us to lay out his intentions or to give us the amendment so that we have more time to consider it than we normally have to consider amendments at stage 3?

The Convener: I do not intend to put that to the minister directly as I do not want to reopen the debate, but I am sure that he has heard your request, which is not unreasonable.

Fergus Ewing: I have a brief point, convener. The minister spared us the technical criticism, but that information would be useful for many members as it would help to inform and improve the quality of the debate. If the committee could have the technical criticism, we could see where the technical faults exist and perhaps put them right, with the assistance of people who have an interest, some of whom are in the room and some of whom are outwith it.

The Convener: I will explore with the minister whether it is possible to make such information available. As I said, I do not want to reopen the debate.

Fergus Ewing: The minister is nodding, which is always welcome.

Amendment 9 agreed to.

Section 2, as amended, agreed to.

Section 3—Funding and borrowing
Amendments 10 to 13 moved—[Nicol Stephen]—and agreed to.

Section 3, as amended, agreed to.

Section 4—Administrative functions of RTPs
Amendment 14 moved—[Nicol Stephen]—and agreed to.
Section 4, as amended, agreed to.

The Convener: That brings us to the beginning of the next group of amendments. We will commence consideration of those amendments at our next meeting. I thank the minister and his officials for attending.

15:47

Meeting suspended.
Transport (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 4
- Sections 5 to 15
- Sections 16 to 31
- Section 32
- Sections 33 to 35
- Sections 36 to 46
- Schedule 1
- Schedule 2
- Schedule 3
- Schedules 4 and 5
- Schedules 6 and 7
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Schedule 1

Michael McMahon
Supported by: Paul Martin

53 In schedule 1, page 31, line 38, after <functions> insert <and in order to implement its strategy>

Michael McMahon
Supported by: Paul Martin

54 In schedule 1, page 32, line 13 leave out <purchase land compulsorily under sub-paragraph (1)(b)> and insert <acquire or purchase land under sub-paragraph (1)>

Michael McMahon
Supported by: Paul Martin

55 In schedule 1, page 32, leave out lines 15 to 17 and insert—

< ( ) A Transport Partnership may dispose of land or an interest in land.>

( ) Subsections 74(2) to (2H) of the Local Government (Scotland) Act 1973 (c.65) apply to a Transport Partnership as they apply to a local authority.>

Michael McMahon
Supported by: Paul Martin

56 In schedule 1, page 32, line 17, at end insert—

< ( ) For the purposes of its functions or business or in relation to the implementation of its strategies, a Regional Transport Partnership may—

(a) develop land in such a manner as it thinks fit;

(b) develop for use by other persons any part of its land which is not required for the purposes of its business;>
(c) where the use of its land for the purposes of its functions or business can be combined with its use for other purposes, develop the land by constructing or adapting buildings thereon for use wholly or partly by other persons;

(d) acquire land adjacent to its land, by agreement, for the purpose of developing it together with its own land; and

(e) sell or otherwise dispose of land or buildings assembled or developed.>

Nicol Stephen
15 In schedule 1, page 32, line 20, at end insert—

<(2) The power conferred by sub-paragraph (1) above on a Transport Partnership includes power to continue the promotion or opposition of private legislation in the circumstances set out in sub-paragraph (3) below.

(3) Those circumstances are—

(a) where the function in pursuance of which the legislation was first promoted or opposed was transferred to the Transport Partnership under section 10 above after the introduction of the Bill for the legislation;

(b) in a case where that function was transferred to the Scottish Ministers under section 12 above after the introduction of that Bill, where the Scottish Ministers have directed that the Transport Partnership specified in the direction is to continue the promotion or opposition of that legislation; or

(c) a combination of the circumstances set out in sub-sub-paragraphs (a) and (b) above.>
Section 5

Dr Sylvia Jackson
Supported by: Margaret Smith

57 In section 5, page 3, line 29, after <including> insert <improving transport links between all inhabited parts of the region, and>

Dr Sylvia Jackson
Supported by: Margaret Smith

58 In section 5, page 3, line 30, at end insert <, including changes in population and land use>

Paul Martin
Supported by: Dr Sylvia Jackson

59 In section 5, page 3, line 32, after <affect> insert—

<(  ) the meeting of statutory equal opportunities obligations;
(  ) the provision of transport services to a wide range of different users (including the socially excluded); and>

Dr Sylvia Jackson
Supported by: Margaret Smith

60 In section 5, page 3, line 33, after <there> insert <, the promotion of sustainable economic growth,>

Dr Sylvia Jackson
Supported by: Margaret Smith

61 In section 5, page 3, line 33, leave out <environment> and insert <promotion of environmentally sustainable transport policies>

Dr Sylvia Jackson
Supported by: Margaret Smith

62 In section 5, page 3, line 37, at end insert—

< (  ) the promotion of road safety and of safe public transport;>

Nicol Stephen

18 In section 5, page 4, line 18, after <councils> insert <or council>

Fergus Ewing

63 In section 5, page 4, line 20, at end insert—

<(2A) A Partnership’s transport strategy must include plans for the development or improvement, within the region, of—
(a) transport—
 (i) by road;>
(ii) by rail;
(iii) by air;
(iv) on inland waterways; and
(v) by any other mode of transport identified by the Partnership,

(b) access to, and usage of, all forms of public transport;
(c) transport services used, in particular, by persons experiencing social exclusion through unemployment, poverty or other economic factors, homelessness, geographical remoteness, ill health, or religious or cultural mores;
(d) the non-trunk road network; and
(e) any other matters identified by the Partnership.

(2B) Separate plans must be produced for each of the modes of transport mentioned in subsection (2A)(a) and for each of matters referred to in subsections (2A)(b) to (e).

(2C) Each plan mentioned in subsection (2B) must include—

(a) a statement of the overall objective of the plan;
(b) a list of the specific projects and initiatives relating to each plan which the Partnership considers should be implemented in order to meet the objectives of the plan; and
(c) an order of preference for each of the projects and initiatives, indicating how the Partnership considers they should be prioritised.

Michael McMahon
Supported by: Paul Martin

64 In section 5, page 4, line 23, at end insert <and to any current national transport strategy established by the Scottish Ministers>

Section 6

Nicol Stephen

19 In section 6, page 4, line 26, after <councils> insert <or council>

Nicol Stephen

20 In section 6, page 4, line 28, at beginning insert <subject to subsection (1A) below>

Paul Martin
Supported by: Michael McMahon

65 In section 6, page 4, line 29, at end insert <for approval>

Nicol Stephen

21 In section 6, page 4, line 29, at end insert—

<(1A) The Scottish Ministers may—>
at the request of a Transport Partnership made to them within 8 months of the creation of the Partnership; and

(b) if satisfied that there are good reasons for doing so, authorise the Partnership to submit its transport strategy to them later than the time limit specified in subsection (1)(b) above but not later than such date as is specified in the authorisation.

(1B) A Transport Partnership making a request for the purposes of subsection (1A) above shall, if so required by the Scottish Ministers, provide them with reports or information of such kind and in such form as they, for the purposes of that subsection, specify in the requirement.

Nicol Stephen
22 In section 6, page 4, line 38, after <councils> insert <or council>

Nicol Stephen
23 In section 6, page 4, line 40, after <them> insert <or, as the case may be, it>

Section 9

Michael McMahon
66 In section 9, page 5, line 29, at end insert—

<(  ) In drawing up joint transport strategies, Transport Partnerships shall have regard to improving transport between any cities or other major centres of population within the area covered by the Partnerships.>

Michael McMahon
67 In section 9, page 5, line 29, at end insert—

<(  ) In drawing up joint transport strategies, Transport Partnerships shall have regard to the transport policies of the Scottish Ministers.>

After section 9

Paul Martin
Supported by: Dr Sylvia Jackson
68 After section 9, insert—

<RTP / Health Board transport strategies>

(1) It shall be the duty of each Transport Partnership to prepare a strategy jointly with each Health Board whose area is covered wholly or partly by the area of the partnership.

(2) A strategy prepared under subsection (1) above must set out measures to secure the effective provision of public transport to persons using hospitals and other NHS facilities in the Health Board area.>
Section 10

Nicol Stephen

24 In section 10, page 5, line 35, leave out from <by> to <strategy> in line 37 and insert—

<(  ) as respects a Transport Partnership; and
(  ) by order,

provide for any statutory function relating to transport they>

Michael McMahon
Supported by: Paul Martin

69 In section 10, page 5, line 35, after <function> insert <or power>

Nicol Stephen

25 In section 10, page 6, line 3, at end insert—

<(  ) In making an order under subsection (1) above after the coming into effect of the Transport Partnership’s transport strategy, the Scottish Ministers shall have regard to that strategy.>

Fergus Ewing

70 In section 10, page 6, line 4, at end insert—

<(2A) The Scottish Ministers must transfer to each Transport Partnership transport functions conferring—

(a) the power to—

   (i) enter into quality partnership schemes;
   (ii) enter into quality contract schemes;
   (iii) enter into ticketing arrangements and ticketing schemes; and
   (iv) provide information about bus services;

as provided for in the Transport (Scotland) Act 2001 (asp 2)

(b) the duty to—

   (i) secure best value; and
   (ii) participate in community planning;

as provided for in the Local Government in Scotland Act 2003 (asp 1)

(c) the power to make agreements under section 20 of the Transport Act 1968 (c.73);

(d) the power to specify which rail services should be included in rail franchises;

(e) the power to make capital grants to third parties for public transport facilities;

(f) the power to make capital grants to adapt transport infrastructure in order to facilitate improved travel by people with disabilities;

(g) the power to make revenue grants for public transport facilities on services not requiring a Public Service Vehicle license; and
(h) the power to make agreements in relation to the purchasing, hiring or letting of rolling stock for rail services.

**Fergus Ewing**

71 In section 10, page 6, line 4, at end insert—

<(  ) But any function transferred under subsection (2A) can only be transferred with the agreement of the Partnership.>

**Michael McMahon**

**Supported by: Dr Sylvia Jackson**

72 In section 10, page 6, line 4, at end, insert—

<(  ) Functions referred to in an order under subsection (1) above may include—

(a) the planning, co-ordinating and implementation of measures to introduce road user charging;

(b) those functions of a Roads Authority within the meaning of the Roads (Scotland) Act 1984 (c.54)—

  (i) to secure strategic planning across the Transport Partnership’s area;

  (ii) to enhance the efficiency and effectiveness of arrangements for roads maintenance;

(c) responsibility for tolled road bridges;

(d) developing and taking measures to support the development of rail services within the Transport Partnership’s area;

(e) planning and co-ordinating ferry services; and

(f) responsibility for any airport having a strategic regional transport function within a Transport Partnership’s area.>

**Nicol Stephen**

26 In section 10, page 6, line 6, after <councils> insert <or council>

**Nicol Stephen**

27 In section 10, page 6, line 7, at end insert—

<(  ) Only councillor members may vote on a question whether to make such a request.>

**Nicol Stephen**

28 In section 10, page 6, line 14, after <councils> insert <or council>

**After section 10**

**Nicol Stephen**

29 After section 10, insert—
Alteration of RTP’s functions

(1) The Scottish Ministers may, by order, provide for any function of a Transport Partnership to be carried out by the person who originally carried it out—
   (a) instead of the Transport Partnership; or
   (b) concurrently with the Transport Partnership.

(2) In so providing, the Scottish Ministers shall have regard to the Transport Partnership’s transport strategy.

(3) Subsections (3) to (6) of section 10 above apply to an order under this section as they apply to one made under that section.

(4) In subsection (1) above, the reference to the person who originally carried out a function is a reference to the person who carried out the function immediately before the coming into effect of—
   (a) the order under section 10 above which transferred it to the Transport Partnership; or
   (b) if there have been two or more orders under that section transferring that function, the first of those orders.

Section 11

Nicol Stephen

30 In section 11, page 6, line 29, at end insert—

< ( ) Where a function of a Transport Partnership falls to be carried out before its transport strategy comes into effect, the Transport Partnership shall carry out the function in accordance with such directions as the Scottish Ministers may give it.>

Nicol Stephen

31 In section 11, page 6, line 29, at end insert—

< (3) A Transport Partnership shall carry out its functions in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.

(4) In subsection (3) above, “equal opportunities” and “equal opportunities requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46).>

After section 11

Paul Martin

Supported by: Dr Sylvia Jackson

73 Withdrawn
Section 12

Michael McMahon
Supported by: Paul Martin
74 In section 12, page 6, line 33, after <function> insert <or power>

Michael McMahon
Supported by: Paul Martin
75 In section 12, page 6, line 38, after first <function> insert <or power>

Nicol Stephen
32 In section 12, page 6, line 38, after <any> insert <statutory>

Michael McMahon
Supported by: Paul Martin
76 In section 12, page 6, line 38, at end insert <or power>

Nicol Stephen
33 In section 12, page 7, line 1, leave out <transport> and insert <the provision or regulation of rail services>

Nicol Stephen
34 In section 12, page 7, line 2, after <was> insert <immediately before the provision referred to in subsection (1) above>

Nicol Stephen
35 In section 12, page 7, line 2, leave out <under any enactment>

After section 12

Nicol Stephen
36 After section 12, insert—

<Arrangements for performance by RTP of certain transport functions etc.

A Transport Partnership may enter into arrangements with the Scottish Ministers, a council or any other person having statutory functions relating to transport being arrangements under which the Partnership—

(a) does, on behalf of the Scottish Ministers, the council or that other person, such things relating to transport as are specified in the arrangements;

(b) provides such services for the purposes of, or in connection with, transport as are so specified.>
After section 12, insert—

<Transfer of functions carried out under Transport (Scotland) Act 2001>

(1) Where the Scottish Ministers wholly transfer any function carried out by a Local Transport Authority under the 2001 Act—

(a) to a Transport Partnership under section 10(1) above; or

(b) to themselves under section 12(1) above,

any arrangement, scheme or proposal made, or any process commenced in respect of that function shall continue to have effect; except that any reference in that arrangement, scheme, proposal or process to the Local Transport Authority shall be construed as a reference to the Scottish Ministers or, as the case may be, to the Transport Partnership.

(2) In this section—

“the 2001 Act” means the Transport (Scotland) Act 2001 (asp 2).

“Local Transport Authority” has the meaning given to it by section 82(1) of the 2001 Act.>

Section 13

In section 13, page 7, line 8, at end insert—

<(A1) Where by virtue of sections 2, 10 or 12 above any function is transferred, Scottish Ministers shall ensure that the order transferring the function shall also provide for the transfer of staff appropriate to that function in compliance with subsections (2A) to (2E) below.>

In section 13, page 7, line 12, leave out from beginning to <former> in line 16 and insert—

<(2) Where a member of staff (the “employee”) transfers from the body who was carrying out the function immediately before the transfer (the “present employer”) to a new body who will be carrying out the function after the transfer (the “new employer”—

(a) the contract of employment between the employee and the employee’s present employer continues to have effect but as if originally made between the employee and the new employer; and

(b) the employee’s period of employment by the present>
Any order transferring functions under sections 2, 10 or 12 which would involve the transfer of staff must also make provision for the establishment of a staff board for the purposes of carrying out such functions in relation to the staff as the Scottish Ministers consider appropriate.

Before making an order of the sort mentioned in subsection (2A) above, the Scottish Ministers must consult such persons as they think fit.

Without prejudice to the generality of subsection (2A), such an order may confer on the staff board the functions of—

(a) considering and keeping under review the arrangements for the recruitment of staff by new agencies and Transport Partnerships and for the transfer of any staff from the present employer to the new employer;
(b) considering any staffing problems arising out of, as a consequence of, or in connection with any transfer of functions under sections 2, 10 or 12;
(c) advising the Scottish Ministers of the steps required to safeguard the interests of transferred staff; and
(d) advising the bodies from whom and to whom functions are transferring on what steps are required in relation to the interests of transferred staff.

The Scottish Ministers may give directions—

(a) to any staff board as to its procedure and to the carrying out of its functions;
(b) to any body from whom and to whom staff or powers are being transferred in respect of providing information required by the staff board; and
(c) to any body described in paragraph (b) above with respect to the implementation of any advice given by the staff board.

The Scottish Ministers shall provide for the funding of all costs and expenses incurred by any staff board.

In section 13, page 7, line 29, after <property> insert <, rights>

In section 13, page 7, line 31, after <property> insert <, rights>

In subsection (1) above, “works in roads” includes road works within the meaning given by section 107(3) of the 1991 Act, works for roads purposes within the meaning given by subsection (2) of section 145 of that Act and major works for roads purposes within the meaning given by subsection (3) of that section.
Section 17

Nicol Stephen

82 In section 17, page 9, line 30, at end insert—

<(3A) The Scottish Ministers may by regulations—

(a) provide that the payment to the Commissioner of the prescribed fee is a condition of access to the SRWR as mentioned in subsection (3) (and different fees may be prescribed for access for different purposes), and

(b) make other provision as to the payment to the Commissioner by such persons as are prescribed of such amounts as are prescribed.

(3B) Amounts received by the Commissioner under subsection (3A) are to be applied by the Commissioner to the keeping of the SRWR.>

Nicol Stephen

83 In section 17, page 10, line 10, at end insert—

<(  ) under subsection (2) of section 56 of the Roads (Scotland) Act 1984 (c.54), given an applicant for consent for road works or excavations notice of affected statutory undertakers,

(  ) under subsection (8) of that section, given notification of unlawful works removed or unlawful excavations filled in,

(  ) under section 58(1) of that Act, given permission for the occupation of part of a road for the deposit of materials or for the erection of staging or scaffolding projecting over part of a road,

(  ) under section 61(1) of that Act, given permission for the placing, leaving, retention, maintenance, repair or reinstatement of apparatus in or under a road or the breaking open of or having access to the road.>

Nicol Stephen

84 In section 17, page 10, line 11, leave out <the Roads (Scotland) Act 1984 (c.54)> and insert <that Act>

Nicol Stephen

85 In section 17, page 10, line 37, at end insert—

<(  ) In section 108(2) of the 1991 Act (roads authority to be regarded in certain circumstances as road works authority for purposes including those of section 112 of the Act) for “112” there is substituted “112B (duty to enter certain information in Scottish Road Works Register)”.

Section 18

Nicol Stephen

86 In section 18, page 12, line 13, at end insert—

<(  ) After subsection (2) there is inserted—
“(2A) 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.”.

Section 23

Nicol Stephen
87 In section 23, page 15, line 10, after <on> insert <road works authorities and>

Nicol Stephen
88 In section 23, page 15, line 11, leave out <section 119> and insert <sections 118 and 119 respectively>

Section 32

Nicol Stephen
89 In section 32, page 21, line 22, after <order> insert <made by statutory instrument>

Nicol Stephen
90 In section 32, page 21, line 25, after <of> insert <the statutory instrument containing>

Schedule 5

Nicol Stephen
91 In schedule 5, page 37, line 29, leave out <the Scottish Ministers may by regulations prescribe> and insert <may be prescribed>

Nicol Stephen
92 In schedule 5, page 39, line 33, at end insert—
   <Effect of prosecution on notice>
   8A Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.>

Nicol Stephen
93 In schedule 5, page 39, line 35, leave out <paragraph 8> and insert <paragraphs 8 and 8A>

Nicol Stephen
94 In schedule 5, page 40, line 17, at beginning insert—
   <(1) The road works authority shall, subject to sub-paragraph (2), remit the money received by them by way of fixed penalties under this Schedule to the Scottish Ministers.>
(2) The Scottish Ministers may, by regulations, provide that the road works authority may retain as much of that money as is sufficient to meet such of their expenditure as is described in the regulations.

(3)>

Nicol Stephen
95 In schedule 5, page 40, leave out lines 18 and 19

Nicol Stephen
96 In schedule 5, page 40, line 22, at beginning insert—
<
(1) Fixed penalty notices may not be given in such circumstances as may be prescribed.
(2) The method or methods by which fixed penalties may be paid may be prescribed.
(3)>

Nicol Stephen
97 In schedule 5, page 40, leave out line 23

Nicol Stephen
98 In schedule 5, page 40, leave out line 26

Section 33

Nicol Stephen
99 In section 33, page 22, line 28, at end insert—
<
( ) Regulations shall not be made unless a draft of them has been laid before and approved by resolution of the Scottish Parliament.>

Section 35

Nicol Stephen
100 In section 35, page 23, leave out lines 26 to 29 and insert—
<
(1) Any offence under this Act which is listed in the first column of Schedule 8A to this Act (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Act.>

Nicol Stephen
101 In section 35, page 23, line 32, at end insert—
<
(2A) The Scottish Ministers may, by order, modify that Schedule so as to provide that an offence is to cease to be a fixed penalty offence.>
In section 35, page 23, line 35, leave out <Regulations under subsection (1)(b)> and insert <An order under subsection (2A)>.

In section 35, page 23, line 35, at end insert—

<(  ) In section 143 of that Act (which includes provision as to orders under the Act), in subsection (2)(b)(ii), after “section” there is inserted “130A or”.

Schedule 7

In schedule 7, page 43, line 17, at end insert—

<Effect of prosecution on notice

8A Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.>

In schedule 7, page 43, line 19, leave out <paragraph 8> and insert <paragraphs 8 and 8A>

In schedule 7, page 43, line 39, at beginning insert—

<(1) The roads authority shall, subject to sub-paragraph (2), remit the money received by them by way of fixed penalties under this Schedule to the Scottish Ministers.

(2) The Scottish Ministers may, by regulations, provide that the roads authority may retain as much of that money as is sufficient to meet such of their expenditure as is described in the regulations.

(3)>}

In schedule 7, page 43, leave out lines 40 and 41

Section 36

In section 36, page 24, line 11, leave out from <such> to end of line 12 and insert <the offences which, under section 130A of this Act, are fixed penalty offences>

In section 36, page 24, line 37, at end insert—
In section 143 of that Act (which includes provision as to regulations under the Act), in subsection (2)(b)(i) after “17” there is inserted “or 130B”.

After section 37

Chris Ballance

1 After section 37, insert—

<Transport management strategies

(1) The Scottish Ministers shall, no later than one year after the day on which this Act comes into force, and at least once every two years thereafter—

(a) publish a target for reducing—

(i) the total distance travelled annually by road vehicles in Scotland; or

(ii) the annual rate of growth of that amount; and

(b) lay before the Scottish Parliament a report setting out—

(i) the measures which the Scottish Ministers propose to take; and

(ii) the progress, if any, made,

to achieve the target.

(2) The Scottish Parliament must debate whether to approve the report within 28 sitting days of it being laid.

(3) If a report debated under subsection (2) is not approved, the Scottish Ministers must, within six months, lay a revised report before the Parliament.

(4) Subsection (2) applies to a revised report as it applies to a report.>

Fergus Ewing

2 After section 37, insert—

<Rail Passengers’ Committee for Scotland

(1) The Scottish Ministers shall establish a Rail Passengers’ Committee for Scotland (“the Committee”).

(2) The Committee shall consist of—

(a) a convener appointed by the Scottish Ministers; and

(b) such other members, being not less than ten nor more than twenty in number, as the Scottish Ministers may from time to time appoint after consultation with the convener.

(3) The convener and other members of the Committee established under subsection (1) above shall hold and vacate office in accordance with the terms of the instruments appointing them and shall, on ceasing to hold office, be eligible for re-appointment.

(4) The provisions of schedule (Rail Passengers’ Committee for Scotland) shall have effect.

(5) It shall be the duty of the Committee to investigate any matter which relates—

(a) to the provision of rail transport services; or
(b) to the provision of station services by any person in a case where the operator of
the station in question is authorised by a station licence,

if the condition specified in subsection (6) below is satisfied in relation to the matter in
question.

(6) The condition mentioned in subsection (5) above is satisfied if the matter—

(a) is the subject of a representation made to the Committee by a user or potential
user of railway passenger services and does not appear to the Committee to be
frivolous or vexatious;

(b) is referred to the Committee by the Scottish Ministers; or

(c) appears to the Committee to be one which it ought to investigate.

(7) If, on investigating any matter, the Committee considers it appropriate to do so, the
Committee shall make representations to—

(a) the person providing the service in question; and

(b) in the case of a service provided under a franchise agreement, the franchisee,
about the matter, or any matter to which it relates or which appears to the Committee to
be relevant to the subject of the matter investigated.

(8) Where the Committee—

(a) having made representations under subsection (6) above, is of the opinion that it is
unable to achieve a satisfactory resolution of the matter by that means; or

(b) on investigating any matter, has reason to believe that the holder of a passenger
licence or a station licence is contravening, or is likely to contravene, any
condition of the licence,

it shall refer the matter (or, if it was referred to the Committee by the Scottish Ministers,
refer it back) to the Scottish Ministers with a view to the Scottish Ministers exercising
such of their powers as they consider appropriate in the circumstances of the case.

(9) Where the Committee investigates any matter pursuant to subsections (5) to (7) above, it
may prepare a report of its findings and lay it before the Scottish Parliament.

(10) At the request of the Scottish Ministers, the Committee shall make a report to them on
such matters relating to the quality of railway passenger services and station services as
may be specified in the request.

(11) The Scottish Ministers may arrange for the publication of any report under subsection
(10) above in such manner as they consider appropriate.

(12) If the Scottish Ministers so request, the Committee shall assist the Scottish Ministers, to
such extent and in such respects as may be specified in the request, in ascertaining
whether, in the case of any franchise agreement, the franchise operator is attainment the
standards set for the provision of the franchised services.

(13) Where the Committee has investigated any matter pursuant to subsections (5) to (7) or
subsection (10) above, it shall neither—

(a) include in any report or representations a proposal for any steps to be taken by any
person in relation to that matter, nor

(b) refer the matter under subsection (8) above by reason only of the failure of any
person to take any steps in relation to that matter,
unless, balancing the cost of taking those steps against the benefits which the Committee
considers will be enjoyed by any person in consequence of the taking of those steps, the
Committee is of the opinion, on the basis of the information available to it, that the
expenditure involved represents good value for money.

(14) In this section—

“franchise agreement” means an agreement with the Scottish Ministers under
which another party undertakes either—

(a) to provide; or

(b) to secure that a wholly owned subsidiary of that party provides,
 throughout the franchise term those services for the carriage of passengers by
railway to which the agreement relates;

“passenger licence” means a licence authorising a person—

(a) to be the operator of a train being used on a network for the purpose of
carrying passengers by railway; and

(b) to be the operator of a train being used on a network for a purpose
preparatory or incidental to, or consequential on, using a train as mentioned
in paragraph (a) above;

“railway passenger service” means any service for the carriage of passengers by
railway, and includes bus substitution services required to be provided in place of
any such services;

“station licence” means a licence authorising a person to be the operator of a
station;

“station service” means any service which consists of, or is comprised in, the
provision or operation of a station.>

Paul Martin

2A As an amendment to amendment 2, line 3, leave out <Rail Passengers’> and insert <Public
Transport Users’>

Paul Martin

2B As an amendment to amendment 2, line 14, at end insert—

<() to the provision of bus services;

() to the provision of ferry services;>

Paul Martin

2C As an amendment to amendment 2, line 22, leave out <railway passenger services> and insert—

<() bus services;

() ferry services; or

() railway passenger services,>
Paul Martin

2D As an amendment to amendment 2, line 44, after <of> insert—

    <( ) bus services;
    ( ) ferry services;
    ( )>

Paul Martin

2E As an amendment to amendment 2, line 62, at end insert—

    <“bus service” means any regular scheduled service for the carriage of passengers
    by bus or coach;
    “ferry service” means any transport service by water (including such a service by
    means of a hovercraft) which carries passengers and operates regularly between
    two or more points;>

After schedule 7

Fergus Ewing

3 After schedule 7, insert—

    <SCHEDULE

    (introduced by section (Rail Passengers’ Committee for Scotland))

    RAIL PASSENGERS’ COMMITTEE FOR SCOTLAND

Remuneration of, and allowances for, members

1 There shall be paid to the convener and other members of the Committee such
    remuneration, and such travelling and other allowances, as the Scottish Ministers may
    determine.

2 The Scottish Ministers shall make arrangements for the Committee to be provided with
    office accommodation and with such services as they consider appropriate to enable
    them to carry out their functions.

Proceedings

3 (1) Subject to the following provisions of this paragraph and paragraph 4 below, the
    Committee may regulate its own procedure, including quorum.

    (2) The Committee shall meet when convened by the convener, and in any case shall meet
        at least twice a year.

    (3) Without prejudice to the discretion of the convener to call a meeting whenever he or she
        sees fit, he or she shall call a meeting when required to do so by any three members of
        the Committee.

    (4) Minutes shall be kept of the proceedings at every meeting of the Committee; and copies
        of those minutes shall be sent to the Scottish Ministers.

    (5) The Committee shall have regard to any general recommendations which the Scottish
        Ministers may from time to time make with regard to any matter affecting the procedure
        or functions of the Committee.
(6) The validity of any proceedings of the Committee shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

Admission of public to meetings

4 (1) Subject to sub-paragraph (2) below, meetings of the Committee shall be open to the public.

(2) The public shall be excluded during any item of business where—
   
   (a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the Committee by the Scottish Ministers would be disclosed in breach of the obligation of confidence;
   
   (b) the Committee has resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded;
   
   (c) it is likely, were members of the public to be present during that item, that there would be disclosed to them—
      
      (i) any matter which relates to the affairs of an individual; or
      
      (ii) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate; or
      
      where public disclosure of that matter would or might, in the opinion of the Committee, seriously and prejudicially affect the interests of that individual body;
   
   (d) the circumstances are such as are specified in, or determined by resolution of the Committee in accordance with, an order made by the Scottish Ministers.

(3) The Committee shall give such notice—
   
   (a) of any meeting of the Committee which is open to the public; and
   
   (b) of the business to be taken at that meeting (other than items during which the public is to be excluded);

as it considers appropriate for the purpose of bringing the meeting to the attention of interested members of the public.

Sub-committees

5 (1) The Committee may—
   
   (a) establish local and other sub-committees through which it may carry out such of its functions as it may determine;
   
   (b) appoint such persons (including persons who are not members of the Committee) to be members of any such sub-committee as they may determine; and
   
   (c) regulate the procedure of any such sub-committee.

(2) Persons appointed under sub-paragraph (1) above who are not members of the Committee may be reimbursed for their travelling expenses and such of their out-of-pocket expenses as do not relate to loss of remuneration.

Financial provisions

6 (1) There shall be paid by the Scottish Ministers—
   
   (a) any sums payable to or in respect of any person under paragraph 1 or 5 above; and;
(b) any expenses incurred by the Committee (provided that the Committee complied with its financial duties in incurring them).

(2) The Scottish Ministers may determine the financial duties of the Committee; and different determinations may be made for different functions of the Committee.

(3) The Scottish Ministers shall give the Committee notice of every determination of its financial duties; and such a determination may—
   (a) relate to a period beginning before, on or after the date on which it is made;
   (b) contain supplementary provisions; and
   (c) be varied by a subsequent determination.

After section 42

Nicol Stephen

110 After section 42, insert—

<Badges for vehicles used for disabled people: change of terminology

In section 21(4) of the Chronically Sick and Disabled Persons Act 1970 (c.44) (badges for display on motor vehicles used by institutions concerned with the care of disabled people) for “institution”, in both places where it occurs, there is substituted “organisation”.

Nicol Stephen

111 After section 42 insert—

<Extension of remit of Bus User Complaints Tribunal

In section 41 of the Transport (Scotland) Act 2001 (asp 2) (Bus User Complaints Tribunal)—

(a) in subsection (7), for “local” in both places where it occurs, there is substituted “bus”;

(b) after that subsection there is inserted—

“(8) In subsection (7) above, “bus service” means—
   (a) a local bus service; or
   (b) a service which—
      (i) uses one or more public service vehicles for the carriage of passengers by road at separate fares;
      (ii) operates between places at least one of which is in Scotland; and
      (iii) is not a local service.”

Section 43

Nicol Stephen

112 In section 43, page 29, line 10, at end insert—
<( ) In section 66(4) (application of Act to motor vehicles and persons in public service of the Crown), for “subsection (2)” there is substituted “subsection (3”).>

Section 44

Nicol Stephen

39 In section 44, page 29, line 34, after <2(1)> insert <or (2A)>  

Nicol Stephen

40 In section 44, page 29, line 34, after <(7),> insert <(Alteration of RTP’s functions)(1),>
Transport (Scotland) Bill

Groupings of Amendments for Stage 2 (Day 2)

Acquisition, development and disposal of land by RTPs
53, 54, 55, 56

RTPs and private legislation
15

RTPs forming or promoting companies
16

Transport strategies of RTPs
57, 58, 59, 60, 61, 62, 63, 64

Procedure before and after drawing up of transport strategies
20, 65, 21

Joint transport strategies
66, 67

RTP / Health Board transport strategies
68

Transport functions of Scottish Ministers
32, 33, 34, 35

Continuation of schemes etc under Transport (Scotland) Act 2001 where transfer occurs
77

Transfer of staff, property and liabilities
78, 79, 80, 37, 38

Definition of works in roads
81

Payments to the Commissioner
82

Actions by Road Works Authorities to be entered into SRWR
83, 84, 85

Appeals against directions as to timing of road works
86
Imposition of penalties on road works authorities  
87, 88

Fixed and civil penalty offences under the 1991 and 1984 Acts  
89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109

Transport Management Strategies  
1

Representation of Passengers  
2, 2A, 2B, 2C, 2D, 2E, 3, 111

Badges for vehicles used by disabled people  
110

Transport (Scotland) Act 2001  
112

Note: the following amendments have already been debated—

With 41 – 17, 27  
With 5 – 18, 19, 22, 23, 26, 28  
With 9 – 24, 69, 25, 70, 71, 72, 29, 30, 31, 74, 75, 76, 36, 39, 40
Present:

Bruce Crawford JP MSP (Deputy Convener)  Mr David Davidson (Committee Substitute)
Fergus Ewing MSP  Dr Sylvia Jackson
Paul Martin  Michael McMahon
Bristow Muldoon (Convener)  Tommy Sheridan
Margaret Smith

Apologies: David Mundell MSP

**Transport (Scotland) Bill:** The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to without division: 54, 15, 16, 17, 58, 62, 18, 64, 19, 20, 65, 21, 22, 23, 68, 24, 25, 26, 28 and 31.

The following amendments were agreed to by division:

57 (For 8, Against 0, Abstentions 1)
59 (For 8, Against 0, Abstentions 1)
60 (For 6, Against 1, Abstentions 2)
61 (For 6, Against 0, Abstentions 3)
66 (For 6, Against 0, Abstentions 3)
72 (For 8, Against 1, Abstentions 0)
29 (For 6, Against 1, Abstentions 2)
30 (For 8, Against 1, Abstentions 0)

The following amendments were disagreed to by division:

55 (For 1, Against 6, Abstentions 2)
56 (For 1, Against 6, Abstentions 2)

Amendment 53 was moved and, with the agreement of the Committee, withdrawn.

Amendments 63, 67, 69, 70, 71 and 27 were not moved.

Sections 7 and 8 were agreed to without amendment.

Schedule 1 and sections 5, 6, 9, 10 and 11 were agreed to as amended.

The Committee ended consideration for the day, amendment 75 having been disposed of.
Scottish Parliament
Local Government and Transport Committee

Tuesday 26 April 2005

[THE CONVENER opened the meeting at 14:07]

Transport (Scotland) Bill: Stage 2

The Convener (Bristow Muldoon): Today’s meeting of the Local Government and Transport Committee is our 14th of 2005. I welcome back to the committee the Minister for Transport, Nicol Stephen MSP, who is with us for the first item on the agenda, which is further consideration of the Transport (Scotland) Bill at stage 2. The minister is supported by four Scottish Executive officials: Richard Hadfield, Jonathan Pryce, Caroline Lyon and Graham McGlashan. I welcome them and the members of the press and the public who have come to follow today’s proceedings.

All members should have copies of the bill, the latest marshalled list—which was published on Monday morning—and the groupings of amendments. Those documents will assist them in following the business.

Schedule 1
ADMINISTRATIVE FUNCTIONS OF RTPs

The Convener: Amendment 53, in the name of Michael McMahon, is grouped with amendments 54 to 56.

Michael McMahon (Hamilton North and Bellshill) (Lab): I will be brief. Without the provision that amendment 53 seeks to insert, the bill would restrict regional transport partnerships in their ability to make decisions on how they could develop strategies in cases where they did not own the land on which they intended to carry out work. If we do not insert that provision into the bill, we will fail to address an issue that requires to be addressed.

I move amendment 53.

The Minister for Transport (Nicol Stephen): Amendment 54 seeks to clarify that servitudes or other land rights can be acquired by agreement or by compulsion, and the Executive encourages the committee to support it.

Amendment 56 will bring RTPs’ powers in relation to land into line with those of the Strathclyde Passenger Transport Executive and the local authorities. Although I agree in principle with the amendment, which reflects our intention, I would like to come back with an Executive amendment at stage 3, to ensure that the drafting fits in with the language of the bill. For example, the bill refers to a “Transport Partnership” rather than to a “Regional Transport Partnership”. Nonetheless, we accept the principle behind amendment 56.

Amendment 55 is welcome for a slightly different reason, in that it has exposed an anomaly in the bill. Paragraph 6(5) of schedule 1 reflects an old system of ministerial consent, which used to apply to local authority disposals of land at less than full value. The fact that that regime has recently been updated by section 11 of the Local Government in Scotland Act 2003 means that paragraph 6(5) needs to be deleted and replaced. Although I agree in principle with amendment 55, I would like to come back at stage 3 with an amendment that covers the same point, but that refers to existing provision and the new regime that will apply to RTPs.

It is clear that amendment 53 is well intentioned, but I urge Michael McMahon to withdraw it, because, in the Executive’s view, it is not necessary. Section 11 requires an RTP to perform its functions “so as to fulfil its transport strategy”, so the bill already defines that the purpose of the exercise of a partnership’s functions is to implement its transport strategy. By creating a distinction between the exercise of a partnership’s functions and the implementation of its strategy, amendment 53 risks confusion. That is why we hope that it will be withdrawn.

Michael McMahon: Given that the minister has indicated that amendment 53 would make paragraph 6(1) of schedule 1 tautologous, I do not think that there is any point in pressing it. I take it that the minister is right in saying that it merely reiterates what is stated earlier in the bill, so I will not press amendment 53.

Amendment 53, by agreement, withdrawn.

Amendment 54 moved—[Michael McMahon]—and agreed to.

The Convener: Do you wish to move amendment 55, Michael?

Michael McMahon: I hope that the minister will lodge an amendment at stage 3 that will address the point that I have raised. I am glad that he accepts that amendment 55 is in the right area.

The Convener: Does any other member wish to move amendment 55?

Tommy Sheridan (Glasgow) (SSP): I would like to move amendment 55 because, although the minister has given an indication of his intention, I would rather that we had the safety of knowing...
that amendment 55 had already been agreed to. When we reach stage 3—

**The Convener:** You cannot speak to amendment 55 at this stage.

Amendment 55 moved—[Tommy Sheridan].

**The Convener:** The question is, that amendment 55 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**
Sheridan, Tommy (Glasgow) (SSP)

**AGAINST**
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

**ABSTENTIONS**
Davidson, Mr David (North East Scotland) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)

**The Convener:** The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 55 disagreed to.

Amendment 56 moved—[Tommy Sheridan].

**The Convener:** The question is, that amendment 56 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**
Sheridan, Tommy (Glasgow) (SSP)

**AGAINST**
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

**ABSTENTIONS**
Davidson, Mr David (North East Scotland) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)

**The Convener:** The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 56 disagreed to.

**14:15**

**The Convener:** Amendment 15, in the name of the minister, is in a group on its own.

**Nicol Stephen:** Amendment 15 expresses the intention that the west of Scotland partnership will be able to continue to promote private bills such as Strathclyde Passenger Transport’s bill for the Glasgow airport rail link, which is to be introduced later this year. Amendment 15 is consistent with the Executive’s policy intention that the initiative for major transport projects in the west of Scotland will continue to be taken by a strong regional partnership body.

I understand that the Procedures Committee proposes to change standing orders to allow for the promoter of a private bill to change, provided that the appropriate conditions are met. However, we cannot prejudge the Parliament’s consideration of the Procedures Committee’s report and I prefer to include the provision in the bill. Should the Parliament agree to new standing orders that achieve the same objective before we get to stage 3, we will consider lodging an amendment to remove the provisions inserted by amendment 15, which would no longer be necessary.

I move amendment 15.

**Tommy Sheridan:** Is the minister confident that amendment 15 addresses SPT’s concerns that there is a gap in the bill in relation to the promotion of private bills and the development work that is undertaken in their preparation? I understand that the United Kingdom Railways Act 2005 might have an effect on the bill in that respect. Is he telling the committee today that amendment 15 would allow major projects to be promoted on a private legislation basis in future?

**The Convener:** I will allow you to respond to the point in your winding-up speech, minister.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Will the minister clarify whether amendment 15 would apply solely to the transitional arrangements that need to be put in place to ensure that schemes that are to be promoted in future, such as the Glasgow airport rail link, are covered? Will the power to promote a private bill be passed to the relevant RTP? Will amendment 15—or, indeed, any other amendment that the Executive lodges—allow the west of Scotland RTP to act as the promoter of any large project that is brought forward in future?

**The Convener:** I welcome amendment 15, which addresses a concern that SPT in particular has raised. SPT is concerned that the transition period during which the functions of the existing transport structure in the west of Scotland pass to the new structures could result in a loss of progress on projects. SPT is specifically concerned about the Glasgow airport rail link. The minister intends that amendment 15 will allow projects such as the Glasgow airport rail link to be passed to successor bodies without interruption. That is to be welcomed, as it indicates that the Executive has listened to the concerns that were raised, particularly by SPT.
I invite the minister to respond to the debate on amendment 15.

**Nicol Stephen:** My answer to Tommy Sheridan’s question is yes. Amendment 15 achieves what I think is our shared objective, which is to ensure that bills such as the Glasgow airport rail link bill can be taken over by a regional transport partnership. Paragraph 7 of schedule 1 states:

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

That makes it clear that RTPs will have powers in relation to private legislation. In response to Fergus Ewing’s question, I believe that the provision in amendment 15 could apply in future—given my remarks about possible changes to standing orders, it might be useful to keep that provision in the bill to give greater statutory certainty to the position. However, we will clarify the matter for stage 3 and make any adjustments that are required. I think that, even if the Procedures Committee makes the change that has been mentioned, it will be worth retaining the provision.

Amendment 15 agreed to.

**The Convener:** Amendment 16, in the name of the minister, is in a group on its own.

**Nicol Stephen:** The intention behind amendment 16 is to ensure that RTPs have powers similar to local authorities to allow them to create companies that can deliver, promote or give effect to particular responsibilities or functions. An example would be Transport Initiatives Edinburgh Ltd, which was created by the City of Edinburgh Council and is responsible for a number of important projects, including the Edinburgh trams and the Edinburgh airport rail link.

It will be up to an RTP to determine whether there is a need to establish a company to deliver its functions or responsibilities. Amendment 16 seeks to provide the partnerships with that power, which they would be able to exercise as necessary.

I move amendment 16.

**Tommy Sheridan:** If amendment 16 is passed, will RTPs be able to facilitate and promote companies to deliver, for example, bus services in the same way that Lothian Regional Transport does? Does the minister feel that such an approach is necessary, given the failure of the market in such areas?

**Bruce Crawford (Mid Scotland and Fife) (SNP):** I, too, have a simple question for the minister. If a regional transport partnership receives an Executive grant, will that funding score against the Scottish block—that is, the money that we receive through the Barnett formula? If an RTP forms a company and the Executive grant is passed to that company to help it to deliver a particular project, will it still score against the block? Moreover, will such companies be able to deliver changes to Scotland’s transport infrastructure without the Treasury counting the money that they spend as public money? If so, room for other expenditure would be freed up.

**Fergus Ewing:** I have a few brief questions. First, will the RTPs have the power to set up legal persons in other business formats, such as trusts? I realise that this might not be the correct time to ask my second question, but I feel that it covers the same terrain. What financial powers will the transport partnerships have? For example, if they are to promote projects, will they have borrowing powers? Finally, on this general topic, will the RTPs have the full range of powers that they will require if they are to be given the responsibility of taking charge of projects such as the Glasgow airport rail link? Such a provision might be set out elsewhere in the bill, but I have not been able to pick it up.

**Mr David Davidson (North East Scotland) (Con):** I assume—but I would like the minister to confirm—that the amendment will allow for cross-border companies to be set up where there may be some common interest between one or more RTP and one or more development company or whatever they happen to be. Will the amendment allow for that flexibility in future, when some RTPs may wish to come together or work with different partners on specific cross-regional routes and services?

**The Convener:** I note that amendment 16 states:

“A Transport Partnership may … form or promote companies within the meaning of the Companies Act 1985”.

Will that allow the transport partnership to engage with existing companies? I am thinking specifically of TIE, which you mentioned in your introductory remarks, minister. Will the amendment give enough scope to the transport partnership in the east of Scotland to engage an existing company such as TIE in pursuing projects on its behalf?

**Margaret Smith (Edinburgh West) (LD):** Having had quite a lot of dealings with TIE, I think that, as things stand, there is some public concern about arm’s-length companies that may be formed or promoted by councils. Amendment 16 allows for such companies. How can we guarantee accountability to the public on the use of public funds and more generally?

**The Convener:** You have a whole range of questions to respond to, minister.
Nicol Stephen: I shall try to answer the questions in order. The first point was about the block grant that the Scottish Executive receives and whether the funds spent by the regional transport partnerships, or by companies established by the RTPs, would count against the block. The answer is that, if the funding comes from the Executive, it would count against the block, but that would not necessarily be the case for funding generated from other sources. However, to the extent that the funding comes through the Executive, the moneys would count against the Scottish block.

The second question was on establishing a trust. As I understand it, amendment 16 allows us to establish companies. I would need to check the position in relation to any other form of body and write to the committee on that point. The amendment refers specifically to forming or promoting "companies within the meaning of the Companies Act 1985".

In relation to finances, the RTPs will have borrowing powers. I was asked whether they would have a full range of powers. I would certainly expect that full range of powers to exist in the west of Scotland, where the partnership will receive strong powers from the start. The extent of the powers in other parts of Scotland will depend on the approach taken by local authorities in the regional partnership area and the extent to which powers are transferred. It is important to emphasise that I would like all the RTPs to have at least concurrent powers with local authorities in relation to park-and-ride schemes and bus priority measures, to give some real momentum to such initiatives, which can suffer from cross-boundary conflict. The Executive would like the partnerships to have powers right from the beginning to be able to make a difference to public transport.

On the cross-border arrangements—not across the Scottish-English border, but across the borders between the regional transport partnerships—amendment 16 specifically states:

“A Transport Partnership may (whether alone or with others, who need not be Transport Partnerships) form or promote companies”.

Therefore, the partnerships will have the power to work with other partnerships and with others in establishing companies. That is perfectly possible.

I have forgotten Margaret Smith’s final point, although I think that it was about accountability.

14:30

The Convener: There are two or three points yet to address. Tommy Sheridan asked whether the RTPs would have the power to establish bus companies, similar to LRT, for example. Margaret Smith’s point was about the accountability of companies that are formed. I asked whether the RTPs could engage existing companies as opposed to companies that they might establish in the future.

Nicol Stephen: In fact, I took a note of that one. The short answer is that existing companies can be engaged.

Bus companies could be used for the purposes that Tommy Sheridan mentioned, but such companies would have to comply with the rules to ensure that there was fair competition between bus operators. The partnership would have to be given those powers by the relevant local authorities in the regional partnership area.

On the point about accountability, the rules that would apply to the companies established by the RTPs would be the same as those that currently apply to TIE and other companies that are established by local authorities and other public bodies to deliver a project, as happens frequently. There requires to be strong accountability because of the partnership nature of those entities and the public sector involvement.

The Convener: I see that Fergus Ewing wishes to speak, but I do not want to reopen the debate at this stage.

Fergus Ewing: I just want to clarify a point.

The Convener: I prefer not to reopen the debate, Fergus—

Fergus Ewing: It would be quite helpful, as always.

The Convener: There is a danger that it would prolong proceedings, because, if some members reopen the debate, others might want to make additional points.

Fergus Ewing: I have a specific question—

The Convener: The minister has wound up the debate and I prefer to proceed to the decision.

Bruce Crawford: We will end up voting against it.

The Convener: That is your decision, Bruce.

Amendment 16 agreed to.

Amendment 17 moved—[Nicol Stephen]—and agreed to.

Schedule 1, as amended, agreed to.

Section 5—Formulation and content of regional transport strategies

The Convener: Amendment 57, in the name of Sylvia Jackson, is grouped with amendments 58 to 64.
Dr Sylvia Jackson (Stirling) (Lab): Section 5 gives more information than section 4 does about the functions of RTPs. Various concerns were made in evidence to us that should be addressed on the face of the bill. I will run through them quickly.

Amendment 57 seeks to make it clearer that we want RTPs to improve transport links between “all inhabited parts of the region”.

Amendment 58 addresses an issue of concern to the convener and me in particular. It proposes that RTPs should take on board “changes in population and land use”.

I know that Paul Martin will speak to amendment 59 in a second. It takes on board much of the evidence that we took in relation to “a wide range of different users”.

Amendment 60 takes on board the issue of sustainability. The whole thrust of transport policy is economic, but it is important that we have sustainable economic growth. That is also the case with amendment 61, which talks about “environmentally sustainable transport policies”; again, the emphasis is on sustainable development.

Amendment 62 concerns an important point of which all members are aware: “the promotion of road safety and of safe public transport”. The amendment incorporates consideration of that into the bill.

Michael McMahon will speak to amendment 64, so I will not say anything on it.

Several of the points that Fergus Ewing addresses in amendment 63 are similar to those that I have raised, but I will ask him about one issue. Paragraph (c) of proposed new subsection (2A) mentions “religious or cultural mores”; I ask him to elaborate on what he means by that.

I move amendment 57.

Paul Martin (Glasgow Springburn) (Lab): I hope that the minister will respond to amendment 59 by saying that it was an omission not to have included

“the meeting of statutory equal opportunities obligations”
in the bill originally. All the legislation that we pass, particularly transport legislation, should include that detail, so I hope that his response will be to say that he should have included it and that he will support amendment 59.

Amendment 59 also mentions the socially excluded. Far too often, transport strategies exclude people from opportunities to access transport. A crucial element of regenerating many of our communities, including the one that I represent, is ensuring that people have access to public transport. That is why I felt strongly that we must ensure that regional transport partnerships will be aware that, to ensure that areas are able to regenerate, it is necessary to include the socially excluded in the strategies that the partnerships prepare and to give paramount importance to equal opportunities. The volume of evidence that we received at stage 1 from various organisations, including the Mobility and Access Committee for Scotland, made it clear that they wanted the regional transport partnerships’ strategies to keep equal opportunities at the forefront. It is disappointing that, despite the significant evidence that we received on the matter, it was not mentioned in the bill, which is why I have raised it at stage 2.

Fergus Ewing: Amendment 63 seeks to specify in the bill matters that should be considered in the preparation of the regional transport partnerships’ transport strategies. The reasoning behind the amendment is that the Scottish National Party believes that if we are to have regional transport partnerships, they should have a full range of powers and a serious job of work to do. That is why I spell it out that, in devising their strategies in their first year, the partnerships should consider not only the rather general criteria that are specified in section 5(2), which I support as far as it goes—which is not much more than a millimetre—but the various modes: road, rail, air, inland waterways and any other mode that the partnership identifies. Incidentally, I should have added ferries. That was a serious omission on my part, but I can put it right at stage 3 after the committee agrees to amendment 63.

The main point is that the partnerships’ strategies should cover all modes of transport. If they do not, the partnerships will be considered to be rather pointless bodies. They might be regarded as quangos that cost £35 million but have not been given a proper job to do. For the public to believe that the partnerships are of use, it is crucial that they have the full powers that I propose. I am keen that, in his response, the minister should indicate his views on the inclusion of each of the modes that I have mentioned. In addition, it is obvious that the strategy should encompass all areas of public transport and I hope that all members agree with that.

To answer Sylvia Jackson’s question about the reference in paragraph (c) of proposed new subsection (2A) to “religious or cultural mores”, I was specifically thinking about the position of the Western Isles and travel on the Sabbath. My wife came back from the Western Isles just yesterday, thereby observing the Sabbath; I am not sure that that observation has been universal during this election campaign. Obviously, I am too delicate to
mention any names, convener. Out of respect for those who hold the serious religious belief that the Lord’s day should be observed, the consideration should be included in the bill. It would be much appreciated by those of that persuasion, whether they live in the Western Isles or elsewhere.

Amendment 63 might be technically infelicitous and incomplete. No doubt if it is, I will hear the minister catalogue its technical infringements and failings. If that is the case, those faults could be put right at stage 3. However, the amendment is very serious. Its purpose is to establish the partnerships in the public eye as bodies that are worth having. If they do not have powers over those areas, the converse would be true: those bodies would be seen to be worthless—I am sure that none of us wants that.

I am interested to hear what the minister has to say in response to the other amendments in the group. I am inclined to support most of them. However, I have a brief word to say about amendments 60 and 61. Amendment 60 would require strategies to take into consideration “sustainable economic growth”. Will there be a statutory definition of “sustainable economic growth”? Call me a pedant, but we are creating phrases that could mean anything to anyone.

Amendment 61 asks us to provide in law that, in devising its strategy, partnerships have a duty to take account of the “promotion of environmentally sustainable transport policies”.

Again, I level the criticism that that is too vague and nebulous to take its place in statute. If Dr Jackson can offer us a definition here and now, I invite her to do so. What is the difference between the promotion of sustainable transport policies and the promotion of environmentally sustainable transport policies? Is the inclusion of “environmentally” not a tautology?

To bring the argument down to a more practical level, is the M74 extension environmentally sustainable? Are cheap flights environmentally sustainable? I say that not to score points but because I am cognisant that when the partnerships are devising their strategies, there are those who would take to judicial review the consideration of any matter that was not, in their view, environmentally sustainable. Just as the M74 might become enmeshed in expensive and useless litigation by pressure groups, the regional transport partnerships, having only to devise their strategy in the first year of their life, might also become enmeshed in litigation over the meaning of a rather vague, if warm, phrase. I am interested to hear Dr Jackson’s response to my criticisms of her amendments, but I reaffirm my absolute support for economic growth, the M74 extension and inexpensive flights for all.

14:45

Michael McMahon: As Fergus Ewing said, we are here to make law. A bill must set out as clearly as possible the powers that organisations and ministers have and ensure that the purpose and intent of the proposed legislation are known to everyone. Amendment 64 provides a safety net, because if the bill does not direct RTPs to consider the national transport strategies that develop over time, in future we might find that an RTP was following guidance that had been superseded by a strategy. We do not want ministers having to change legislation repeatedly in order to develop their strategies. It would be remiss of the bill not to specify that the RTP must take the national transport strategy into account.

I am glad that Fergus Ewing clarified the reference to “religious or cultural mores” in answer to Sylvia Jackson’s question. I would be the last person to say that we should not take account of people’s religious or cultural mores. However, amendment 63 might provide a veto to groups—however well intentioned they might be—which could have an impact on the wider community. Someone’s decision not to travel on the Sabbath is a matter for their conscience. Should a group that holds such views be given a veto over the right of the regional transport partnership to develop a transport strategy for the rest of the population? That part of amendment 63 causes me great concern, because by including such a provision in the bill we would set a dangerous precedent in law. For that reason, I oppose amendment 63.

Margaret Smith: The group of amendments that we are considering includes quite principled amendments as well as belt-and-braces amendments. I support amendment 58, which Sylvia Jackson lodged. It is important that we think ahead as much as possible about changes in population and land use, in relation to areas such as the waterfront in Edinburgh, for example. I am sure that all members can think of examples in their constituencies and regions. We have had problems in the past because we did not consider changes in population and land use five, 10 or 15 years ahead, so development took place before we had the transport infrastructure that would have ensured that things worked properly.

I also support amendment 59, which would clearly place a duty on regional transport partnerships to consider
“the meeting of statutory equal opportunities obligations”.

We cannot stress too much how crucial transport is, particularly for people who deal with the problems of disability.

I support amendments 60 and 61, which Sylvia Jackson lodged. However, Fergus Ewing made a reasonable point—not for the first time—about the need for a definition of the terms that the amendments use. We might need to ask the Executive whether, if it supports the amendments in theory, there is a workable definition that we can use in the bill, because there is no point in our proposing a definition that would not be workable. However, we are trying to find an approach that balances the needs of the economy with those of the environment.

There has been a reduction in accidents—certainly in Edinburgh. It is important that the promotion of road safety and safe public transport underpin the bill, so I support amendment 62.

I am totally opposed to amendment 63. We sought clarification from Fergus Ewing on what it means, and now that we have received it, I am more fundamentally opposed to it than I was prior to the clarification. As Fergus Ewing said, we are creating law, but we are doing so not just for those who have particular beliefs but for the whole population of Scotland. I agree with what Michael McMahon said about amendment 63. I would defend to the death somebody’s right not to travel on the Sabbath, if that is what they choose to do but, equally, I would defend to the death somebody’s right to travel if that is what they wish to do. It is fine that people such as Margaret Ewing respect other people’s point of view and choose not to travel on the Sabbath, so long as other people have the choice. If we go along with amendment 63, we will be putting something in the bill that will in effect allow members of the public to be held to ransom by the religious views of those who have a particular view on how we respect the Sabbath. I accept that that would be appreciated by those who take that view, but it would not be appreciated by others. We are trying to take forward transport issues in Scotland, not to uphold the right of people of one religious belief to hold other members of the general public to ransom over how and where they travel. Where would we draw the line for lifeline air routes, ferry routes and so on? I am fundamentally opposed to amendment 63.

Mr Davidson: My first thought on amendment 57 is to ask where the definition is. If we are going to refer to “all inhabited parts”, we need a definition of what that means. Does it mean one croft, two crofts or 10,000 people in a community? The amendment is not clear enough to be supported.

On amendment 58, I assume that the general principles of what RTPs are supposed to do address changes in population anyway. However, I accept the principle behind the amendment.

My concern about amendment 59 is that immediately the bill is passed, every RTP will have to ensure that virtually every piece of transport equipment meets the obligations. Instead of a prescriptive, highly expensive requirement from day one, I would like to see a more selective right to ensure that the needs of the disabled and disadvantaged are taken care of. Although I accept that we have to look after the needs of people with disabilities and infirmities, amendment 59 is far too strict.

Like Fergus Ewing I am concerned about amendment 60, because there is no clear definition. I am concerned that we will have loads of public objections seeking to block anything, based on what an individual considers “sustainable” to mean. Good legislation does not leave such matters open to doubt. The measure would be restrictive and time consuming. If the Parliament is to pass any laws, they have to be clear as to what they are about. Amendment 61 has a touch of motherhood and apple pie about it, and also comes under the category of requiring a clear definition.

I assume that the duty to promote road safety and safe public transport in amendment 62 is a statutory duty on Government anyway, and I would have thought that it would be rolled out to RTPs and all public agencies.

I would have preferred paragraph (a) of proposed subsection (2A) in amendment 63 to refer to “all forms of public transport”, because the situation will vary from place to place; for example, some areas will not have inland waterways. The general reference would have been sufficient.

I agree with others on paragraph (c). A veto that is based on a consideration that is not applicable to the general population and is not based on any kind of democratic principle cannot be included in a bill. That would fly in the face of the principles on which the Scottish Parliament is supposed to produce legislation that is meaningful to the generality of the nation. I agree with other members that if people choose not to travel, on a Saturday for one religious grouping, on a Sunday for another, or on a Friday for another, that is a matter of their freedom of choice. I would not like to see their freedom being encroached on any more than I would like to see the amendment being accepted.

I think that I understand where Michael McMahon is going with amendment 64 but, equally, we Conservatives certainly do not want to see too much central prescription. We would like
there to be more decentralisation and more accountability to the local population, in all its forms, through the RTPs. In his summary of amendment 64, I would like Michael McMahon to clarify exactly why he thinks that the amendment is needed and why it would support an RTP in being accountable to its local population and to people who use the transport services when they pass through the area or transport goods through it. I do not find the phrase that the amendment suggests should be added to the bill to be necessary, but I would like some clarity on those issues.

Tommy Sheridan: It is true that we need clarity in any legislation that we pass in the Parliament, but if amendments 57 and 58 were passed it would be incumbent on the Executive—I hope in conjunction with Sylvia Jackson—to arrive at a definition to explain what is required. The idea behind both amendments should be supported.

On amendment 59, we have to get a grip. All that is being asked is that the regional transport plans meet “statutory equal opportunities obligations”. The amendment is not adding anything, as it refers to existing statutory obligations. I say to David Davidson that it is not good enough for us as a group of parliamentarians to say that we are all in favour of equal opportunities, but only in so far as we can afford it or only in so far as they can be fitted in. Those obligations are statutory and they must be in the bill. Paul Martin is right. I hope that the minister will admit that there has been an omission and will accept the amendment.

The point that I made about having definitions applies to amendment 60: what is the definition of “sustainable economic growth”? We must have some form of definition. I hope that the definition would not cover plans that deliver increased congestion and pollution, cater for only a minority of the public or are poor value for the taxpayer. Of course, the M74 would not be supported—the public local inquiry has already rejected it—if the definition took into account those factors. It is contradictory for some members apparently to be in favour of sustainable economic growth but to be in favour of a transport plan that is completely the opposite. The provision should be in the bill. We should aim to deliver sustainable economic growth, but definitions have to be available in case there are legal actions or problems in relation to the rejection of this or that plan. Communities must be able to oppose a proposal and they need to know on what basis it is being promoted. I hope that those amendments are accepted.

Fergus Ewing made the fair point that we should have clear definitions to have good legislation, but he then contradicted himself by speaking to amendment 63, which mentions “religious or cultural mores”. How many people could say that X plan does not fit in with their cultural or religious beliefs? That is a recipe for doing nothing. Although some other aspects of amendment 63 are useful, I ask Fergus to consider not moving the amendment. Perhaps at stage 3, instead of including the phrase

“ill health, or religious or cultural mores”

he could insert “disability”, leave out “religious or cultural mores” and include the phrase “by ferry”. He has admitted that the latter was an omission on his part. I am sure that there would be broader support for his proposals if he did that. There are reasonable proposals in the amendment, but the inclusion of that wording in paragraph (c) fatally wounds it.

On amendment 64, it is important not to have a hotch-potch of regional transport plans with no unity. We must get Scotland as a whole moving and there should be seamless relationships between the various transport partnerships so that there are no cross-boundary problems. It will be necessary for plans to have a view to broader national transport plans, and that should be stated in the bill.

15:00

Bruce Crawford: I start with the important point that Tommy Sheridan finished on. I congratulate Michael McMahon on amendment 64. If what he proposes is not included in the bill, where will the cohesion in pulling Scotland together be? Where will our joined-up thinking be? I ask David Davidson to think about a possible decision in the future by a Scottish minister that the east coast rail line should be electrified, for example. All the transport partnerships would have to be involved in helping to deliver that electrification and all the associated paraphernalia. If amendment 64 were not accepted, a transport partnership would not need to consider the ministers’ national transport strategy and therefore a major project might not be completed as a result of a transport area not playing ball. That would be a crazy situation. I will certainly support amendment 64, unless the minister comes up with a proposal that I have not foreseen.

I will leave Fergus Ewing to deal with the details of amendment 63.

The Convener: It would be helpful if you spoke to amendment 63, as Fergus Ewing does not have a right to respond to the debate. Only the person who moves the first amendment in a group has the right to respond to the debate.

Bruce Crawford: In that case, I will try to respond on the hoof.
People are concerned about specific elements of amendment 63, but Fergus Ewing should be encouraged that it is generally accepted that he is on the right track. I think that he accepts that he must reconsider parts of the amendment and lodge another amendment. However, it should be pointed out that the phrase “religious or cultural mores” is currently used in law; we might not like it, but it is out there somewhere. Fergus might not want to proceed with the wording of the amendment at this stage and I am sure that he will lodge an amendment at stage 3 that addresses people’s concerns. I hope that I have successfully covered Fergus’s points.

I understand where Sylvia Jackson is coming from in lodging amendments 60 and 61. However, the minister has proposed an additional power in the transport strategies in order to promote the Glasgow airport rail link, for example. I am sure that some of the people who objected to the Stirling-Alloa-Kincardine rail line would have said that it was not part of an environmentally sustainable transport policy and, if what the amendments propose had been in place, might have made it difficult in law for the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill to go through. However, it might be possible for the minister to be helpful to Sylvia Jackson by stating under section 5(1) that, in drawing up transport strategies, RTPs should consider how sustainable economic development can best be achieved, without including in the bill a definition that might cause difficulties to major transport policies or project developments. That consideration could be included in the bill, but not necessarily in the way that Sylvia Jackson proposes. I have tried to be helpful.

The Convener: I will make some brief comments. I understand that the amendments in the name of Sylvia Jackson and supported by Margaret Smith try to have the transport strategies’ aims set out and try to address people’s concerns about there not being enough definition in the bill. I think that most committee members support those members’ aims. However, if the Executive’s view is that the amendments need further refinement, we can agree to them at this stage with a view to agreeing to Executive amendments at stage 3 that can provide the definition to which Fergus Ewing referred.

I agree with the wide range of other members who have pointed out the potential problems that could be created by amendment 63’s reference in paragraph (c) to “religious or cultural mores”. It is valid to recognise that, although certain parts of Scotland have strong religious beliefs about observance of the Sabbath, we have many different Christian faiths and other faiths in this country as well as many people who do not have a faith. If a transport strategy were to try to address all those different viewpoints, the problems that other members have highlighted might transpire, with many days of the week being deemed inappropriate days for the provision of transport. Indeed, certain types of transport might also cause problems for people with specific beliefs or for certain cultural groups. Amendment 63 is pretty unworkable. Like most committee members, I welcome Bruce Crawford’s recognition that Fergus Ewing will probably need to go away and think again. Fergus Ewing can perhaps lodge an alternative amendment at a later stage, but I urge him not to move amendment 63 today.

I will give the minister and then Sylvia Jackson the chance to respond to the debate.

Nicol Stephen: I will try to be brief.

I think that Bruce Crawford did an outstanding job in responding to the challenge—which none of the rest of the committee would have wanted—of reading Fergus Ewing’s mind.

Fergus Ewing: I am not sure that I agree.

Michael McMahon: His speech was far too short, for a start.

Bruce Crawford: I need to go for help.

Nicol Stephen: It is for the committee to judge the best way forward, but I accept the committee’s clear intention that there should be more in the bill setting out what is expected from the strategies of regional transport partnerships. It is for the committee to judge whether to agree to amendments in this group today or whether to agree to some of them and hold back others on the basis of my assurance that we will lodge appropriate amendments at stage 3. For the reasons that other members have given, we will need to lodge Executive amendments at stage 3 to clarify definitions and intent but, in the main, we accept the principle of what is being sought by the amendments in this group.

We fully share the intention of amendments 57 to 62 that, in drawing up their strategies, RTPs should, among other things, consider how to improve transport links throughout the region, take account of projected changes in population and land use, focus on the needs of users, pursue sustainable development, promote road safety and safe public transport and meet equal opportunities requirements. As members will know, Executive amendment 31, which has not yet been voted on, will promote equal opportunities. For the Executive amendments at stage 3, we will need to weigh up what is the best way of giving meaning and substance to the committee’s clear wish to have more in the bill.

I will not dwell on amendment 63. Although the amendment contains some reasonable proposals, I suggest that members should oppose it if Fergus...
Ewing moves it. For example, it is not sensible to include in the bill a statutory duty that would require regional transport partnerships to prepare separate plans for different modes of transport. I thought that we were all about trying to get more integrated and joined-up transport. Making the RTPs put together five, six or seven separate statutory plans setting out full-scale statutory responsibilities for cars, buses, planes, trams, cycling, walking, inland waterways and so on would be the wrong approach.

As members have already spoken out strongly about Mr Ewing’s reference to “religious and cultural mores” in paragraph (c) of proposed new subsection (2A), I will not go over their points again.

I agree with the intent behind amendment 64, in the name of Michael McMahon, but it might need to be tidied up by an Executive amendment at stage 3. It seems that our legal and drafting teams will have to do a lot of hard work to get this right by that stage, but I have great confidence that they will rise to the challenge.

Dr Jackson: I find David Davidson’s remarks on amendment 57 somewhat strange, as they seem to imply that he does not want the more remote parts of our rural areas to be covered by the bill. He is shaking his head now, but at the time I felt that was what he was saying. Strategies must cover all parts of the country, and that is certainly what amendment 57 seeks to ensure.

We all agree on amendment 58, which sets out the need to incorporate “changes in population and land use” in RTP strategies. There is also general agreement on amendment 59, in the name of Paul Martin.

Fergus Ewing has raised a significant question about definitions with regard to my amendments 60 and 61. However, this is not the first time that we have been in such a situation. For example, during the passage of the National Parks (Scotland) Bill, we had exactly the same debate about sustainable development, and we were able to break the matter down into three particular aspects. As a result, I do not think that the problem is insurmountable; indeed, the Executive should be able to get its head round it and come up with a definition.

Moreover, the environmental assessment procedures that have been introduced should be useful as far as amendment 61 is concerned. Only this morning, the Subordinate Legislation Committee was considering the Environmental Assessment (Scotland) Bill which, if I remember correctly, has been introduced as a result of a European directive. There is a lot in the pipeline that should be able to address this matter.

As concerns have been expressed about certain very important environmental and social issues—indeed, the M74 has already been mentioned in that respect—I believe that amendments 60 and 61 must be agreed to in order to make the point. The minister has himself agreed that these points are important.

I think that everything that needs to be said about amendment 63 has been said, and Michael McMahon, Margaret Smith and David Davidson have dealt adequately with the issues that emerge from it.

I will press amendment 57.

The Convener: The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Margaret (Edinburgh West) (LD)

ABSTENTIONS
Davidson, Mr David (North East Scotland) (Con)

The Convener: The result is: For 8, Against 0, Abstentions 1.

Amendment 57 agreed to.

Amendment 58 moved—[Dr Sylvia Jackson]—and agreed to.

Amendment 59 moved—[Paul Martin].

The Convener: The question is, that amendment 59 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Margaret (Edinburgh West) (LD)

ABSTENTIONS
Davidson, Mr David (North East Scotland) (Con)

The Convener: The result is: For 8, Against 0, Abstentions 1.
Amendment 59 agreed to.
Amendment 60 moved—[Dr Sylvia Jackson].

The Convener: The question is, that amendment 60 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Margaret (Edinburgh West) (LD)

AGAINST
Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Amendment 60 agreed to.
Amendment 61 moved—[Dr Sylvia Jackson].

The Convener: The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Margaret (Edinburgh West) (LD)

AGAINST
Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 6, Against 0, Abstentions 3.

Amendment 61 agreed to.

Amendment 19 moved—[Nicol Stephen]—and agreed to.

Amendment 62 moved—[Dr Sylvia Jackson]—and agreed to.

Amendment 18 moved—[Nicol Stephen]—and agreed to.

Amendment 63 not moved.

Amendment 64 moved—[Michael McMahon]—and agreed to.

Section 5, as amended, agreed to.

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

Amendment 19 moved—[Nicol Stephen]—and agreed to.

The Convener: Amendment 20, in the name of the minister, is grouped with amendments 65 and 21.

15:15

Nicol Stephen: The original draft of the bill proposes that transport partnerships must submit their strategies within 12 months of their creation. That is a reasonable period in which to expect a strategy to be produced. We do not want the strategies to take a long time to prepare and we do not want them to become like local plans, which can be out of date or not updated in good and reasonable time.

However, I have received representations from the existing voluntary partnerships and from SPT, suggesting that the quality of the strategies could be compromised if the partnerships had to stick to a strict 12-month time limit. I have considered the matter carefully and have concluded that the 12-month period should remain in the bill, but that opportunities should be provided for transport partnerships to request an extension of that time limit, subject to good reason being given. I propose that that request be made within eight months to ensure that, should an extension be refused, a regional transport partnership would still have sufficient time in which to produce its strategy.

Amendment 20 is pragmatic, although I stress that there is no intention to permit extensions automatically on request. There must always be adequate reasons and good evidence of substantial work already having been completed by a regional transport partnership.

Paul Martin’s amendment 65 seeks to confirm that the purpose of submitting a strategy is to get it approved. I am happy to accept that amendment.

I move amendment 20.

Paul Martin: Amendment 65 is a technical amendment to include, in section 6, on line 29 of page 4, the words “for approval”.

Fergus Ewing: Amendment 21 would allow a partnership

“to submit its transport strategy … later than the time limit specified … but not later than such date as is specified in the authorisation.”

That provision seems to contain no long-stop date. My reading of the bill is that one year is the period in which the partnerships should devise their strategies. If there is to be any extension, some time limit should be set for that extension.
I wonder whether I have missed something or whether no time limit has been set for that extension. It would be odd for some partnerships to do their work in a year but for others to have an unspecified longer period in which to produce their strategies. Perhaps I have missed something, in which case I apologise. However, if there is no long-stop date at present, will the minister consider setting a long-stop date at stage 3? Unless there is a deadline, some people find it difficult to produce the goods. A deadline concentrates the mind, and the absence of one does the opposite.

Nicol Stephen: Fergus Ewing’s idea is a good one, and I will come back to that point at stage 3 having considered what might be an appropriate back-stop time limit—perhaps a further six months. I thank Fergus Ewing for that suggestion.

Amendment 20 agreed to.

Amendment 65 moved—[Paul Martin]—and agreed to.

Amendments 21 to 23 moved—[Nicol Stephen]—and agreed to.

Section 6, as amended, agreed to.

Sections 7 and 8 agreed to.

Section 9—Joint transport strategies

The Convener: Amendment 66, in the name of Michael McMahon, is grouped with amendment 67.

Michael McMahon: During the consultation on the bill and stage 1, there was a lot of discussion about the possibility of a centre of population lying outwith a particular RTP’s area, despite there being a compelling argument for the travel to work between that centre and the RTP’s area to be included in the RTP’s transport strategy. Section 9 deals with joint transport strategies, but there is a gap within that section. Unless the bill says that RTPs must ensure that there are good links between a centre of population and a particular RTP, there will be a loophole that it will be possible to exploit. As we have done on several occasions to make a bill tighter, we must have an amendment such as amendment 66.

Amendment 64, which we agreed to earlier, will ensure that any national transport strategy is taken into consideration, so amendment 67 is probably no longer required. I will not move amendment 67 if the minister agrees that that is the case. There is no point in having that provision in the bill twice.

I am more interested in getting amendment 66 into the bill so that it instructs RTPs in a way that will ensure that there are no loopholes whereby they can consider only centres of population within their area and not, in devising joint strategies, look across their boundaries and develop a national framework of transport that will be to the benefit of all.

I move amendment 66.

Bruce Crawford: Amendment 64 was about a national transport strategy. Inevitably, a national transport strategy cannot deal with all the minutiae that there might be in the Executive’s policy framework with regard to the specific policies in a given area. I wonder, therefore, whether not moving amendment 67 would be a weakness rather than a strength, as amendment 67 talks about “transport policies”, not the overarching current national transport strategy. I seek the convener’s indulgence. If, having listened to the minister, Michael McMahon decides not to move amendment 67, can I move it?

The Convener: Yes.

Bruce Crawford: Okay. I will wait to hear what the minister has to say.

Dr Jackson: I support amendment 66. My constituency of Stirling is in one particular regional transport partnership area, but the big centres of population of Glasgow and Edinburgh are on either side of it. Amendment 66 will be particularly important and I support it.

Fergus Ewing: I have a couple of questions for Michael McMahon. Although I agree absolutely with the sentiment of his remarks, surely it is explicit in section 9 that the transport partnerships should work together where they have common interests. I take the example of the A9, which straddles two or three transport partnerships. Given that they will all have an interest in seeing improvements to the A9, they will want to speak to each other on the matter.

Amendment 66 says:

“In drawing up joint transport strategies, Transport Partnerships shall have regard to improving transport between any cities or other major centres of population within the area covered by the Partnerships.”

Although that is desirable, if the provision is put on the face of the bill, the implication is that the joint strategies need not consider transport in areas that are not major centres of population. In other words, if amendment 66 were to become enshrined in law, partnerships would not be required to consider the needs of smaller towns and villages in their joint transport strategies.

I am sure that that was not Michael McMahon’s intention in drafting the amendment. If that meaning or that implication can be drawn from the wording of the amendment, does he agree that it would be better to think again about the provision and bring it back in another form?
My second question relates to amendment 67. As Bruce Crawford said, Michael McMahon referred to the “national transport strategy” in amendment 64. In drafting amendments, it is important to choose the same language. In amendment 67, the word “policies” should therefore be replaced by the word “strategies”. If the bill is amended so that

“Transport Partnerships shall have regard to the transport policies of the Scottish Ministers”,

that begs the question of what the policies of the Scottish ministers are. Without being too contentious, some could argue that it is not always clear what those policies are. I understand that the strategy is to be published in one document. Anyone involved in interpreting the law will therefore be able to establish exactly what the national strategy is, even if they are unable to establish what national policies are.

Nicol Stephen: I completely endorse Michael McMahon’s intention in lodging amendments 66 and 67. If I may, I will take the second amendment first. The advice that I have received is that amendment 67 is unnecessary. If members look at section 5 on the formulation and content of regional transport strategies, they will see that section 5(2)(e) refers to

“the respects in which the transport … will contribute to the realisation of the transport policies of the Scottish Ministers”.

The duty also refers to instances in which joint strategies are produced. I ask Michael McMahon not to move amendment 67.

The outcome on amendment 66 will rest on the committee’s judgment of the arguments. I would prefer it if Michael McMahon withdrew amendment 66 on the basis of the giving him an assurance that we accept the principle of what he is trying to achieve and that we would come back with an appropriate amendment at stage 3, which would relate to the section 5 amendments of Sylvia Jackson and others. It would be better if we provided greater clarity on, and greater specification of, what is required of regional transport strategies in section 5, so that that could flow through to the joint strategies. It seems easier to achieve what we want to achieve by amending section 5 at stage 3, and in so doing taking account of Michael McMahon’s intention, than by voting in amendment 66 and then having to reverse it out at stage 3 and put back the appropriate reference in section 5. I hope that members understand what I am suggesting.

It would be sensible to place all the relevant detail in section 5. I want to ensure that that is properly scrutinised by the Executive lawyers and drafting people and that the bill makes it clear that what applies to the strategies of individual regional transport partnerships also applies to joint transport strategies. Our current advice is that the bill is clear on that, but I will check up on that advice and find out whether we cannot make the bill even clearer on that point.

15:30

Michael McMahon: As I read amendment 67, it occurred to me that we would just be repeating an earlier provision. The minister clarified that amendment 67 is unnecessary, given that the wording of section 5(2)(e) means that my intended aim has already been met. As I am more than happy with the minister’s response, I will not move amendment 67.

I am not as satisfied with his comments on amendment 66. We have to get such a provision into the bill. If he believes that another form of words is necessary, or that other issues must be dealt with, I would be more than happy for him to lodge a further amendment at stage 3, but I ask the committee to support amendment 66. Once the provision has been inserted, the minister will be able to produce other suggestions thereafter.

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Margaret (Edinburgh West) (LD)

ABSTENTIONS
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 6, Against 0, Abstentions 3.

Amendment 66 agreed to.
Amendment 67 not moved.

Section 9, as amended, agreed to.

After section 9

The Convener: Amendment 68, in the name of Paul Martin, is in a group on its own.

Paul Martin: I lodged amendment 68 for a number of reasons. At stage 1, we received representations from a number of groups that referred to a lack of co-ordination in the delivery of transport to many national health service facilities throughout Scotland. The local evidence that I received on the ability of a transport strategy to...
provide transport services to health facilities in my constituency—I am sure that other members have received similar evidence—made me feel strongly that it should be a requirement that a strategic approach to the matter be adopted through the formation of partnerships between the health authorities and the regional transport partnerships. There is some evidence that informal partnerships are in place in various parts of Scotland. By making the formation of partnerships between the relevant health authorities and the regional transport partnerships a legal requirement, amendment 68 would ensure that consideration is given to the challenges that people face in accessing the health service.

I was motivated to lodge amendment 68 after seeing the difficulties that the reduction in the frequency of bus services caused many of my constituents when they were trying to attend Stobhill hospital. I am sure that, throughout Scotland, there are examples of transport services to health facilities being reduced because of a lack of co-ordination and partnership between health authorities and transport authorities.

I move amendment 68.

The Convener: I see that quite a few members wish to comment. Before I ask them to speak, I point out that I intend to let the committee decide on this amendment, and then on some other amendments that we have already debated, before suspending these considerations until the next meeting at which we discuss stage 2 of the bill. The debate on amendment 68 will be the last debate today.

Tommy Sheridan: I strongly support amendment 68. Paul Martin has reflected the wishes of his constituents who find it very difficult to get to and from Stobhill hospital. I am sure that, throughout Scotland, there are examples of transport services to health facilities being reduced because of a lack of co-ordination and partnership between health authorities and transport authorities.

Amendment 68 is very important and I hope that the minister will indicate his support for it so that bus services to hospitals can be improved across Scotland. Like Paul Martin, I can speak only for Glasgow, but radical improvements are required.

Dr Jackson: It was in Glasgow that we first heard of an example of a health facility being moved but the bus service continuing to run as if the facility was still in its original place. A number of new hospitals are being built, so it is vital for communities to have the provisions of amendment 68 in the bill. I heartily support the amendment.

Margaret Smith: I, too, support amendment 68; it is crucial that its provisions become a legal requirement. Anyone who has had anything to do with consultations on acute services reviews will know that, for the public, transport is one of the top two issues. That is certainly true in Edinburgh, where people now have to travel great distances to get to the new Edinburgh royal infirmary. The convener will know about problems getting to St John’s hospital in Livingston; and, in my constituency, a new tramline will not stop at the second largest hospital in the city. In the past, the NHS has not given transport the importance that it deserves in its formal processes. If legislative action is required for that to happen, we should take that action. I welcome amendment 68.

Bruce Crawford: I welcome amendment 68 as well. It is a pity that we cannot rewind the acute services reviews and include in them the provisions of the amendment. In Sylvia Jackson’s area, no one considered how to get people from Callander to Larbert before the decision was taken to build the new hospital at Larbert. In future, people will face similar problems getting from Dunfermline to Kirkcaldy. There are no cohesive plans to transport people from one part of the community to another.

Many such decisions have been taken at the margins. Had we had something like the provisions of amendment 68 in place earlier, we might have been able to get people to apply their minds to transport issues. I am a bit afraid that some irrevocable decisions are being made and that we are facing a future transport nightmare because some of that work has not been done properly by local authorities and the health boards. Had a transport authority and the health boards sat down and thought it through properly, they might have come to a different conclusion. I am glad that the amendment is being made now, even though the previous situation cannot be rewound.

Mr Davidson: I have received communications from all over Scotland about access by public transport to hospital services. The issue is wider than that because some of the centralisation plans of the NHS and the Executive, as well as staff shortages, have resulted in some peripatetic outpatient services being moved into population centres. In the rural north east, where I come from, there is a huge problem in all parts of the region about access, not just to services, but for people to be able to visit others.

I have two questions for Paul Martin that I hope he will be able to answer. Where does he expect the funding for the measures to come from?
Would it come partly from the health boards, or solely from the regional transport partnership? Without adequate funding, some of those services will just not happen, despite what is on the face of the bill.

Paul Martin’s amendment 68 includes the words: 
"persons using hospitals and other NHS facilities in the Health Board area."

Why did he not seek to extend provision of transport to major care facilities? A lot of older people want to visit relatives who are in care and they require access to public transport, which is part and parcel of the support of an individual in a care facility. Apart from that, I accept the principle of what Paul Martin tries to achieve, but we could do with more clarification. Perhaps the minister will express Executive views about that in his winding up.

Fergus Ewing: I have a few technical points to make. I support the aim and sentiments of amendment 68, which is that the transport partnerships and the health boards should work together. However, amendment 68 says that the strategy “must set out measures to secure the effective provision of public transport to persons using hospitals”.

I am not quite sure what the phrase “persons using hospitals” means because people who visit hospitals cannot be said to use hospitals. I presume that it is intended that visitors to in-patients should be covered. If that is the case, it must be made clear. I presume that the wording would apply to patients, visitors, employees and people in general who have a need to go to a hospital.

The amendment does not encapsulate the provision in section 9 that makes it clear that in producing the health transport strategies, the requirements of sections 5 and 6 have to be fulfilled. That is a technical point, but if there are to be strategies, they should be produced in a year, or a longer period. That is the purpose of section 9(1), which makes it clear that joint transport strategies should be covered by the generality of the technical rules in sections 5 and 6. Perhaps the minister will respond to that.

If we are to make specific transport provision to and from hospitals for health boards, which is desirable, what about specific provision to and from schools for education authorities? I am tempted to ask, “Where do we stop?” or, “Should we stop?” I am just asking the question and not setting out any particular view. Transport to and from school can be just as contentious and controversial as transport to and from hospital and perhaps more so in some cases because of the additional problem of security. Should that be on the face of the bill too? I am interested to know what the minister thinks.

Is it intended that the strategy should encapsulate the Scottish Ambulance Service, which applies to the whole of Scotland, as well as the geographical areas of health boards? It does not seem to be the case, but I thought that that might be intended. Would wider issues such as car-parking charges be covered by the strategy? Car-parking charges in some cases are so high that they are a deterrent to people who want to visit hospitals. It can be a very expensive experience in some parts of the country.

15:45

Nicol Stephen: There is clearly strong feeling on the issue, which I support. My recommendation is therefore that you agree to amendment 68 today, but that it will be necessary to come back at stage 3 with an amendment that will cover some of the issues that have just been raised by Fergus Ewing in relation to health board areas, the fact that the Scottish Ambulance Service has a Scotland-wide remit and the duty that would be placed on all the health boards in Scotland.

I would also like to examine the potential for a multiplicity of different statutory strategies to see whether, in terms of cross-boundary issues, there are opportunities for regional partnerships and/or health boards to work together on the development of those plans. We need to consider what status should be given to plans with health boards as against other plans with education departments or social work departments, or with plans such as that in the care home example given by David Davidson. I would like to weigh up those issues and draft an amendment, but that amendment should keep the spirit of amendment 68, which the Executive strongly supports.

I would also like to discuss the issue with the Minister for Health and Community Care, so that we can take soundings in the Health Department and come up with a sensible way of implementing a strategy. I have already spoken to him and he supports the intention of Paul Martin’s amendment. It is important to put that on the record and make it clear that any amendment that the Executive comes back with at stage 3 will attempt to strengthen and ensure proper implementation of amendment 68, rather than change its intention.

Paul Martin: I shall deal briefly with a number of points. Fergus Ewing raised a point about the comparison with education facilities. The purpose of amendment 68 was to introduce a specific reference to health. I think that there is a significant difference between mothers travelling to school to collect their children and people
attending hospitals who require 24-hour facilities. I make no apologies for the fact that the purpose of my amendment is to focus on health. I recognise that there are many other arguments for areas that are to be served by transport facilities, but health is the specific focus of my amendment.

Fergus Ewing had the opportunity to lodge his own amendment about education or any other area, but amendment 68 gives us the opportunity to focus on health and to recognise the challenges that people face when they have to travel at an appointed time. No routine is attached to medical facilities. People do not attend every morning at 9 o’clock; sometimes they are told to attend at certain times. Amendment 68 recognises that and attempts to inject a health theme into the bill.

David Davidson made a point about funding. I know that the First Minister asks David McLetchie about funding every week, so there is a comparison there. Funding will come into the issue, and the challenge that the regional partnerships will face will involve them in looking for ways in which they can create opportunities for funding. They will also have an opportunity to face up to the bus companies, which have to take the good with the bad, as I have always said, and deliver a service to the needs of the region. I would argue that the partnerships could have powerful lobbying opportunities to bring in additional funding for services. They could also examine how services are delivered at the moment, because there are still opportunities to improve services where resources are not always the issue. Getting round the table in the first place, which does not happen in many health board areas because there is no statutory obligation to do so, will ensure that that happens.

David Davidson also raised the issue of care facilities. It is difficult to define our approach to that issue. The focus of the amendment is on primary and acute care services. I understand that the member wants to add care facilities, and there may be opportunities at stage 3 to broaden the scope of the amendment.

I welcome the fact that a majority of members appear to support amendment 68. However, members’ unanimous support for the amendment would add weight to the argument that there is a need for all transport services to improve how they deliver services to communities that are served by health facilities.

Amendment 68 agreed to.

Section 10—Other transport functions of RTPs

The Convener: We will vote on a series of amendments before concluding today’s stage 2 consideration of the bill. I remind members that amendment 24 pre-empts amendment 69.

Amendment 24 moved—[Nicol Stephen]—and agreed to.

The Convener: Amendment 69 falls.

Amendment 25 moved—[Nicol Stephen]—and agreed to.

Amendments 70 and 71 not moved.

Amendment 72 moved—[Michael McMahon].

The Convener: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Margaret (Edinburgh West) (LD)

AGAINST
Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 72 agreed to.

Amendment 26 moved—[Nicol Stephen]—and agreed to.

Amendment 27 not moved.

Amendment 28 moved—[Nicol Stephen]—and agreed to.

Section 10, as amended, agreed to.

After section 10

Amendment 29 moved—[Nicol Stephen].

The Convener: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Margaret (Edinburgh West) (LD)

AGAINST
Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Amendment 29 agreed to.

Section 11—Manner of performance of RTPs’ functions

Amendment 30 moved—[Nicol Stephen].

The Convener: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Margaret (Edinburgh West) (LD)

AGAINST
Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 30 agreed to.

Amendment 31 moved—[Nicol Stephen]—and agreed to.

Section 11, as amended, agreed to.

The Convener: Amendment 73 was withdrawn.

Section 12—Transport functions of Scottish Ministers

Amendments 74 and 75 not moved.

The Convener: That brings us to the start of the next grouping, which we will debate at our meeting on 10 May. We conclude today’s stage 2 consideration of the Transport (Scotland) Bill and move on to the remainder of our business. A completion target for the meeting of 10 May will be published in the Business Bulletin within the next couple of days. I thank the minister and his officials for their participation in the meeting.

Nicol Stephen: I thank the convener and members.

The Convener: I suspend the meeting to give members the opportunity to have a short break.

15:55
Meeting suspended.
Transport (Scotland) Bill

3rd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 4
Sections 5 to 15
Sections 16 to 31
Section 32
Sections 33 to 35
Sections 36 to 46

Schedule 1
Schedule 2
Schedule 3
Schedules 4 and 5
Schedules 6 and 7
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 12

Nicol Stephen
32 In section 12, page 6, line 38, after <any> insert <statutory>

Michael McMahon
Supported by: Paul Martin
76 In section 12, page 6, line 38, at end insert <or power>

Nicol Stephen
33 In section 12, page 7, line 1, leave out <transport> and insert <the provision or regulation of rail services>

Nicol Stephen
34 In section 12, page 7, line 2, after <was> insert <immediately before the provision referred to in subsection (1) above>

Nicol Stephen
35 In section 12, page 7, line 2, leave out <under any enactment>

After section 12

Nicol Stephen
36 After section 12, insert—
<Arrangements for performance by RTP of certain transport functions etc.> 

A Transport Partnership may enter into arrangements with the Scottish Ministers, a council or any other person having statutory functions relating to transport being arrangements under which the Partnership—

(a) does, on behalf of the Scottish Ministers, the council or that other person, such things relating to transport as are specified in the arrangements;

(b) provides such services for the purposes of, or in connection with, transport as are so specified.>

Before section 13

Michael McMahon

*77 Before section 13, insert—

<Transfer of functions carried out under Transport (Scotland) Act 2001>

(1) Where the Scottish Ministers wholly transfer any function carried out by a local transport authority under the 2001 Act—

(a) to a Transport Partnership under section 10(1) above; or

(b) to themselves under section 12(1) above,

any arrangement, scheme or proposal made, or any process commenced in respect of that function shall continue to have effect; except that any reference in that arrangement, scheme, proposal or process to the local transport authority shall be construed as a reference to the Scottish Ministers or, as the case may be, to the Transport Partnership.

(2) In this section—

“The 2001 Act” means the Transport (Scotland) Act 2001 (asp 2);

“local transport authority” has the meaning given to it by section 82(1) of the 2001 Act.>

Section 13

Michael McMahon

Supported by: Paul Martin

78 In section 13, page 7, line 8, at end insert—

<(A1) Where by virtue of sections 2, 10 or 12 above any function is transferred, Scottish Ministers shall ensure that the order transferring the function shall also provide for the transfer of staff appropriate to that function in compliance with subsections (2A) to (2E) below.>

Michael McMahon

Supported by: Paul Martin

79 In section 13, page 7, line 12, leave out from beginning to <former> in line 16 and insert—

<(2) Where a member of staff (the “employee”) transfers from the body who was carrying out the function immediately before the transfer (the “present employer”) to a new body who will be carrying out the function after the transfer (the “new employer”)—>
(a) the contract of employment between the employee and the employee’s present employer continues to have effect but as if originally made between the employee and the new employer; and

(b) the employee’s period of employment by the present employer continues to have effect as if originally made between the employee and the new employer;

Michael McMahon
Supported by: Paul Martin
80 In section 13, page 7, line 19, at end insert—

<(2A) Any order transferring functions under sections 2, 10 or 12 which would involve the transfer of staff must also make provision for the establishment of a staff board for the purposes of carrying out such functions in relation to the staff as the Scottish Ministers consider appropriate.

(2B) Before making an order of the sort mentioned in subsection (2A) above, the Scottish Ministers must consult such persons as they think fit.

(2C) Without prejudice to the generality of subsection (2A), such an order may confer on the staff board the functions of—

(a) considering and keeping under review the arrangements for the recruitment of staff by new agencies and Transport Partnerships and for the transfer of any staff from the present employer to the new employer;

(b) considering any staffing problems arising out of, as a consequence of, or in connection with any transfer of functions under sections 2, 10 or 12;

(c) advising the Scottish Ministers of the steps required to safeguard the interests of transferred staff; and

(d) advising the bodies from whom and to whom functions are transferring on what steps are required in relation to the interests of transferred staff.

(2D) The Scottish Ministers may give directions—

(a) to any staff board as to its procedure and to the carrying out of its functions;

(b) to any body from whom and to whom staff or powers are being transferred in respect of providing information required by the staff board; and

(c) to any body described in paragraph (b) above with respect to the implementation of any advice given by the staff board.

(2E) The Scottish Ministers shall provide for the funding of all costs and expenses incurred by any staff board.>

Nicol Stephen
37 In section 13, page 7, line 29, after <property> insert <, rights>

Nicol Stephen
38 In section 13, page 7, line 31, after <property> insert <, rights>
Section 15

Michael McMahon

120 In section 15, page 8, line 18, at end insert—

< ( ) arbitrating disputes between road works authorities and undertakers, >

Nicol Stephen

81 In section 15, page 8, line 23, at end insert—

< ( ) In subsection (1) above, “works in roads” includes road works within the meaning given by section 107(3) of the 1991 Act, works for roads purposes within the meaning given by subsection (2) of section 145 of that Act and major works for roads purposes within the meaning given by subsection (3) of that section. >

Section 17

Nicol Stephen

82 In section 17, page 9, line 30, at end insert—

< (3A) The Scottish Ministers may by regulations—

(a) provide that the payment to the Commissioner of the prescribed fee is a condition of access to the SRWR as mentioned in subsection (3) (and different fees may be prescribed for access for different purposes), and

(b) make other provision as to the payment to the Commissioner by such persons as are prescribed of such amounts as are prescribed.

(3B) Amounts received by the Commissioner under subsection (3A) are to be applied by the Commissioner to the keeping of the SRWR. >

Nicol Stephen

83 In section 17, page 10, line 10, at end insert—

< ( ) under subsection (2) of section 56 of the Roads (Scotland) Act 1984 (c.54), given an applicant for consent for road works or excavations notice of affected statutory undertakers,

( ) under subsection (8) of that section, given notification of unlawful works removed or unlawful excavations filled in,

( ) under section 58(1) of that Act, given permission for the occupation of part of a road for the deposit of materials or for the erection of staging or scaffolding projecting over part of a road,

( ) under section 61(1) of that Act, given permission for the placing, leaving, retention, maintenance, repair or reinstatement of apparatus in or under a road or the breaking open of or having access to the road. >

Nicol Stephen

84 In section 17, page 10, line 11, leave out <the Roads (Scotland) Act 1984 (c.54)> and insert <that Act>
Nicol Stephen

85 In section 17, page 10, line 37, at end insert—

<( ) In section 108(2) of the 1991 Act (roads authority to be regarded in certain circumstances as road works authority for purposes including those of section 112 of the Act) for “112” there is substituted “112B (duty to enter certain information in Scottish Road Works Register)”:>

Fergus Ewing

135 In section 17, page 11, line 5, after <undertaker> insert <or road works authority which is a local authority>

Fergus Ewing

136 In section 17, page 11, line 15, after <undertaker> insert <or road works authority which is a local authority>

Fergus Ewing

137 In section 17, page 11, line 18, after <undertaker’s> insert <or road works authority’s>

Fergus Ewing

138 In section 17, page 11, line 19, after <has> insert <or they have>

Before section 18

Fergus Ewing

139 Before section 18, insert—

<Definition of “undertaker”>

(1) In section 107(4) of the 1991 Act, after “him)” there is inserted “including (for the avoidance of doubt) a road works authority”

(2) In section 164(1) of the 1991 Act, at the end of the definition of “statutory right” there is inserted “and, for the avoidance of doubt, a statutory right may include a right conferred on a road works authority”>

Fergus Ewing

140 Before section 18, insert—

<Duties of local authorities: further provision>

(1) In section 113 of the 1991 Act—

(a) in subsection (1), after “undertaker” there is inserted “or road works authority (where it is a local authority)”

(b) in subsection (5), after “who” there is inserted “, or road works authority which is a local authority which,” and after “his” there is inserted “or their”

(2) In section 114—
(a) in subsection (1), after “undertaker” there is inserted “or road works authority which is a local authority”
(b) in subsection (5), after “who” there is inserted “, or road works authority which is a local authority which,”
(c) in subsection (6), after “person” there is inserted “(or in the case of a road works authority, a person acting on behalf of, or with the permission of, the road works authority)“>

(3) In section 116—
(a) in subsection (1), after “undertaker” there is inserted “or road works authority”
(b) in subsection (2), after “undertaker” there is inserted “or road works authority which is a local authority”
(c) in subsection (4), after “who” there is inserted “or road works authority which”
(d) in subsection (5), after the first occurrence of “person” there is inserted “or, in the case of a road works authority, as a person acting on behalf of, or with the permission of, the road works authority,”

(4) In section 129—
(a) in subsection (1), after “whom” there is inserted “or road works authority which is a local authority by which”
(b) in subsection (2), (3) and (4), for each occurrence of “he shall” there is substituted “he or they shall” and after each occurrence of “he has” there is inserted “or they have”
(c) in subsection (6), after “who” there is inserted “or road works authority which”

(5) In section 145(1), before the entry “roads authority” there is inserted—
“local authority” means a council under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39)”

Section 18

Michael McMahon

121 In section 18, page 12, line 13, at end insert—

<(  ) But the authority may only give directions under subsection (1A) if satisfied that they will not cause completion of the works to be delayed by more than ten days.”>

Michael McMahon

122 In section 18, page 12, line 13, at end insert—

<(  ) But the authority may only give directions under subsection (1A) if satisfied that they would not cause substantial—

(a) inconvenience, or

(b) financial disadvantage,

to the customers of any public utility company.”>
Nicol Stephen

86 In section 18, page 12, line 13, at end insert—

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

“(2A) 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.”.>

Section 19

Michael McMahon

123 In section 19, page 12, line 22, after <works> insert <that are not emergency works>

Michael McMahon

124 In section 19, page 12, line 35, at end insert—

<( ) placing the apparatus in the other road would not result in any delay in connecting customers to electricity, gas, water, sewerage, telecommunications or other public utility networks,>

Michael McMahon

125 In section 19, page 13, line 2, leave out <may> and insert <shall>

Michael McMahon

126 In section 19, page 13, line 8, after <duty> insert <or contractual requirement>

Michael McMahon

127 In section 19, page 13, line 9, after <service> insert <, or

( ) requirement imposed under any relevant current code of practice published by the undertaker following approval by the Office of Communications under the Communications Act 2003 (c.21),>

Michael McMahon

128 Leave out section 19

Section 20

Michael McMahon

129 In section 20, page 13, leave out line 20

Michael McMahon

130 In section 20, page 13, line 20 at end insert—

<( ) in subsection (5), after paragraph (a) there is inserted—
“( ) to connect customers to electricity, gas, water, sewerage, telecommunications or other public utility networks,
( ) to make urgent repairs following a serious disruption to the supply of electricity or gas to customers, or to the water, sewerage or telecommunications networks.”

Section 23

Nicol Stephen
87 In section 23, page 15, line 10, after <on> insert <road works authorities and>

Nicol Stephen
88 In section 23, page 15, line 11, leave out <section 119> and insert <sections 118 and 119 respectively>

Section 24

Fergus Ewing
141 In section 24, page 15, line 20, leave out <(2)> and insert <(1A)>

Fergus Ewing
142 In section 24, page 15, line 20, at end insert—
     <(1A) In subsection (1), after “undertaker” there is inserted “or road works authority”>

Fergus Ewing
143 In section 24, page 15, line 31, at end insert—
     <( ) In subsection (2), after “who” there is inserted “or road works authority which”>

Fergus Ewing
144 In section 24, page 16, line 8, at end insert <, or road works authority which fails to comply with their duty under subsection (1) or (2),>

Section 26

Fergus Ewing
145 In section 26, page 16, line 38, after <undertaker> insert <or road works authority>

Section 27

Fergus Ewing
146 In section 27, page 17, line 10, at end insert—
<(3B) The Scottish Ministers shall issue guidance in relation to the exercising of the power in subsection (3A), and, in doing so, shall—

(a) consult any relevant associations of road works authorities or undertakers and any other bodies they consider appropriate; and

(b) take into account any relevant current codes of practice or good practice guidance issued by road works authorities or undertakers.

(3C) The road works authority shall have regard to any guidance issued under subsection (3B).”>

Fergus Ewing

147 In section 27, page 17, line 18, at end insert—

<(2B) The Scottish Ministers shall issue guidance in relation to the exercising of the power in subsection (2A), and, in doing so, shall—

(a) consult any relevant associations of road work authorities or undertakers and any other bodies they consider appropriate; and

(b) take into account any relevant current codes of practice or good practice guidance issued by road works authorities or undertakers.

(2C) The responsible authority shall have regard to any guidance issued under subsection (2B).”>

Section 28

Michael McMahon

131 In section 28, page 17, line 36, leave out <(including any part not, and not) and insert <that has been, or is>

Michael McMahon

132 In section 28, page 18, leave out lines 19 and 20

Michael McMahon

133 In section 28, page 18, line 24, at end insert—

<( ) A resurfacing notice shall specify a date by which the undertaker must begin the execution of resurfacing works, which must not fall more than nine months after the undertaker has given notice under section 129(3).>

Section 29

Michael McMahon

134 In section 29, page 19, line 41, at end insert—

<( ) Before making regulations under subsection (1), the Scottish Ministers shall consult any relevant association of undertakers and such other bodies as they consider appropriate.>
Section 32

Nicol Stephen
89 In section 32, page 21, line 22, after <order> insert <made by statutory instrument>

Nicol Stephen
90 In section 32, page 21, line 25, after <of> insert <the statutory instrument containing>

Schedule 5

Fergus Ewing
148 In schedule 5, page 37, line 24, at end insert—

<( ) But the officer shall not issue a notice if prima facie satisfied that the offence was inadvertent and that the effect of the offence was trivial.>

Nicol Stephen
91 In schedule 5, page 37, line 29, leave out <the Scottish Ministers may by regulations prescribe> and insert <may be prescribed>

Fergus Ewing
149 In schedule 5, page 38, line 10, at end insert—

<( ) In determining the amount, account shall be taken of whether the offence appeared to be inadvertent and whether the effect of the offence was trivial.>

Fergus Ewing
150 In schedule 5, page 39, line 33, at end insert—

<( ) In reaching a decision, the road works authority shall take into account whether the offence appeared to be inadvertent and whether the effect of the offence was trivial.>

Nicol Stephen
92 In schedule 5, page 39, line 33, at end insert—

<Effect of prosecution on notice>

8A Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.>

Nicol Stephen
93 In schedule 5, page 39, line 35, leave out <paragraph 8> and insert <paragraphs 8 and 8A>

Fergus Ewing
151 In schedule 5, page 40, line 15, at end insert—
Operation of fixed penalty procedure where local authority is believed to be the offender

When the person referred to in paragraph 1(1) is a road works authority which is a local authority, paragraphs 1 to 10 of this schedule shall apply to that person as they would to any other person, except that—

(a) references to a road works authority shall be construed as references to the Commissioner, and

(b) references to an authorised officer of a road works authority shall be construed as references to a person authorised by the Commissioner to issue notices under paragraph 1(1).>

Nicol Stephen

In schedule 5, page 40, line 17, at beginning insert—

<(1) The road works authority shall, subject to sub-paragraph (2), remit the money received by them by way of fixed penalties under this Schedule to the Scottish Ministers.

(2) The Scottish Ministers may, by regulations, provide that the road works authority may retain as much of that money as is sufficient to meet such of their expenditure as is described in the regulations.

(3)>
(1) The Scottish Ministers shall by regulations establish a regime under which fixed penalty notices under section 32 apply to road works authorities equally (making any necessary changes) as they do to undertakers.

(2) Regulations established under subsection (1) may, if the Scottish Ministers consider it necessary, modify any enactment.

Section 33

Nicol Stephen

99 In section 33, page 22, line 28, at end insert—

<( ) Regulations shall not be made unless a draft of them has been laid before and approved by resolution of the Scottish Parliament.>

Section 35

Nicol Stephen

100 In section 35, page 23, leave out lines 26 to 29 and insert—

<(1) Any offence under this Act which is listed in the first column of Schedule 8A to this Act (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Act.>

Nicol Stephen

101 In section 35, page 23, line 32, at end insert—

<(2A) The Scottish Ministers may, by order, modify that Schedule so as to provide that an offence is to cease to be a fixed penalty offence.>

Nicol Stephen

102 In section 35, page 23, line 35, leave out <Regulations under subsection (1)(b)> and insert <An order under subsection (2A)>

Nicol Stephen

103 In section 35, page 23, line 35, at end insert—

<( ) In section 143 of that Act (which includes provision as to orders under the Act), in subsection (2)(b)(ii), after “section” there is inserted “130A or”.>

Schedule 7

Nicol Stephen

104 In schedule 7, page 43, line 17, at end insert—

<Effect of prosecution on notice

8A Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.>
Nicol Stephen
105 In schedule 7, page 43, line 19, leave out <paragraph 8> and insert <paragraphs 8 and 8A>

Nicol Stephen
106 In schedule 7, page 43, line 39, at beginning insert—

<(1) The roads authority shall, subject to sub-paragraph (2), remit the money received by them by way of fixed penalties under this Schedule to the Scottish Ministers.

(2) The Scottish Ministers may, by regulations, provide that the roads authority may retain as much of that money as is sufficient to meet such of their expenditure as is described in the regulations.

(3)>}

Nicol Stephen
107 In schedule 7, page 43, leave out lines 40 and 41

After section 35

Fergus Ewing
153 After section 35, insert—

<Applicability of fixed penalty offences under the Roads (Scotland) Act 1984 to road works authorities

(1) The Scottish Ministers shall by regulations establish a regime under which fixed penalty notices under section 35 apply to road works authorities equally (making any necessary changes) as they do to undertakers.

(2) Regulations established under subsection (1) may, if the Scottish Ministers consider it necessary, modify any enactment.>

Section 36

Nicol Stephen
108 In section 36, page 24, line 11, leave out from <such> to end of line 12 and insert <the offences which, under section 130A of this Act, are fixed penalty offences>

Nicol Stephen
109 In section 36, page 24, line 37, at end insert—

< ( ) In section 143 of that Act (which includes provision as to regulations under the Act), in subsection (2)(b)(i) after “17” there is inserted “or 130B”>
After section 37

Chris Ballance

1 After section 37, insert—

<Transport management strategies

(1) The Scottish Ministers shall, no later than one year after the day on which this Act comes into force, and at least once every two years thereafter—

(a) publish a target for reducing—

(i) the total distance travelled annually by road vehicles in Scotland; or

(ii) the annual rate of growth of that amount; and

(b) lay before the Scottish Parliament a report setting out—

(i) the measures which the Scottish Ministers propose to take; and

(ii) the progress, if any, made,

to achieve the target.

(2) The Scottish Parliament must debate whether to approve the report within 28 sitting days of it being laid.

(3) If a report debated under subsection (2) is not approved, the Scottish Ministers must, within six months, lay a revised report before the Parliament.

(4) Subsection (2) applies to a revised report as it applies to a report.>

Fergus Ewing

2 After section 37, insert—

<Rail Passengers’ Committee for Scotland

(1) The Scottish Ministers shall establish a Rail Passengers’ Committee for Scotland (“the Committee”).

(2) The Committee shall consist of—

(a) a convener appointed by the Scottish Ministers; and

(b) such other members, being not less than ten nor more than twenty in number, as the Scottish Ministers may from time to time appoint after consultation with the convener.

(3) The convener and other members of the Committee established under subsection (1) above shall hold and vacate office in accordance with the terms of the instruments appointing them and shall, on ceasing to hold office, be eligible for re-appointment.

(4) The provisions of schedule (Rail Passengers’ Committee for Scotland) shall have effect.

(5) It shall be the duty of the Committee to investigate any matter which relates—

(a) to the provision of rail transport services; or

(b) to the provision of station services by any person in a case where the operator of the station in question is authorised by a station licence,

if the condition specified in subsection (6) below is satisfied in relation to the matter in question.
The condition mentioned in subsection (5) above is satisfied if the matter—

(a) is the subject of a representation made to the Committee by a user or potential user of railway passenger services and does not appear to the Committee to be frivolous or vexatious;

(b) is referred to the Committee by the Scottish Ministers; or

(c) appears to the Committee to be one which it ought to investigate.

If, on investigating any matter, the Committee considers it appropriate to do so, the Committee shall make representations to—

(a) the person providing the service in question; and

(b) in the case of a service provided under a franchise agreement, the franchisee, about the matter, or any matter to which it relates or which appears to the Committee to be relevant to the subject of the matter investigated.

Where the Committee—

(a) having made representations under subsection (6) above, is of the opinion that it is unable to achieve a satisfactory resolution of the matter by that means; or

(b) on investigating any matter, has reason to believe that the holder of a passenger licence or a station licence is contravening, or is likely to contravene, any condition of the licence,

it shall refer the matter (or, if it was referred to the Committee by the Scottish Ministers, refer it back) to the Scottish Ministers with a view to the Scottish Ministers exercising such of their powers as they consider appropriate in the circumstances of the case.

Where the Committee investigates any matter pursuant to subsections (5) to (7) above, it may prepare a report of its findings and lay it before the Scottish Parliament.

At the request of the Scottish Ministers, the Committee shall make a report to them on such matters relating to the quality of railway passenger services and station services as may be specified in the request.

The Scottish Ministers may arrange for the publication of any report under subsection (10) above in such manner as they consider appropriate.

If the Scottish Ministers so request, the Committee shall assist the Scottish Ministers, to such extent and in such respects as may be specified in the request, in ascertaining whether, in the case of any franchise agreement, the franchise operator is attaining the standards set for the provision of the franchised services.

Where the Committee has investigated any matter pursuant to subsections (5) to (7) or subsection (10) above, it shall neither—

(a) include in any report or representations a proposal for any steps to be taken by any person in relation to that matter, nor

(b) refer the matter under subsection (8) above by reason only of the failure of any person to take any steps in relation to that matter,

unless, balancing the cost of taking those steps against the benefits which the Committee considers will be enjoyed by any person in consequence of the taking of those steps, the Committee is of the opinion, on the basis of the information available to it, that the expenditure involved represents good value for money.

In this section—
“franchise agreement” means an agreement with the Scottish Ministers under which another party undertakes either—

(a) to provide; or

(b) to secure that a wholly owned subsidiary of that party provides,

throughout the franchise term those services for the carriage of passengers by railway to which the agreement relates;

“passenger licence” means a licence authorising a person—

(a) to be the operator of a train being used on a network for the purpose of carrying passengers by railway; and

(b) to be the operator of a train being used on a network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in paragraph (a) above;

“railway passenger service” means any service for the carriage of passengers by railway, and includes bus substitution services required to be provided in place of any such services;

“station licence” means a licence authorising a person to be the operator of a station;

“station service” means any service which consists of, or is comprised in, the provision or operation of a station.>

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Paul Martin

2A As an amendment to amendment 2, line 3, leave out <Rail Passengers’> and insert <Public Transport Users’>.

Paul Martin

2F As an amendment to amendment 2, line 14, at end insert—

< ( ) to the provision of bus services;
 ( ) to the provision of ferry services;
 ( ) to the provision of tram services;>

Paul Martin

2G As an amendment to amendment 2, line 22, leave out <railway passenger services> and insert—

< ( ) bus services;
 ( ) ferry services;
 ( ) tram services; or
 ( ) railway passenger services.>

Paul Martin

2H As an amendment to amendment 2, line 44, after <of> insert—

< ( ) bus services;
 ( ) ferry services;>
( ) tram services;

( )>

Paul Martin

2E As an amendment to amendment 2, line 62, at end insert—

<“bus service” means any regular scheduled service for the carriage of passengers by bus or coach;
  “ferry service” means any transport service by water (including such a service by means of a hovercraft) which carries passengers and operates regularly between two or more points;>

Paul Martin

2I As an amendment to amendment 2, line 76, after <railway> insert <(including underground railway)>

Paul Martin

2J As an amendment to amendment 2, line 81, at end insert—

<“tram service” means any service for the carriage of passengers employing parallel rails which provide support and guidance for vehicles carried on flanged wheels.>

After schedule 7

Fergus Ewing

3 After schedule 7, insert—

<SCHEDULE
  (introduced by section (Rail Passengers’ Committee for Scotland))

RAIL PASSENGERS’ COMMITTEE FOR SCOTLAND

Remuneration of, and allowances for, members

1 There shall be paid to the convener and other members of the Committee such remuneration, and such travelling and other allowances, as the Scottish Ministers may determine.

2 The Scottish Ministers shall make arrangements for the Committee to be provided with office accommodation and with such services as they consider appropriate to enable them to carry out their functions.

Proceedings

3 (1) Subject to the following provisions of this paragraph and paragraph 4 below, the Committee may regulate its own procedure, including quorum.

(2) The Committee shall meet when convened by the convener, and in any case shall meet at least twice a year.
Without prejudice to the discretion of the convener to call a meeting whenever he or she sees fit, he or she shall call a meeting when required to do so by any three members of the Committee.

Minutes shall be kept of the proceedings at every meeting of the Committee; and copies of those minutes shall be sent to the Scottish Ministers.

The Committee shall have regard to any general recommendations which the Scottish Ministers may from time to time make with regard to any matter affecting the procedure or functions of the Committee.

The validity of any proceedings of the Committee shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

Admission of public to meetings

Subject to sub-paragraph (2) below, meetings of the Committee shall be open to the public.

The public shall be excluded during any item of business where—

(a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the Committee by the Scottish Ministers would be disclosed in breach of the obligation of confidence;

(b) the Committee has resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded;

(c) it is likely, were members of the public to be present during that item, that there would be disclosed to them—

(i) any matter which relates to the affairs of an individual; or

(ii) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate; or

where public disclosure of that matter would or might, in the opinion of the Committee, seriously and prejudicially affect the interests of that individual body;

(d) the circumstances are such as are specified in, or determined by resolution of the Committee in accordance with, an order made by the Scottish Ministers.

The Committee shall give such notice—

(a) of any meeting of the Committee which is open to the public; and

(b) of the business to be taken at that meeting (other than items during which the public is to be excluded);

as it considers appropriate for the purpose of bringing the meeting to the attention of interested members of the public.

Sub-committees

The Committee may—

(a) establish local and other sub-committees through which it may carry out such of its functions as it may determine;

(b) appoint such persons (including persons who are not members of the Committee) to be members of any such sub-committee as they may determine; and

(c) regulate the procedure of any such sub-committee.
(2) Persons appointed under sub-paragraph (1) above who are not members of the Committee may be reimbursed for their travelling expenses and such of their out-of-pocket expenses as do not relate to loss of remuneration.

Financial provisions

6 (1) There shall be paid by the Scottish Ministers—
   (a) any sums payable to or in respect of any person under paragraph 1 or 5 above; and;
   (b) any expenses incurred by the Committee (provided that the Committee complied with its financial duties in incurring them).

(2) The Scottish Ministers may determine the financial duties of the Committee; and different determinations may be made for different functions of the Committee.

(3) The Scottish Ministers shall give the Committee notice of every determination of its financial duties; and such a determination may—
   (a) relate to a period beginning before, on or after the date on which it is made;
   (b) contain supplementary provisions; and
   (c) be varied by a subsequent determination.

After section 37

Fergus Ewing

*154 After section 37, insert—

<Scottish Ferry Committee

(1) The Scottish Ministers shall establish a Scottish Ferry Committee (“the Committee”).

(2) The Committee shall consist of—
   (a) a convener appointed by the Scottish Ministers; and
   (b) such other members, being not less than ten nor more than twenty in number, as the Scottish Ministers may from time to time appoint after consultation with the convener.

(3) In making appointments under subsection 2(b), the Scottish Ministers shall ensure that—
   (a) a majority of the members of the Committee are—
      (i) resident in areas served by ferry services, or
      (iii) regular or frequent users of ferry services; and
   (b) the number of members of the Committee who are either councillors or representatives of trade associations connected with the provision or use of ferry services should not exceed half of the total number of members.

(4) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), in schedule 2, after “Scottish Environment Protection Agency” there is inserted “Scottish Ferry Committee”.

19
The convener and other members of the Committee established under subsection (1) above shall hold and vacate office in accordance with the terms of the instruments appointing them and shall, on ceasing to hold office, be eligible for re-appointment.

The provisions of schedule (Scottish Ferry Committee) shall have effect.

It shall be the duty of the Committee to—

(a) report to the Scottish Ministers on how ferry services should be managed and developed and, in particular, how ferry services should be managed and developed in order to—

(i) meet the needs of ferry users; and

(ii) encourage the social and economic development of areas covered by services; and

(b) investigate any matter which relates to the provision of ferry services if the condition mentioned in subsection (8) is satisfied in relation to the matter in question.

The condition mentioned in subsection (7) above is satisfied if the matter—

(a) is the subject of a representation made to the Committee by a user or potential user of ferry services and does not appear to the Committee to be frivolous or vexatious; or

(b) appears to the Committee to be one which it ought to investigate.

If, on investigating any matter, the Committee considers it appropriate to do so, the Committee shall make representations to the person providing the service in question about the matter, or any matter to which it relates or which appears to the Committee to be relevant to the subject of the matter investigated.

A person providing ferry services must provide a written response to any representations made under subsection (9), if requested to by the Committee.

Where the Committee, having made representations under subsection (9) above, considers that it has not achieved a satisfactory resolution of the matter, it may refer the matter back to the person providing the service and instruct that person to reconsider the representations made by the Committee; and the person providing the service must provide a further written response if requested to by the Committee.

Where the Committee investigates any matter pursuant to subsections (7) to (9) above, it may prepare a report of its findings and lay it before the Scottish Parliament.

The Scottish Ministers shall, by regulations, establish a scheme under which the Committee is able to require persons—

(a) to attend its proceedings; or

(b) produce documents in their custody or under their control, for the purposes of carrying out its responsibilities under this section.

In exercising their duties under this section, each member of the Committee must act, as far as possible, in the interests of all users of ferry services.

Nothing in this section affects the right of a person to make a complaint under section 9 of the Scottish Public Services Ombudsman Act 2002 (asp 11).
(16) In this section, “ferry service” means any transport service by water (including such a service by means of a hovercraft) which carries passengers and operates regularly between two or more points.

After schedule 7

Fergus Ewing

156 After schedule 7, insert—

<SCHEDULE
(introduced by section (Scottish Ferry Committee))

SCOTTISH FERRY COMMITTEE

Remuneration of, and allowances for, members

1 There shall be paid to the convener and other members of the Committee such remuneration, and such travelling and other allowances, as the Scottish Ministers may determine.

2 The Scottish Ministers shall make arrangements for the Committee to be provided with office accommodation and with such services as they consider appropriate to enable them to carry out their functions.

Proceedings

3 (1) Subject to the following provisions of this paragraph and paragraph 4 below, the Committee may regulate its own procedure, including quorum.

(2) The Committee shall meet when convened by the convener, and in any case shall meet at least twice a year.

(3) Without prejudice to the discretion of the convener to call a meeting whenever he or she sees fit, he or she shall call a meeting when required to do so by any three members of the Committee.

(4) Minutes shall be kept of the proceedings at every meeting of the Committee; and copies of those minutes shall be sent to the Scottish Ministers.

(5) The Committee shall have regard to any general recommendations which the Scottish Ministers may from time to time make with regard to any matter affecting the procedure or functions of the Committee.

(6) The validity of any proceedings of the Committee shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

Admission of public to meetings

4 (1) Subject to sub-paragraph (2) below, meetings of the Committee shall be open to the public.

(2) The public shall be excluded during any item of business where—

(a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the Committee by the Scottish Ministers would be disclosed in breach of the obligation of confidence;

(b) the Committee has resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded;
it is likely, were members of the public to be present during that item, that there would be disclosed to them—

(i) any matter which relates to the affairs of an individual; or

(ii) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate; or

where public disclosure of that matter would or might, in the opinion of the Committee, seriously and prejudicially affect the interests of that individual body;

(d) the circumstances are such as are specified in, or determined by resolution of the Committee in accordance with, an order made by the Scottish Ministers.

(3) The Committee shall give such notice—

(a) of any meeting of the Committee which is open to the public; and

(b) of the business to be taken at that meeting (other than items during which the public is to be excluded);

as it considers appropriate for the purpose of bringing the meeting to the attention of interested members of the public.

Sub-committees

5 (1) The Committee may—

(a) establish local and other sub-committees through which it may carry out such of its functions as it may determine;

(b) appoint such persons (including persons who are not members of the Committee) to be members of any such sub-committee as they may determine; and

(c) regulate the procedure of any such sub-committee.

(2) Persons appointed under sub-paragraph (1) above who are not members of the Committee may be reimbursed for their travelling expenses and such of their out-of-pocket expenses as do not relate to loss of remuneration.

Financial provisions

6 (1) There shall be paid by the Scottish Ministers—

(a) any sums payable to or in respect of any person under paragraph 1 or 5 above; and;

(b) any expenses incurred by the Committee (provided that the Committee complied with its financial duties in incurring them).

(2) The Scottish Ministers may determine the financial duties of the Committee; and different determinations may be made for different functions of the Committee.

(3) The Scottish Ministers shall give the Committee notice of every determination of its financial duties; and such a determination may—

(a) relate to a period beginning before, on or after the date on which it is made;

(b) contain supplementary provisions; and

(c) be varied by a subsequent determination.>
After section 37

Fergus Ewing

After section 37, insert—

<Amendment to the Scottish Public Services Ombudsman Act 2002

After paragraph 20 of schedule 2 to 041

the Scottish Public Services Ombudsman Act 2002 (asp 11) there is inserted—

“Caledonian MacBrayne Limited, or any other body operating ferry services

which receive public funding and provide social or economic benefit to any

community.”>

After section 42

Nicol Stephen

After section 42, insert—

<Badges for vehicles used for disabled people: change of terminology

In section 21(4) of the Chronically Sick and Disabled Persons Act 1970 (c.44) (badges

for display on motor vehicles used by institutions concerned with the care of disabled

people) for “institution”, in both places where it occurs, there is substituted

“organisation”.

Nicol Stephen

After section 42 insert—

<Extension of remit of Bus User Complaints Tribunal

In section 41 of the Transport (Scotland) Act 2001 (asp 2) (Bus User Complaints

Tribunal)—

(a) in subsection (7), for “local” in both places where it occurs, there is substituted

“bus”;

(b) after that subsection there is inserted—

“(8) In subsection (7) above, “bus service” means—

(a) a local bus service; or

(b) a service which—

(i) uses one or more public service vehicles for the carriage of

passengers by road at separate fares;

(ii) operates between places at least one of which is in Scotland; and

(iii) is not a local service.”>

Section 43

Nicol Stephen

In section 43, page 28, line 35, leave out <(2)> and insert <(3)>
In section 43, page 28, line 35, leave out <(2)> and insert <(1A)>

In section 43, page 28, line 35, at end insert—

<(1A) Before Part 1, there is inserted—

“PART
LOCAL TRANSPORT STRATEGIES
Local transport strategies
(1) Each local transport authority shall prepare a strategy (a “local transport strategy”) for transport facilities and services—
   (a) within their area; and
   (b) between that area and the areas of adjacent local transport authorities.
(2) A local transport strategy shall set out how the authority proposes to promote and encourage transport facilities and services which—
   (a) are safe, integrated, efficient, accessible and environmentally sustainable;
   (b) meet the needs of persons living or working in the authority’s area, or visiting or travelling through that area, including pedestrians, cyclists and elderly persons, and persons with limited mobility; and
   (c) are required for the transportation of freight.
(3) In preparing a local transport strategy, the authority shall have regard to any guidance issued under paragraphs (bb), (c) or (d) of section 79 (1) and shall consult—
   (a) such persons or organisations as appear to them to be representative of local residents, local businesses, road users, public transport users, pedestrians, people on low incomes, and elderly persons and persons with limited mobility;
   (b) organisations concerned with protection of the environment;
   (c) operators of public transport or rail freight transport services, or such organisations as appear to them to be representative of such operators;
   (d) every other local transport authority whose area appears to them likely to be affected by it;
   (e) every Transport Partnership whose area appears to them likely to be affected by it; and
   (f) the Scottish Ministers.
(4) The authority shall, as soon as practicable after preparation of a local transport strategy—
   (a) send a copy to the persons or organisations they consulted under subsection (3);
   (b) publish it in such manner as they consider appropriate;
(c) make arrangements for it to be available for inspection in such location and at such times as they consider appropriate, and give notice in at least one newspaper circulating in the area to which the scheme relates;

(d) make arrangements for copies to be provided on request either free or for a charge no greater than the marginal cost of producing each such copy.

(5) It shall be the duty of each local transport authority to carry out their functions in accordance with their local transport strategy.

(6) Where a local authority have, before the coming into force of this section, prepared and published a document setting out their policies in relation to the matters described in subsection (2), they shall treat that document as their local transport strategy until such time as it is replaced by a strategy prepared under this section; but paragraphs (a) and (b) of subsection (4) shall not apply.

(7) Each authority shall keep their local transport strategy (including a document being treated as such a strategy under subsection (7)) under review and shall revise it—

(a) whenever they consider it appropriate to do so; and

(b) in any case no later than five years after the date on which—

(i) it was last published, or

(ii) this section comes into force,

whichever is the later.

(8) Subsections (1) to (5) and (7) above shall apply to any revised local transport strategy as they apply to the original strategy.”

Nicol Stephen

117 In section 43, page 28, line 36, leave out subsection (2)

Nicol Stephen

118 In section 43, page 29, line 10, at end insert—

<(1C) Provision made by virtue of subsection (1A) above may—

(a) include provision conferring the functions referred to in paragraphs (a) and (b) of that subsection on persons appointed to carry out functions similar to those functions; and

(b) where it does so, may, so as to give the provision full effect, apply and modify any enactment.>

Nicol Stephen

112 In section 43, page 29, line 10, at end insert—

<( ) In section 66(4) (application of Act to motor vehicles and persons in public service of the Crown), for “subsection (2)” there is substituted “subsection (3)”.

Chris Ballance

115 In section 43, page 29, line 11, after, after <authorities),> insert—
<(  ) after paragraph (b) there is inserted—

“(bb) local transport authorities in relation to how they can contribute to meeting transport related targets, including targets established by or under the Road Traffic Reduction Act 1997 (c.54) and targets for climate change omission reductions;”>

Nicol Stephen

119 In section 43, page 29, line 13, at end insert—

<(  ) In section 81(4)(b) (which specifies the regulations that are to be made by way of affirmative resolution procedure), after “Act” there is inserted “or which consist of or include provision made by virtue of section 64(1C) of this Act.”>

Section 44

Nicol Stephen

39 In section 44, page 29, line 34, after <2(1)> insert <or (2A)>

Nicol Stephen

40 In section 44, page 29, line 34, after <(7),> insert <(Alteration of RTP’s functions)(1),>

Fergus Ewing

157 In section 44, page 29, line 35, after <12(1)> insert <, (Applicability of fixed penalty offences to road works authorities)(1), (Applicability of fixed penalty offences under the Roads (Scotland) Act 1984 to road works authorities)(1)>
The following amendment has been lodged as a manuscript amendment. The Convener of the Local Government and Transport Committee has decided under Rule 9.10.6 to agree to amendment 158 being moved at today’s meeting of the Local Government and Transport Committee.

After section 37

Fergus Ewing

158 After section 37, insert—

<Ampendment to the Scottish Public Services Ombudsman Act 2002

After paragraph 20 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (asp 11) there is inserted—

“Caledonian MacBrayne Limited, or any other body operating ferry services which receive public funding and provide social or economic benefit to any community.”>
Transport functions of Scottish Ministers
32, 33, 34, 35

Continuation of schemes etc under Transport (Scotland) Act 2001 where transfer occurs
77

Transfer of staff, property and liabilities
78, 79, 80, 37, 38

Functions of Commissioner
120, 81

Road Works Register: payments to the Commissioner
82

Information to be entered into SRWR by road works authorities
83, 84, 85

Application of 1991 Act to local authorities/ road works authorities
135, 136, 137, 138, 139, 140, 87, 88, 145, 151, 152, 153, 157

Directions as to timing of road works
121, 122, 86

Directions as to the placing of apparatus in roads
123, 124, 125, 126, 127, 128

Restriction on works following substantial road works
129, 130

Qualifications of supervisors and operatives; application to road works authority
141, 142, 143, 144

Notices requiring remedial works relating to reinstatements
146, 147

Resurfacing
131, 132, 133, 134

Fixed and civil penalty offences under the 1991 and 1984 Acts
89, 90, 148, 91, 149, 150, 96, 97, 98, 99
Fixed penalty offences: effect of prosecution on notice
92, 93, 104, 105

Money raised by way of fixed penalties
94, 95, 106, 107

Fixed and civil penalty offences under the 1984 Act
100, 101, 102, 103, 108, 109

Transport Management Strategies
1

Public transport: customer involvement
2, 2A, 2F, 2G, 2H, 2I, 3, 154, 156, 155 158, 111

Badges for vehicles used for disabled people
110

Minor amendments to Transport (Scotland) Act 2001
116, 117, 118, 112, 119

Amendments to Transport (Scotland) Act 2001: local transport authorities
113, 114, 115

Note: the following amendments have already been debated—

With 9 – 76, 36, 39, 40
Transport (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 3).

The following amendments were agreed to without division: 32, 33, 34, 35, 36, 37, 38, 81, 82, 83, 84, 85, 135, 136, 137, 138, 86, 125, 87, 88, 134, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 2A, 2F, 2G, 2H, 2E, 2I, 2J, 2, 110, 111, 118, 112, 119, 39 and 40

The following amendments were disagreed to by division:
- 77 (For 1, Against 7, Abstentions 0)
- 78 (For 1, Against 6, Abstentions 2)
- 79 (For 1, Against 6, Abstentions 2)
- 80 (For 1, Against 6, Abstentions 2)
- 113 (For 0, Against 7, Abstentions 0)

Amendments 120, 121, 123, 129, 141, 146, 131, 1 and 116 were moved and, with the agreement of the Committee, withdrawn.

Amendments 76, 139, 140, 122, 124, 126, 127, 128, 130, 142, 143, 144, 145, 147, 132, 133, 148, 149, 150, 151, 152, 153, 3, 154, 156, 155, 114, 117, 115 and 157 were not moved.

Section 14, schedule 2, sections 16, 20, 21, 22, 24, 25, 26, 27, 28, 30 and 31, schedules 3 and 4, section 34, schedule 6, sections 37, 38, 39, 40, 41, 42, 45 and 46 the long title were agreed to without amendment.

Sections 12, 13, 15, 17, 18, 19, 23, 29 and 32, schedule 5, sections 33 and 35, schedule 7, sections 36, 43 and 44 were agreed to as amended.

The Committee completed Stage 2 consideration of the Bill.
Transport (Scotland) Bill: Stage 2

14:05

**The Convener:** The main item of business today is stage 2 of the Transport (Scotland) Bill. I welcome the Minister for Transport, Nicol Stephen, and his officials, Jonathan Pryce, Caroline Lyon and Frazer Henderson. If all of us stay focused and keep our comments concise, I see no reason why we should not reach the end of stage 2 today—I hope that all members take that hint positively, as I intended.

Section 12—Transport functions of Scottish Ministers

**The Convener:** Amendment 32, in the name of the minister, is grouped with amendments 33 to 35.

**The Minister for Transport (Nicol Stephen):** I start by referring to the United Kingdom Railways Act 2005, which we have previously referred to as a bill, but which received royal assent on 7 April. That act will lead to significant new powers being devolved to Scotland; I refer in particular to the transfer to Scottish ministers of the Strategic Rail Authority’s role as franchise signatory. The transfer will remove the anomaly of the previous position, under which Scottish ministers—with the authority of Parliament—funded the franchise but were not formal signatories to it. The transfer, along with the transfer of Strathclyde Passenger Transport’s rail powers to Scottish ministers, will bring the operation of rail services in Scotland and the franchise process together under a single signatory.

The white paper that we published last June set out our proposals for the future of SPT’s rail functions. However, at that time, and at the time of the introduction of the bill, Parliament did not have the powers to make legislative provision for such a transfer. However, a section 30 order to devolve the powers was already in the parliamentary system, both in Scotland and at Westminster. We explained in the policy memorandum that, once the section 30 order was confirmed—which happened last December—we would lodge a stage 2 amendment to limit the scope of section 12. That means that only the rail functions of the Strathclyde Passenger Transport Authority and the Strathclyde Passenger Transport Executive can be transferred to the Scottish ministers.

It remains our intention that all other SPT transport functions will be transferred to the new strong regional transport partnership for the west of Scotland. I remain committed to ensuring that the west of Scotland RTP, as successor body to the SPT, has a continuing role in the development,
management and monitoring of rail services in the west of Scotland. The statutory provision for the arrangements that are to be entered into is contained in a separate amendment.

I move amendment 32.

Amendment 32 agreed to.

The Convener: Amendment 76, in the name of Michael McMahon, was debated with amendment 9.

Michael McMahon (Hamilton North and Bellshill) (Lab): Given that we accepted at our last meeting that the wording in the bill is okay, I will not move the amendment.

Amendment 76 not moved.

Amendments 33 to 35 moved—[Nicol Stephen]—and agreed to.

Section 12, as amended, agreed to.

After section 12

Amendment 36 moved—[Nicol Stephen]—and agreed to.

Before section 13

The Convener: Amendment 77, in the name of Michael McMahon, is in a group on its own.

Michael McMahon: I will try to be as brief as possible, convener, in order to comply with your request. Amendment 77 was lodged because experience shows that we require to take certain measures to protect staff during any transfer of functions. It was felt that the bill needed to offer such protection and I would like to hear the minister's response to that.

I move amendment 77.

Tommy Sheridan (Glasgow) (SSP): Amendment 77 is useful and I hope that the minister will support it. There is a lot of worry, particularly among SPT staff, about the transfer of functions and staff, particularly in the light of experience of transferring staff from public to private bodies. I understand that functions in this case will be transferred from one public body to another public body, but there are all sorts of questions about pensions and conditions of service, which require security. The employees of SPT have worked well for many years and they require that security, so I hope that the minister will agree to the amendment.

Nicol Stephen: I support whole-heartedly the intention behind amendment 77 and I have no desire to see the bill inadvertently undermine any of the work that was undertaken for the implementation of the Transport (Scotland) Act 2001. That legislation remains central to the Executive's aims and, I am sure, Parliament's aims for transport in Scotland.

However, sections 10 and 44(4) of the bill are sufficient to ensure that that will not happen. Any order made under section 10 can include any necessary transitional provisions and, at the time of making orders under section 10, I will ensure through transitional provisions that any work that has already been undertaken is not lost as a result of the transfer of functions. I hope that Michael McMahon will withdraw amendment 77 in the light of those firm assurances.

Michael McMahon: I hoped that the minister would say that. He agrees to the principle and has said that the security that SPT and its employees seek will be delivered, so I seek to withdraw amendment 77.

The Convener: Michael McMahon has indicated his wish to withdraw amendment 77. Is that agreed?

Tommy Sheridan: No.

The Convener: The question is, that amendment 77 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Sheridan, Tommy (Glasgow) (SSP)

AGAINST
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

ABSTENTIONS
McMahon, Michael (Hamilton North and Bellshill) (Lab)

The Convener: The result of the division is: For 1, Against 7, Abstentions 1.

Amendment 77 disagreed to.

Section 13—Transfer of staff, property and liabilities

The Convener: Amendment 78, in the name of Michael McMahon, is grouped with amendments 79, 80, 37 and 38.

Michael McMahon: Amendments 78, 79 and 80 were lodged to seek a guarantee that action will be taken to reassure people who currently operate within organisations such as SPT that there will be protection for the jobs that they already do, and that the minister has taken account of concerns that that might not be covered by the bill as it stands. I hope that the minister will say that the
issues are to be addressed and that he can do better than the amendments.

I move amendment 78.

14:15

Nicol Stephen: Amendments 37 and 38 are technical and seek to ensure that the usual legal formulation of property rights and liabilities is applied to cover every possible eventuality that will arise from the transfers.

I turn to Michael McMahon’s amendments 78, 79 and 80. I agree fully that staff relations are critical to the success of any organisation and that we should do everything possible to ensure that staff employment rights are protected in this situation. However, I shall explain what is being proposed in terms of the current legislation.

I suggest that it is not necessary for an advisory board to be set up each time a transfer of functions takes place. I understand that amendment 78 was inspired by the approach that was taken during the local government reorganisation in 1996, when a staff commission was appointed to oversee the process of staff transfers. That was sensible at that time because it was necessary to ensure that—during what was possibly the largest and most disruptive local government reorganisation ever in Scotland—a consistent approach to staff transfers was taken across the whole country. At that time, many people were applying for positions and reapplying for their jobs. However, that will not be the situation with SPT; the transfers that are envisaged under the bill will be nothing like as widespread or complicated. In 1996, we did not have the Cabinet Office’s “Staff Transfers in the Public Sector: Statement of Practice”, which states clearly that the Transfer of Undertakings (Protection of Employment) Regulations 1981 should apply. In line with that guidance, section 13 explicitly states that TUPE will apply in this situation.

We foresee that the most numerous transfer of staff will be from SPT, along with the staff in the west of Scotland transport partnership core team, to the new regional partnership for the west of Scotland. For that reason, we have encouraged officials from WESTRANS and SPT to begin to discuss management of the movement of functions and staff from those organisations to the new regional transport partnership. Those bodies are able to address all the practical matters relating to the transfer, and under TUPE it is rightly the responsibility of the exporting organisation—in this case, primarily SPT—and the importing organisation, the new west of Scotland partnership, to ensure that the transition of staff proceeds smoothly without impacting on the rights of staff. The bill makes it clear that Scottish ministers have a duty to consult parties before making a transfer, and I do not propose to initiate a transfer of functions without fully exploring all the issues and establishing whether the transfer plans have taken fully into account all staff-related matters.

Similar points apply to amendment 79. The effect of TUPE is that employment contracts are automatically transferred from one employer to another. Amendment 79 is, therefore, unnecessary given section 13(1).

With those clear reassurances, I invite Michael McMahon to consider not pressing amendments 78, 79 and 80 on the understanding that I will continue to support and encourage the process that I have described, which must properly take place between SPT, councils in the west of Scotland and WESTRANS in implementing the transfer of staff to the new west of Scotland partnership.

Tommy Sheridan: My understanding is that SPT may also have inspired the amendments in Michael McMahon’s name. It is a tribute to that employer that it has inspired amendments that seek to provide maximum protection for its employees in their transfer to a new employer. For that, SPT deserves tribute.

In the course of our deliberations on the bill, the one area of concern has been the tension between the current functions of SPT and what the new west of Scotland transport partnership will have transferred to it. We have tried to accommodate as best we could a body that we believe is working very well, but that has not always been possible. SPT has, in good faith, suggested a number of amendments that seek to provide maximum security. SPT is aware of the bill’s provisions as the minister has outlined them, but it still feels that further amendments are necessary. Nothing that the minister has said today is new; the issue was known about before the amendments were lodged. I am minded to support all the amendments in Michael McMahon’s name.

Bruce Crawford (Mid Scotland and Fife) (SNP): I am also minded to support the amendments. I have heard the minister’s assurances and I will be interested to hear what Michael McMahon does with those assurances. I seek my own assurances from the minister regarding section 13. Can the minister give us guarantees about the pension rights of individuals who may be transferred under TUPE? My understanding is that TUPE does not always guarantee the transfer of pension rights or of travel and subsistence arrangements that might apply to members of staff currently employed by SPT. Can it be guaranteed that their rights will be continued under the new organisation?
In earlier discussions, the committee accepted that the new partnerships could form a company as recognised under the companies acts, perhaps with joint delivery mechanisms between the new partnerships and the private sector. If, under later joint arrangements, the individuals concerned were to be transferred to one of the new partnerships under the eventual act but were subsequently transferred to a joint partnership company that formed part of the delivery mechanism, would their rights continue in that new organisation, which might be a private sector company?

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I, too, wanted to ask about the consequences for employees' pension rights, but Bruce Crawford has, displaying his telepathic ability, already asked the questions I was going to pose.

Bruce Crawford: If it is telepathy, I am in deep trouble.

Nicol Stephen: My advice is that the Cabinet Office's statement of practice covers pension rights. We are in a position to give assurance on the protection of pension rights when a transfer is made from one public sector organisation to another, but travel and subsistence will be very much matters for the new organisation. I am not sure that travel and subsistence rights are protected in the same way as pensions. However, I am sure that the new organisation will wish to address that issue. Most organisations in the public sector will have a broadly comparable approach in that regard.

I would like to get some solid legal advice on the point about the joint partnership companies, but my understanding is that if an initial transfer between public sector organisations was followed by a move into what was deemed to be a private sector company, different rules might apply. That would depend on a legal evaluation of whether the company in question was in the private sector. We have discussed the approach that was taken with Network Rail, which is regarded as a private sector organisation, despite the fact that its shareholders are to a considerable extent Government bodies. Network Rail was established under unusual circumstances.

Each case should be examined individually. If the City of Edinburgh Council moved staff to Transport Initiatives Edinburgh Ltd or to its bus company, protections would apply. However, the organisation will, when employing staff directly for the first time, do so under its own terms and conditions. As I understand it, there will still be safeguards for staff who move into a private sector company, but those safeguards might not be as solid, secure and firm as the safeguards in this situation for staff who move from SPT to another public sector organisation; that is, the new regional transport partnership. We can give far more reassurance about that situation.

With that reassurance, we should be able to move forward without having to impose a statutory staff board that would have to be used—as I understand it from Michael McMahon's amendment 80—in every situation in which there was to be a transfer of staff of the kind that is envisaged. I imagine that, in the future, it might not only apply in relation to SPT, I will encourage good co-operation between SPT, WESTRANS and the relevant councils. If they feel that a staff board is the way ahead, there is nothing to prevent their having that; however, I do not think that the bill should impose a staff board in every situation. Some of the transfers will be straightforward and will be accepted by all the staff who are involved.

Michael McMahon: Tommy Sheridan is absolutely right to say that amendments 78, 79 and 80 were lodged because of concerns that SPT had, and to find out what the RTPs could do to address them. SPT feels that the bill lacks reassurance, so the purpose of the amendments was to tease out in debate whether further amendment would be required to ensure that their concerns were addressed. SPT's concerns should be lessened by the fact that the minister believes that those concerns are addressed in the bill, that any gaps that remain can be addressed by order or regulation, and that the powers that SPT believes are necessary already exist. The purpose of the amendments was to tease out those answers from the minister and to ensure that the debate was had, because SPT believed that the matter was not clear enough. I believe that the reassurances that have been given will be satisfactory to SPT, so I will not press amendment 78 or move amendments 79 and 80.

The Convener: Michael McMahon does not wish to press amendment 78, but Tommy Sheridan has indicated that he wishes to do so. The question is, that amendment 78 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Sheridan, Tommy (Glasgow) (SSP)

AGAINST
Davidson, Mr David (North East Scotland) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

ABSTENTIONS
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
The Convener: The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 78 disagreed to.

Amendment 79 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 79 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Sheridan, Tommy (Glasgow) (SSP)

AGAINST
Davidson, Mr David (North East Scotland) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

ABSTENTIONS
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 79 disagreed to.

Tommy Sheridan: For consistency, I also move amendment 80.

The Convener: The question is, that amendment 80 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Sheridan, Tommy (Glasgow) (SSP)

AGAINST
Davidson, Mr David (North East Scotland) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

ABSTENTIONS
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 80 disagreed to.

Amendments 37 and 38 moved—[Nicol Stephen]—and agreed to.

Section 13, as amended, agreed to.

Section 14 agreed to.

Section 15—Functions of Commissioner

14:30

The Convener: Amendment 120, in the name of Michael McMahon, is grouped with amendment 81.

Michael McMahon: When we were consulting on the bill, there was a clear indication from operators in both the public and private sectors of the utilities industry that the bill did not ensure that there would be a level playing field for the various types of agency or body that are involved in road works. I have lodged a series of amendments that I hope will allow us to have a debate that will address the concerns that were raised. If nothing else, the bill should create a level playing field for all the bodies that operate within the remit of the bill. Amendment 120 is the first of those amendments.

The office of the commissioner will be central to ensuring that there is a level playing field. Therefore, it has to be independent of those who undertake the works and must deal evenly with everyone who undertakes the works, which means that it will have to arbitrate between the different sides of the debate.

From what I understand, only in extremely rare situations is it impossible for agreement to be reached between all the parties that are involved in road works. However, for the avoidance of any doubt, we at least have to hear from the minister that, with regard to the commissioner, those who undertake work on behalf of the Scottish Executive—that is, contractors such as BEAR Scotland and Amey—will be subject to the same rules as everyone else will be. I hope that the minister can give us some assurance that if this area is not already covered, he intends to cover it. I will consider what to do with the amendment when I find out whether that is the case.

I move amendment 120.

Nicol Stephen: The purpose of amendment 81 is to provide a definition of “works in roads”. That term covers all the activities that are required to be recorded on the Scottish road works register, which will be the principal tool by which the commissioner will monitor the carrying out of works in roads in Scotland.

I understand the intention behind amendment 120. However, if the amendment were to be accepted, it would create a large amount of legal uncertainty as it does not specify what disputes are to be subject to arbitration. The advice that I have received is that the amendment is also unnecessary, as section 34 of the bill introduces new section 157A to the New Roads and Street Works Act 1991. The effect of that section is to
confer a power on the Scottish ministers to prescribe the manner in which certain disputes can be settled and to enable those disputes to be settled by the road works commissioner, if that is appropriate. Of course, I hope that disputes will be rare. However, members will note that section 34 lists instances of possible disputes that may be settled by the commissioner. I also draw to members’ attention the fact that the commissioner could be engaged in the settlement of disputes arising from new sections 115A, 132D and 137A of the 1991 act, which are introduced in sections 19, 29 and 30 of the bill, respectively—I hope that members are still with me at this point.

In closing, I urge Michael McMahon to withdraw amendment 120. The assurances that he seeks in respect of the commissioner’s role in dispute resolution are to be found elsewhere in the bill. Amendment 120 could undermine the commissioner’s role.

Fergus Ewing: In paragraph 22 of its stage 1 report, the committee agreed that local authorities and utility companies should be treated equally. That, I think, was the unanimous conclusion of committee members.

I endorse Michael McMahon’s comment that there should be a level playing field for those who carry out road works. After all, from the public’s point of view, it makes not one whit of difference whether it is Transco, Thus, a local authority, BEAR, Amey or anyone else who has dug a hole in a road. You do not hear people who have been delayed for three hours saying, “Oh, that’s okay—it’s local authority road works.”

It is a basic principle that there must be equal treatment. If there is not, it will cast doubt on the whole purpose of this part of the bill. I therefore thought that it might be useful to state that principle—concisely as always—at the outset. The principle will inform our approach this afternoon.

I am persuaded by the minister’s point that the bill already contains provision for an arbitration function. However, will the minister confirm that he accepts totally the principle of the level playing field? If he does not accept it, will he tell us how he would depart from it? That would be helpful in informing our work this afternoon.

Nicol Stephen: I may not be allowed to speak again on this point.

The Convener: You will be allowed to respond shortly.

Mr David Davidson (North East Scotland) (Con): I agree completely with the principle of having a level playing field. We must also have clarity. In any contract, there must be absolute clarity on the expectation of outcomes. Methods of dispute resolution should be firmly stated. That is just good common sense.

I agree with the principle behind amendment 120 but, on the wording, I take the minister’s point about the definition of disputes. I will listen to what the minister has to say about situations in which a minister, as opposed to the commissioner, might intervene.

Bruce Crawford: I understand the principle behind what Michael McMahon is trying to achieve, and I agree with the direction that he is taking. The word that worries me in amendment 120 is “arbitrating”. If we were going to use any word, I would have thought that it would be “adjudicating”. The role of the roads commissioner is more that of adjudicator than that of arbitrator. The arbitrators will probably be found in the roads authorities and utilities committee (Scotland), which is not mentioned in the bill. That committee is where all the arbitration goes on.

When somebody arbitrates, it does not mean that they have the power to make a decision. We need the commissioner to have that power. I think that that is what the minister achieves in section 34(4), on the commissioner’s power to settle disputes. I assume—and I hope that the minister will confirm this—that the commissioner will be able to make decisions when arbitration has not been successful.

I do not have it in front of me, but the 1991 act may describe who the arbiter will be. Proposed new section 157A of the 1991 act, which section 34(4) of the bill introduces, mentions “arbitration”, but who will be involved in that arbitration? Who will bring the utility company and the road works authority together? That is not clear to me in the bill, although the bill might refer back to the 1991 act where it might be clearer. However, before I am able to accept the minister’s views, there will have to be clarity on that issue.

Nicol Stephen: The most important point to make is that I accept the principle of the level playing field. We lodged amendments 87 and 88, which are in a later group, to place responsibilities on the road works authorities. That addresses Michael McMahon’s core concern and argument. The amendments reflect the committee’s concerns, to which Fergus Ewing has also referred. Although amendment 120 refers to road works authorities and undertakers, the key issue is the use of the words “arbitrating disputes”. I have already explained that that could create legal uncertainties and difficulties and the matter is covered by other aspects of the 1991 act. I will leave it at that. We have responded to the committee’s main concern, but we deal with it later on. Amendment 120 raises the separate legal difficulties and concerns that I have described.

Bruce Crawford: With all due respect, I do not think that my question has been answered. I asked the minister to describe who will be involved
in arbitration as laid out in new section 157A(b) of the 1991 act, which is introduced by section 34(4) of the bill.

The Convener: Okay. You have made that point. Do you have a response to that, minister?

Nicol Stephen: Yes. Proposed new section 157A of the 1991 act provides for a dispute to be settled by the commissioner or by arbitration. We would want to consult on that and involve RAUCS and others in it. There are normal procedures for and different methods of arbitration. The word arbitration has a clearly defined legal meaning. I do not mean to be flippant or simplistic, but it would be arbitration in the normal, well-defined legal sense of the word, as clarified through further guidance, which would come on the back of the bill following the consultation to which I referred. We would try to conduct arbitration in a way with which both utility companies and roads authorities felt comfortable.

Michael McMahon: As I said at the outset, amendment 120 was very much a probing amendment to ensure that the committee’s concerns about the level playing field were going to be addressed. There were concerns about the bill as presented, but the minister has indicated that, both through his amendments and the Executive’s interpretation of the commissioner’s role, the issue has been addressed. Therefore I will not press amendment 120, but take on board what the minister has said. I hope that the provisions that he has put in place for the commissioner will address the concern that the committee expressed in its report about ensuring that there is a level playing field.

Amendment 120, by agreement, withdrawn.

Amendment 81 moved—[Nicol Stephen]—and agreed to.

Section 15, as amended, agreed to.

Schedule 2 agreed to.

Section 17—The Scottish Road Works Register

The Convener: Amendment 82, in the name of the minister, is in a group on its own.

Nicol Stephen: I am grateful to Sylvia Jackson and her colleagues on the Subordinate Legislation Committee for drawing to our attention the need to make an express provision for the charging of fees to enter particulars, information or a notice in the Scottish road works register.

I move amendment 82.

The Convener: Thank you, minister. That was concise.

Fergus Ewing: Can the minister tell us how the fees are to be calculated? I do not expect him to read out the table that will apply, but does he accept the principle that the fees should be no more than the value or cost of the service that is to be provided? In other words, is he clear that it is not a back-door attempt to fund the costs of the commissioner’s office?

Nicol Stephen: That is correct.

Amendment 82 agreed to.

14:45

The Convener: Amendment 83, in the name of the minister, is grouped with amendments 84 and 85.

Nicol Stephen: The committee will recall that, in its written evidence at stage 1, the Society of Chief Officers of Transportation in Scotland advised that further activity needs to be recorded on the Scottish road works register. I am grateful to SCOTS for highlighting those omissions. After discussions with representatives of SCOTS and RAUCS to clarify and confirm activities, I am content to extend the requirement to enter activities on the register to those activities that are listed in amendment 83.

Amendment 84 is a technical amendment that seeks to remove an unnecessary duplication of titles. Amendment 85 seeks to provide the appropriate reference within the 1991 act to new section 112B, which the bill inserts in that act. I urge members to support amendments 83 to 85.

I move amendment 83.

Amendment 83 agreed to.

Amendments 84 and 85 moved—[Nicol Stephen]—and agreed to.

The Convener: Amendment 135, in the name of Fergus Ewing, is grouped with amendments 136 to 140, 145, 151 to 153 and 157.

Fergus Ewing: First, I am indebted to the clerks and the national joint utilities group for their assistance in drafting amendments 135 to 140, 145, 151 to 153 and 157, the purpose of which is to ensure that the level playing field applies to certain aspects of the bill, whether we are talking about BT, Scottish Water, a local authority, or BEAR or Amey acting on behalf of the Scottish Executive.

Amendments 135 to 138 seek to ensure that section 114 of the New Roads and Street Works Act 1991 is amended so that not only utility companies but road works authorities and BEAR and Amey all have to give notice of when they have started work. That is a key element in levelling the playing field between public and
private sector undertakers of road works. I hope that the minister will accept that the principle of which he approves and has applied in his amendments—to which I will come—should be applied across the board.

Amendment 139 defines “undertaker”, which means somebody who is carrying out road works, rather than the better-known meaning of the word. That term should apply to all bodies that carry out road works that cause congestion. They should be subject to the same statutory controls, irrespective of who is doing the digging.

Similarly, amendment 140 seeks to extend the principle expressly to local authorities. In particular, it seeks to ensure that the requirement to give notice of emergency works, and to give notice in advance of and when starting works, is applied to all those who dig up the roads.

The remaining amendments are more technical. As the draftsmanship exactly follows the minister’s own draftsmanship by adding the phrase “road works authority” to “undertaker”, I hope that they are technically acceptable.

I am pleased that the minister has lodged amendments 87 and 88, which deal with the imposition of penalties under section 119 of the 1991 act. As a result of those amendments, a penalty can be imposed on both local authorities and private sector bodies for not carrying out road works timeously or properly. I am pleased that the minister has applied that principle to the imposition of fines. However, I hope that he accepts that the principle also applies to all the other obligations that are incumbent on those who carry out road works under the 1991 act. The issue is really very simple. Indeed, to argue otherwise is to argue that some craters that are left by road works are good and others are bad. I am sure that the minister would not support such a

“Four legs good, two legs bad”

argument any more than he would support an unlevel playing field in—to pick a topic at random—the rules that govern the election of party leaders. I am sure that the minister will be very happy to endorse a level playing field and I hope that the committee will approve my amendments.

I move amendment 135.

The Convener: I wondered how long it would take before someone mentioned that subject. Well done, Fergus.

Nicol Stephen: On amendments 87 and 88, I reflected on the committee’s concerns in its stage 1 report and its challenge to the Executive to bring forward proposals to ensure that road works authorities and utility companies are subject to the same penalty system in a way that avoids the situation in which local authorities in effect fine themselves.

As drafted, the bill enables the commissioner to give directions to road works authorities. Amendments 87 and 88 seek to supplement that power by enabling Scottish ministers to make provision by regulations for the commissioner to apply penalties to road works authorities and undertakers who fail to comply with their duties. I had thought that those amendments would satisfy the committee’s concerns, and road works authorities and utility companies will now be subject to similar constraints and penalties. I believe that those amendments address the committee’s core concerns and hope that they will be supported.

Because the amendments in the name of Fergus Ewing were made known to me only on Friday, I find myself in the position of a back-bench committee member. I did not know that they would be lodged and I am told that we did not receive representations on the detailed matters that they address from any of the parties that have been involved with the bill. As a result, I have to respond to them quickly.

I am not prepared to dismiss the amendments in the name of Fergus Ewing out of hand, and indeed think that some of the proposals have merit. However, I intend to scrutinise each and every one of them and to consider whether it would be appropriate to amend their provisions at stage 3. I do not know whether it would be best for the committee to reject them or to accept them with a view to amending them at stage 3. I am reasonably relaxed about that, but I would like to have the opportunity to scrutinise the wording of the amendments in greater detail and to be assured by my legal and drafting advice that they achieve the committee’s main intention.

Bruce Crawford: I thank the minister for his rather pragmatic approach, although I am surprised by his comments about when the Executive heard about Fergus Ewing’s amendments. I understand that the organisation involved has discussed some of the issues; certainly it has been speaking to civil servants for some time on the matter.

When the minister reconsiders the matter, I ask him to consider why the other amendments in the group should not be included in the bill. Surely the only body that would be affected by the inclusion of the amendments would be the Executive, particularly in its role as a roads authority. The Executive’s agents, in the shape of BEAR and Amey, carry out works all over the country. Under the amendments, BEAR and Amey would, for the first time, come under the level playing field principle that the minister spoke about.
The minister's office over a month ago.

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amendments only towards the end of last week—
indeed, he dwelled on the point when he read from
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at the table provided for him. Although I have not
seen any documentary evidence, I am told that my
amendments in the group were part of a batch of
amendments that were communicated to the
minister’s office over a month ago.

I encourage the minister to discuss strongly with
his civil servants whether the rules are applicable
on this occasion so as to ensure the application of
the level playing field that all of us want to see. It
would be bizarre if we were to have a set of rules
for utilities and local authorities that did not involve
the Scottish Executive as a roads authority, even
though the Executive undertakes a greater level of
expenditure in this regard than do all the local
authorities put together.

I hope that the minister will take solace from the
fact that the committee will support him if he
decides to accept Fergus Ewing’s amendments in
the group in their entirety, or if he at least accepts
the intention behind them. If he is unable to do so,
everything that we have said about principle will
go by default and that is unacceptable.

Mr Davidson: I back the sentiments that Fergus
Ewing and Bruce Crawford expressed. If we are to
have a level playing field, that is what we should
have and it should be set out as simply as
possible in the bill without too many words being
used. I hope that the minister and the committee
will accept the amendments in the name of Fergus
Ewing. After all, if it is necessary to do so for
technical reasons, the minister can always amend
the wording at stage 3.

Nicol Stephen: As I said before, I am relaxed
about the approach that has been suggested.
Although I can see the merit in some of the
proposals, I would like time to take detailed advice
on the subject. It is important to ensure that the bill
is strong and effective. That said, we accept the
policy aim that members seek of Scottish ministers
being subject to penalties and constraints. We will
work hard to ensure that we include that policy aim
in the bill at stage 3. Almost certainly, Executive
amendments will be lodged at stage 3 to reflect
the wishes of all members of the committee this
afternoon.

The Convener: Thank you. In order to clear up
any confusion, I say to Fergus Ewing that the
minister is always given the opportunity to respond
to a group of amendments. After all, the bill that
we are considering is the minister’s bill. As the
mover of the lead amendment in the group,
Fergus Ewing will also be given the opportunity to
respond to the debate. Now is your opportunity,
Fergus.

Fergus Ewing: I have just a few points to make.
The minister said that he had received the
amendments only towards the end of last week—
indeed, he dwelled on the point when he read from
the briefing that I assume those who surround him
at the table provided for him. Although I have not
seen any documentary evidence, I am told that my
amendments in the group were part of a batch of
amendments that were communicated to the
minister’s office over a month ago.

I would not suggest for one moment that the
minister seeks to mislead the Parliament—
obviously, the suggestion is absurd. However,
perhaps the minister will reflect on what he said,
take further advice and come back to the
committee on the matter. If appropriate, I hope
that the minister will correct the impression that he
gave that my amendments are new; they are not
new.

The argument on the grouping is a simple one;
everyone who carries out road works should do so
under the same legal duties. The first four
amendments in the group, amendments 135 to
138, use exactly the same format that the minister
used of adding the phrase “or road works
authority” to the word “undertaker”. Given that the
minister has accepted that format, I presume that
the sauce is good for the gander as well and that
amendments 135 to 138 will be accepted. The
purpose of the amendments is simply to ensure
that, no matter who does the work, they will have
to give notification when they have started it. If the
amendments are not agreed to, private sector
companies that carry out works will legally have to
give notice when they have started, but local
authorities will not have to do so. What is the point
of that? The issue is not complicated.

To respond to the minister, it is reasonable to
urge committee members to take the same view
as we have taken on other amendments to the bill.
My amendments have been introduced with
careful work and co-operation between the clerks
and NJUG and have therefore been subject to a
good deal of thought, but if any further amendment
or tweaking is required, that could be done at
stage 3. As members will recall, we adopted that
approach in relation to Michael McMahon’s and
Paul Martin’s earlier amendments. As always, I
would co-operate completely in any such tidying-
up work.

I hope that members will take that approach,
particularly on amendments 135 to 138, on which
the argument is strong. On my other amendments
in the group, I am happy to accept the minister’s
advice and have further discussion about them,
but amendments 135 to 138 are fairly
straightforward, as far as I understand it, although
I never claim to be an expert. I hope that members
will feel that there is a basis on which to vote for
those amendments at this stage. If it turns out that
there is any error, that could be dealt with at stage
3.

Amendment 135 agreed to.

15:00

The Convener: Well done, Fergus. You are
obviously becoming all consensual in your old age.
Fergus Ewing: The old age bit is right. Amendments 136 to 138 moved—[Fergus Ewing]—and agreed to.

Section 17, as amended, agreed to.

Before section 18

Amendments 139 and 140 not moved.

Section 18—Directions as to timing of road works

The Convener: Amendment 121, in the name of Michael McMahon, is grouped with amendments 122 and 86.

Michael McMahon: During stage 1, we heard a lot about the difficulty of addressing the needs of everyone who is involved in the use or the digging up of roads. The bill will allow local authorities to restrict the times at which digging can take place—such as at peak times—to take account of concerns about the issue. As long as that measure is used sensibly, it will be a good thing, because the needs of motorists, utility companies and the customers who ask for services to be delivered must be balanced. We must ensure that the balance is not tilted too far one way or the other, and that takes us back to the issue of a level playing field.

The intention behind amendment 121 is to ensure that the overall duration of works is not prolonged beyond a certain time as a result of using the measure in the bill, as that would have a direct impact on companies’ ability to meet their customers’ requirements at a reasonable cost.

In their evidence, the utility companies accepted that the balance of road traffic must be taken into account and that they can cause inconvenience. Amendment 122 is about ensuring that their need to comply with demand is matched by the need of local authorities and motorists to have access to roads when they require it.

Amendments 121 and 122 are an attempt to redress the balance and to ensure that the burden that is placed on utility companies is not overwhelming, does not impact on the overall costs to them and does not endanger their ability to deliver services at reasonable cost and in reasonable time.

I move amendment 121.

Nicol Stephen: Again, I am grateful to Sylvia Jackson and the Subordinate Legislation Committee for drawing the matter that amendment 86 addresses to the Executive’s attention. The bill makes no reference to appeals in respect of timing restrictions and the amendment seeks to sort out that problem.

On amendments 121 and 122, it is important to realise that section 18 must be read in conjunction with section 115 of the New Roads and Street Works Act 1991. Although I agree with the broad thrust of Michael McMahon’s amendments and what they seek to achieve, I believe that they are not needed in the bill. In section 115 of the 1991 act, there are provisions for the Scottish ministers to issue or approve a code of practice that will give practical guidance to road works authorities on how they should exercise their responsibilities.

I am also concerned about the reference to 10 days in amendment 121, on which I would like to consult the road works authorities and the utility companies. As far as possible, we have aimed to achieve consensus on such issues and to work together to get a good balance and a level playing field. I assure members that I will seek to work to ensure that the points raised in Michael McMahon’s amendments are addressed through the code of practice.

It is useful that Michael McMahon has lodged the amendments but I urge him to withdraw amendment 121 and not to move amendment 122 because working parties are currently producing recommendations and his concerns and the approach that he has taken should be referred to them so that the parties involved have the opportunity to work together and include those matters in the code of practice.

Fergus Ewing: The amendments in the group all relate to the power to give directions on the placing of apparatus, which I think means cables and pipes and where the road has to be dug up. The provisions in the bill will empower the road works authority to tell the company that is doing the works not to use a particular road. However, interestingly, the power does not seem to extend as far as being able to tell the company to use another road instead. I expect the bill to contain clear criteria and I am concerned that it does not. I support Michael McMahon’s amendments because he has tried to suggest some criteria.

The minister referred to a code for which there is provision under section 115 of the 1991 act, but that code is for guidance only. The utility companies will still be subject to the power of local authorities to prevent them from serving their customers. As Michael McMahon has rightly said, a balance must be struck between the interests of road users and the interests of those who want their gas, phone, electricity, and water to be supplied. As consumers, we often need those things fairly quickly, so there is a tension. Although they might need some tidying up, Michael McMahon’s amendments merit support.

I will be interested to hear from the minister a little more about the exact criteria that will govern the application of the conditions in new section...
115A(2) of the 1991 act. One of those conditions is that
"disruption to traffic would be avoided or reduced if the apparatus were to be placed in the other road".

The condition in new section 115A(2)(c) is that
"it is reasonable to require the undertaker not to place the apparatus in the proposed road."

However, how will we determine whether that is reasonable or not? If no criteria are stated in the bill, nobody will know.

Michael McMahon said that it would not be reasonable if there was a huge cost to the customers of the utilities companies, who would have to pay a great deal more. I believe that that could happen. I will be interested to hear whether the minister can be more specific in his response to this rather difficult question. What amendments will he propose if he is inviting us not to support Michael McMahon’s amendments?

Bruce Crawford: The minister’s amendment 86 will insert the words:
“The Scottish Ministers may by regulations make provision for appeals”.

I cannot imagine any circumstances in which ministers would not want to make such regulations, so can we encourage the minister to return at stage 3 with an amendment to amendment 86? Perhaps someone else needs to do that. The word should be “shall”, not “may”. For the life of me, I cannot understand why we would not want to appear decisive on that point. I cannot see any circumstances in which the word “shall” would not be appropriate. I encourage the minister to make such a change; otherwise, other members might have to consider a stage 3 amendment.

I support the intent behind Michael McMahon’s amendments 121 and 122 and commend his approach, but I have a number of concerns. The amendments propose that it would be up to the local authority to satisfy itself that its directions would not cause certain disadvantages. The use of the word “satisfied” would give local authorities a considerable amount of power. What does it mean? What does the word “substantial” mean in the context? The local authority would have to make a judgment on that.

Amendment 122 refers to
"financial disadvantage … to the customers of any public utility company”.

rather than to the company itself. Would the authority be required to talk to all the customers of the public utility company concerned? The local authority might get involved in a considerable amount of work and might need to talk to several parties. That would not necessarily be a bad thing if that is the intention, but it might have repercussions. The Royal Bank of Scotland might suffer the financial disadvantage, rather than the public utility company. A protracted negotiation process might be required, involving negotiation between the local authority and a third party. I am sure that the minister can find another way forward.

I encourage Michael McMahon not to move amendment 122 and to allow another solution to emerge.

Nicol Stephen: On amendment 86, I would be pleased to return with an amendment at stage 3 that would change the word “may” to “shall” as Bruce Crawford suggests. That shall happen.

Various points were made about section 19, and I will come to those in due course. On section 18 and the amendments to it, the balance is an important one, and we should not tilt it too much in favour of the road works authorities or the utility companies. We want an agreed approach and as much consensus as possible. The utility companies and the road works authorities have been working well together through RAUCS. I believe that the code of practice represents the best way forward. It can be both strong and fair. I urge members to support the direction in which I think it is right to move, which is to deal with these issues through appropriate discussion, the guidance and the code of practice.

15:15

Michael McMahon: I take on board the points that Bruce Crawford made. It was not the intention to create that type of difficulty. As I said, I lodged a series of amendments to tease out the argument, to see whether what the bill provides for could be done better and to ensure that people’s concerns about the intention of the bill were addressed. We have had answers to those concerns.

I agree with the minister that many of the issues that Fergus Ewing raised about apparatus and where it should be placed on the road are covered not in section 18 but in section 19. I have lodged some amendments to probe that issue as well, but the minister has given an answer to that. He believes that the code of practice on the subject will be sufficient to address people’s concerns. I am prepared to accept his assurance on that, and I will not press amendment 121 or move amendment 122.

Amendment 121, by agreement, withdrawn.

Amendment 122 not moved.

Amendment 86 moved—[Nicol Stephen]—and agreed to.

Section 18, as amended, agreed to.
Section 19—Directions as to placing of apparatus in roads

The Convener: Amendment 123, in the name of Michael McMahon, is grouped with amendments 124 to 128.

Michael McMahon: Amendment 123 would ensure that emergency works could not be delayed by the need to wait for a direction on where equipment can be placed or by the need to take a longer route than necessary to deal with the emergency. The whole section is about such practical issues. The utility companies were not satisfied that the bill was clear enough about what they could or could not do to deliver the services that are required, especially in emergency situations.

I will not move amendment 128, which calls for the complete removal of section 19. Suggestions were put to the clerks about the areas that I wanted to have covered, and the only type of amendment that they felt would address the overall concern was one that removed the whole of section 19. I do not believe that anyone thinks that that should happen, and that is not my intention. I simply want to clarify what each section of the bill does in respect of utility companies' responsibilities. The removal of section 19 would not help that, so I will not move amendment 128.

Amendment 124 is similar to amendment 123. A customer’s connection should not be delayed because a utility company has to take an alternative route following instructions from the local authority. There must be a way in which the utility company can go in and do the work as quickly as possible without having to wait for everyone else to catch up with its requirements. I am talking about emergency services for gas or what have you. The last thing that a utility company needs when it is approaching that set of circumstances is to have to make a call first to the local authority to find out where it can put its apparatus.

Amendment 125 relates to appeals in respect of that. There is no provision in the bill for an appeals system that would allow aggrieved parties to challenge rulings. There must be reassurance that utility companies will have redress if they are not satisfied with the rulings that are placed on them under the bill, primarily to ensure that they can do their job without incurring any unnecessary additional costs.

Amendment 126 relates to companies being excused for failing to perform their statutory duties if the failure is due to action that has been taken under the provisions of the bill. Certain organisations that work in the telecoms sector will be subject to the regulations of not only the road works commissioner but the Office of Communications. There must be reassurance that, in complying with directions under the bill, they will not fall out with Ofcom regulations. Some practical issues must be cleared up and it would be helpful if the minister could assure me that such considerations have been taken into account and that either a mechanism exists whereby such concerns can be addressed or he has taken on board the utility companies’ concerns.

I move amendment 123.

Bruce Crawford: I thank Michael McMahon for lodging the amendments. They are good amendments and should be seriously considered.

I imagine that, in 99 per cent of circumstances in which apparatus is being placed and there is discussion between the local authorities and the utilities, consensus will be found. Amendment 124 refers to circumstances in which

“placing the apparatus in the other road would not result in any delay”.

What worries me is that “any delay” might mean one minute, one hour or one week. The amendment would give utility companies a lot of power to say to local authorities, “Whatever you say, this will cause a delay. We are going to do what we originally envisaged,” and that balance ain’t right.

Perhaps the minister or another member could lodge an amendment at stage 3 to deal with the issue. The words “unreasonable delay” might be more appropriate—although then how we define “unreasonable” becomes a problem. The way in which the amendment is currently worded would give the utilities too much leverage to say to the local authority, “We’re not really worried about what you’re saying. We’re bashing ahead because there would be a delay,” even though the delay might be for only one minute. That might not be the intent of the amendment, but I think that it would be the effect. I am sure that the minister will tell me if I am wrong. Indeed, Sylvia Jackson might even be about to tell me, too.

Dr Sylvia Jackson (Stirling) (Lab): Altering the word “may” to “shall” in amendment 86 to section 18 would have consequences for new section 115A(5) of the 1991 act in section 19. We should take that point on board since we are dealing with the two sections together.

Paul Martin (Glasgow Springburn) (Lab): During the evidence sessions, the utility companies raised the issue of additional bureaucracy. I would not like to add to bureaucracy by taking unnecessary measures, but the approach must be balanced, to ensure that the utility companies take into consideration discussions with local authorities. If we are to streamline the process for utility companies in the bill, we must see an improvement in their performance. I would want to give the utility
companies more flexibility only if the end-product is that they carry out their responsibilities much more quickly. We must take into account public concern that utility companies not only take a long time when they are on site, but take a considerable length of time to get on site in the first place. That applies not only to operational works but to emergency works.

Fergus Ewing: I endorse Bruce Crawford’s argument that amendment 124, which would provide that placing the apparatus in the other road should cause no delay to customers’ connection, might give too much power to utility companies. That could be dealt with at stage 3 by qualifying the word “delay”. I hope that Michael McMahon will press the amendment at this stage and that we will agree to the provision. If it needs tidied up, that can be done simply at stage 3.

On balance, we might also want to bear in mind that not only do cables, ducts and pipes supply vital services to us all as consumers—we tend to take that for granted—but the financial contribution to non-domestic rates is absolutely colossal. I think that the contribution is more than £100 million—the rateable value is in the order of £600 per kilometre. Although we all like to cuss and criticise and there is inconvenience, there is a huge contribution to the economy, and I am sure that all of us here who support the free-market economy will want to take the opportunity to acknowledge that welcome contribution.

The Convener: Are you trying to provoke a response from anyone in particular, Fergus?

Mr Davidson: I am a bit puzzled because amendment 124 has not been thought out too well. If Scottish Water and an electricity supply company agreed that they would lay on works, there would be no opportunity for a local authority to co-ordinate the works so that one set of holes could be dug and both sets of equipment could be put in at the same time. Amendment 124 would remove that flexibility. I am not sure whether that was the intention, but it could be read that way and could allow somebody to say, “My customers must not experience any delay.” The amendment would remove an opportunity to co-ordinate activities under the roads, which are one of the biggest bones of contention among the public.

Nicol Stephen: Amendment 123 seeks to confirm that emergency works are not caught by the provisions that restrict the placement of apparatus. I support that but reassure Michael McMahon that in section 19(2), which references section 116 of the New Roads and Street Works Act 1991, we have included provisions to ensure that the execution of emergency works is unaffected by any directions given under section 19. I advise Michael McMahon and all other committee members that the position of emergency works is secure, so amendment 123 is not required.

I have significant concerns about amendment 124, which committee members have reflected in their contributions. Inclusion of the amendment would directly cut across our intention to reduce the disruption caused by the installation of apparatus. The purpose of section 19 is to balance the needs of a utility company and its customers with the needs of road users. When assessing whether to issue a direction, a road works authority will have to be satisfied that the direction will reasonably achieve the needs of the utility company. Sections 19(2)(b) and 19(2)(c) cover that, therefore the spirit of the amendment is already contained in the legislation.

Amendment 124 would go further than the bill and would mean that any delay—I emphasise the word “any”—to the utility company and its customers would override the power to give a direction, at road users’ expense. The amendment would swing the pendulum in favour of the utility companies and I urge caution about that. Road works authorities and all road users would have difficulty with the amendment, which goes back to my earlier point about being anxious to ensure that local roads authorities have a fair say in the proposals in the bill as well as in the codes of practice.

There is a way forward that would address the utility companies’ concerns. There are provisions in section 19 that provide the Scottish ministers with a power to issue or approve the code of practice to which I referred, which will give practical guidance on how road works authorities should exercise their powers to direct the placement of apparatus by utility companies. If Michael McMahon were not to move his amendment, I would be willing to agree to placing Scottish ministers under a duty to produce such a code of practice and to return at stage 3 with an appropriate amendment.

15:30

I am content for Michael McMahon to move amendment 125. There is no doubt about our intention to produce regulations—indeed, a working group has already been established to inform their development.

Amendments 126 and 127 are a different matter. Amendment 126 would tilt the playing field too far in the direction of the utility companies, at the expense of customers rather than road users.

I strongly urge members also to disagree to amendment 127. As members will be aware, telecommunications regulation is a reserved matter. The Executive has not had an opportunity to discuss the issue with Ofcom, so I am reluctant
to agree to the inclusion of any such reference in the bill at this stage. If the proposal proves permissible and an amendment is required, I will return to the issue at stage 3.

That said, the issue again relates to the relationship between a utility company and its customers, as set out in a code of practice that has been approved by Ofcom. The amendment would free a utility company of its obligations under such a code of practice if the matter were related to a road works authority direction. The amendment is similar to amendment 124. We will discuss the issue with Ofcom, but the matter can and should be handled adequately through a code of practice. I urge Michael McMahon not to move amendment 127 on the basis of the reassurances that I have given.

Amendment 128 would delete section 19, but I will not comment further on it as Michael McMahon has already said that he does not intend to move it.

**The Convener:** I fear that the minister might have swung the SNP behind amendment 127 by pointing out that it relates to a reserved matter. Bruce Crawford was getting quite interested.

**Michael McMahon:** I have listened to the minister and my colleagues on the committee who have raised concerns, and will not press amendments 123 and 124. I would be happy to see a proposal from the minister that addresses the concerns that have been raised and ensures that the code of practice is covered in the bill.

I am pleased that the minister supports amendment 125. I will not move amendments 126 or 127 on the basis that there are concerns, which he outlined. He agrees that there must be a way of addressing the concerns that I have raised and I am happy to allow him to have discussions with Ofcom to find out where the boundary lies between the requirements on utility companies under the bill and their need to meet the requirements of Ofcom’s regulations. I hope that the minister will lodge an amendment if it is necessary for the bill to address the matter. As I have said, I will not move amendment 128.

**Amendment 123, by agreement, withdrawn.**

**Amendment 124 not moved.**

**Amendment 125 moved—[Michael McMahon]—and agreed to.**

**Amendments 126 to 128 not moved.**

**Section 19, as amended, agreed to.**

**Section 20—Restriction on works following substantial road works**

**The Convener:** Amendment 129, in the name of Michael McMahon, is grouped with amendment 130.

**Michael McMahon:** These amendments are aimed at teasing out more information from the minister. In discussions on them, there was concern that clarity is required, and I have lodged them to tease out that clarity.

I hope that what the minister has to say will reassure members and that the concerns that remain outstanding following the evidence that we have taken and the points that have been made will at least secure some understanding from him.

I move amendment 129.

**Fergus Ewing:** I too am interested to hear what the minister has to say on amendments 129 and 130.

On amendment 129, there should be some restriction on those who carry out road works such that they cannot come back and do road works again the next week or month, because that would involve unnecessary inconvenience. Such restriction would perhaps also encourage better performance and more efficient carrying out of work, as undertakers would know that they had to get it right because they could not come back for a certain period. However, three years is an incredibly long time not to be allowed to come back. Therefore, Michael McMahon’s objective seems to me to be correct and founded on common sense. After all, the utilities check the robustness of their plant each winter, which suggests that 12 months would be a more sensible and necessary limit, if there is to be such a limit.

The aim of amendment 130 is to provide exceptions that would allow a utility company to return and carry out work within a fairly short period if necessary. Those exceptions are for the purposes of connection of supply and

"to make urgent repairs following a serious disruption to the supply of electricity or gas to customers, or to the water, sewerage or telecommunications networks."

I am sure that we would all support those functions.

I am interested in hearing what the minister has to say about the amendment. He might say, as he has already said, that there is already provision for the carrying out of emergency work in section 19(2), which refers to “emergency works”. However, there is a distinction between emergency work that needs to be carried out for safety reasons—such as an interruption in gas supply—and the wording of amendment 130, which refers to making

"urgent repairs following a serious disruption."

Michael McMahon is attempting to allow a company to go back and get things right within a period that is shorter than three years if customers need to be connected or to have urgent repairs.
carried out. Amendments 129 and 130 should be supported.

**Paul Martin:** The principle that the minister set out in the bill reflects public concern at constant upheaval due to continual construction works for various developments throughout Scotland, but the difficulty is in the practicalities of implementing the bill. Michael McMahon is reflecting some of the issues that the utility companies raised about the practicalities, so it would be helpful to hear how the minister will provide clarity and ensure that we are listening to public concern about the lack of co-ordination between the utility companies in the past and that we take a balanced approach to that concern, which is a fact of life.

Although we received evidence from the utility companies that they work well together, it does not look like they do and therefore some form of regulation is needed to implement the basic principle that we cannot have workmen constantly digging trenches throughout Scotland. At the same time, we need to be fair to the utility companies and give them some flexibility, which Michael McMahon is setting out. He has given us a way forward in amendments 129 and 130, but if the minister has a more effective way forward, we could consider it.

**Mr Davidson:** On amendment 129, I feel that the period of three years specified in section 20(1)(a) is overkill. There is a shortage of housing, and the redevelopment of brownfield sites for housing is taking place all around the country on a creeping basis. It is not always a case of one huge development going up; developments can grow over time. The three-year period is an unnecessary constraint. I have some sympathy with the idea that the undertaker should not come back every second week to have another fiddle, but I would like to think the minister can come up with something a bit more pragmatic that would achieve what he was after without restraining development where it is needed.

**Fergus Ewing:** It is a muddle, not a fiddle.

**The Convener:** I am not sure I want to take that any further.

**Dr Jackson:** I agree whole-heartedly with what Paul Martin said about the balance to be struck, in the spirit of what we wrote about this matter in our stage 1 report. We are dealing with the term “urgent repairs”, and the minister previously referred to how emergency situations are covered. Do we have a definition of “emergency works”? I am not sure what the differences are between “emergency” and “urgent”.

**Nicol Stephen:** I will begin with the last point. The term “emergency works” is defined in section 111 of the 1991 act.

**Michael McMahon:** I sense agreement among members that this issue must be resolved. I was not confident at the outset that amendment 129 was exactly what was required, but I lodged it in response to the evidence that we took on the matter. The committee agreed in its report that the issue required to be addressed.

I sought to tease out that argument and I am sure that the minister understands exactly what my intentions were. Often, bills that we deal with require other areas to work in order to achieve their goals. Planning is one of the areas on which...
the bill that we are discussing will depend to a great extent. It does not make much sense for a local authority or anyone who is involved in planning to prevent people from moving into a new area because they cannot get gas, electricity or telephone connections as a result of a three-year restriction on digging up a road that has just been laid. That point was well made when we were taking evidence, and my amendments were intended to address the issue.

I take on board the point that the minister has made about the involvement of RAUCS and am reassured that he has listened to what we have said and will introduce something at stage 3 that will address the issue better than amendment 129 does.

Amendment 129, by agreement, withdrawn.

Amendment 130 not moved.

Section 20 agreed to.

Sections 21 and 22 agreed to.

Section 23—Enforcement of section 119 of 1991 Act

Amendments 87 and 88 moved—[Nicol Stephen]—and agreed to.

Section 23, as amended, agreed to.

Section 24—Qualifications of supervisors and operatives

The Convener: Amendment 141, in the name of Fergus Ewing, is grouped with amendments 142 to 144.

Fergus Ewing: The purpose of section 24 is to extend provisions in the 1991 act that require utility companies to assure the roads authority that they have suitably trained and qualified staff and supervisors. Amendment 141 allows us to pay another visit to the playing field to ensure that the utility companies are not playing uphill against the wind and the rain.

The provisions in section 24 state that the utility companies must nominate a supervisor for any road works that are being undertaken and provide evidence of the supervisor’s qualifications. The purpose of those provisions is to ensure that the person who is in charge of any road works is competent and suitable.

The purpose of the amendments, which have been drafted for me, is to ensure that the provisions that apply to the utility companies will also apply to local authorities and to the Scottish Executive and its appointed agents, BEAR and Amey. If there is any mistake in the drafting of the amendments, no doubt the minister will inform me.

I move amendment 141.

Nicol Stephen: I understand Fergus Ewing’s point and see his argument. However, the roads authority has a responsibility for ensuring that its assets—including the roads—are properly maintained. Through the use and management of its staff, the roads authority can obtain that assurance. The purpose of ensuring that undertakers provide evidence of qualification is so that the roads authority can be assured that other persons, for whom it has no management responsibility, are capable of performing tasks on its assets to an appropriate level of quality.

The provision in the bill that requests evidence of qualification seeks to minimise risk, and the roads authority is given the power to require and obtain assurance by requesting that evidence. On that basis, and given the argument to do with liability and responsibility, I ask Fergus Ewing not to press amendment 141. It is one instance in which there is a distinction between the position of the roads authority and that of the utility companies.

Fergus Ewing: I am persuaded to the extent that the minister is referring to local authorities. However, I wonder whether he could clarify the position as it relates to the contractors who are engaged by the Scottish Executive to carry out trunk road works, who would be responsible for the placing of certain apparatus such as traffic light connections, cabling for streetlights and other works of that nature. Does the argument that the minister advanced in relation to local authorities apply to BEAR and Amey? Should they have to give notification of who the qualified supervisor is? I understand that there are prescribed qualifications such as city and guilds accreditation for the individual skills of placing signing, lighting and guarding, plant detection, excavating, reinstating and so on, which are formally registered by the Scottish Qualifications Authority. The utility companies have to provide all that information.

Can the minister clarify what the impact will be on the private companies that are engaged on behalf of the Scottish Executive in carrying out its obligations in relation to the trunk road network, as opposed to the non-trunk road network? The non-trunk-road network is the responsibility of the local authorities, which carry out maintenance through the public sector.

The Convener: I do not want to reopen the debate and set a precedent that might lead to the meeting being prolonged unnecessarily; nevertheless, I will allow the minister to clarify whether the undertakers would include the trunk road operators.

Nicol Stephen: The same argument that I made for the roads authorities would apply in relation to the trunk roads, which are the Executive’s asset
and the responsibility of the trunk roads authority. Whether they were directly employed staff or contracted staff, we would be responsible for ensuring that the staff were appropriately qualified and that the roads were appropriately protected and maintained.

Amendment 141, by agreement, withdrawn.

Amendments 142 to 144 not moved.

Section 24 agreed to.

Section 25 agreed to.

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

Amendment 145 not moved.

Section 26 agreed to.

Section 27—Notices requiring remedial works relating to reinstatements

The Convener: Amendment 146, in the name of Fergus Ewing, is grouped with amendment 147.

Fergus Ewing: These amendments relate to the periods of notice for remedial work on road works; such remedial work is required presumably because road works were not done properly the first time. Again, this is a difficult and detailed area. The purpose of the two amendments is simple, and I hope that the minister will agree with their objective of ensuring that, in determining the minimum periods—given the fact that the previous minimum period of seven days has been dispensed with—there will be full consultation with the utilities that are involved.

The purpose of amendment 146 is to ensure that, in issuing guidance in relation to the exercise of the power in new subsection (3A) of section 131 of the 1991 act, ministers take account of the relevant current codes of good practice. I refer briefly to the Highway Authorities and Utilities Committee United Kingdom inspections. HAUC has produced a code of practice promoted by the joint utility and authority inspections working group, which includes Scottish representation. That code of practice defines the prescribed period for undertaking reinstatement remedial works. The agreed period is derived from authority and industry best practice and realistic timescales, to which both the authorities and utilities can work. As the minister knows, it is helpful to have notes in front of us.

The purpose of amendments 146 and 147 is to ensure that when the ministers are deciding how to exercise that power and change the deadlines, the existing corpus of work is not reinvented or replicated but referred to, given the important commercial consequences in many situations.

I move amendment 146.

Nicol Stephen: I thought that Fergus Ewing was getting positively ministerial at one point.

The Convener: I thought that he was getting positive about UK bodies.

Nicol Stephen: SCOTS, RAUCS and HAUC.

I thank Fergus Ewing for his explanation. Although there is no disagreement with the thrust of what he said, it is arguable that his proposed provisions will duplicate information that could be contained in regulations. There is also the fact that he intends to place Scottish ministers under a duty to produce guidance. I have conceded that point elsewhere, but if guidance is not required in this instance because the regulations contain sufficient detail to provide a shared understanding, the production of it would be unnecessary. I expect that the regulations—again, informed by the work of the proposed working groups—would be drafted in such a way that there would be no requirement for additional guidance on how they should be applied. That is the current intention; we should avoid additional guidance. On that basis and given that reassurance, I ask Fergus Ewing to withdraw amendment 146 and not to move amendment 147.

Fergus Ewing: The minister has said that the working group will be consulted, which is, in essence, what the industry wishes. I interpret from what he said that the utilities would be involved in that. If a document is produced that does not require further interpretation, it is logical that there would be no need for guidance. In the light of the minister’s assurances, I am happy to withdraw amendment 146 and will contemplate the matter further prior to stage 3.

Amendment 146, by agreement, withdrawn.

Amendment 147 not moved.

Section 27 agreed to.

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

The Convener: Amendment 131, in the name of Michael McMahon, is grouped with amendments 132 to 134.

Michael McMahon: One of the things that most shocked me in the evidence that we took was our being told that there might be a loophole whereby a utility company that digs up part of a road might find itself being subjected to a request from a local authority to resurface all the road once the work had been carried out. Given the way in which the bill is drafted, that is a concern, and a measure has to be introduced to address that fear. I do not know whether an authority would ever enforce
such a requirement on a company, but the fact that the loophole exists was enough for me to lodge amendment 131 to ensure that the minister addresses the concern.

Amendment 132 would remove the power of roads authorities to direct utility companies on when to commence works. The utilities believe that powers to direct are not required, but if any such powers are to be introduced, the powers to direct that works should be completed by a given date or time ought to be sufficient to ensure that the works do not cause undue disruption. The roads authorities are not really best placed to determine what utility companies can deliver in a certain timescale. Roads authorities may want to shorten the disruption, but they are not best placed to determine whether a company can complete a job in a given time. I ask the minister to confirm whether the bill would allow that to happen. There is a risk that, under pressure to meet local authority-imposed timescales, contractors might be pushed into compromising standards, which would be a detrimental outcome of a well-intentioned measure.

The intention of amendment 133 is to remove the on-going liability that the bill would place on utility companies. The amendment would ensure that companies would be forced to resurface a road if their works caused problems in a certain period after the work is completed, while recognising that defects that reveal themselves after that might not be linked to work not being conducted well. There must be some point at which utility companies cannot be asked to come back and repair roads. Roads deteriorate over time, so problems may have nothing to do with the way in which the road was reinstated.

I lodged amendments 131 to 134 to address concerns that were raised in evidence that utility companies might be asked to do more reinstatement work than is necessary. The companies accept that they have to carry out work well, timeously and as effectively as possible, but if the bill asked them to do more than is reasonable, that would be unfair. I lodged the amendments to ensure that that unfairness does not come through in the bill.

I move amendment 131.

**Paul Martin:** As there was in our debate on amendments 129 and 130, there is an issue of balance. We need to take a reality check about the poor standard of some utility companies’ resurfacing work. I cannot remember the exact statistics, but the testing that the council in the constituency that I represent—Glasgow City Council—carried out on repair works revealed poor statistics. When we balance the matter, we must take into consideration the fact that some utility companies do not carry out repairs and resurfacing to the standard that they should. To reflect on public opinion again, people see cones and barriers all over the place, and they are sometimes there for some time. In my constituency, Scottish Water is probably the worst culprit for abandoning works. I am sure that the same happens in other areas. There is no difficulty with attaching a timeframe to works to ensure that people know that the process is not never ending and that the works will be completed.

On the question of balance, I want to be fair to utility companies, but I am not impressed by their current approach. A timeframe must be attached to works and somebody has to do that; it should not be left in the gift of utility companies to decide how long works can take. There has to be some form of regulation to make sure that there is completion, and I think that I represent the public’s frustration when they see the large number of remedial works that are carried out; there seems to be no end to it.

**Nicola Stephen:** I want to ensure that road works authorities can require undertakers to resurface the road when the quality of the road surface has deteriorated as a consequence of a reinstatement. That addresses Paul Martin’s concerns. Although the intention is that the notice will be applied to an undertaking, there is no intention that the undertaker will be expected to meet the cost of the entire resurfacing in every instance. Either other undertakers or the roads authority will fund the balance when appropriate. The undertaker will contribute to the cost of resurfacing only in relation to the extent to which the original reinstatement has affected the quality of the road surface. I reassure the committee that the purpose of the regulations that are associated with sections 28 to 30 is to provide detailed specification of the manner and circumstances in which notices will be applied. For instance, the regulations will confirm the date after the original reinstatement on which the undertaker will no longer be liable for any resurfacing activity. Those regulations will be informed by the findings of the resurfacing working group, which has already been established and will report later this year.

The amendments seek to pre-empt the findings of the resurfacing working group, which has representation on it from the utility companies as well as from the road works authorities and the Executive. I hope that that reassures Michael McMahon. Because it contains wider interests, I believe that the working group will arrive at a balanced conclusion taking into account a range of issues, including road engineering matters and the balance-sheet risk, which has been raised by the utility companies.

Amendment 134 would place Scottish ministers under a duty to consult utility companies. Of
course, it is Executive policy to consult widely on the provisions of bills and regulations. I have just mentioned the working party that was established to inform and make recommendations in respect of the regulations and codes of practice that flow from the bill. Amendment 134 seems to focus on one association of utility companies and I therefore ask Michael McMahon to withdraw amendment 131 and not to move the other amendments on the basis that we will of course consult and involve a range of organisations. I believe that detailed matters relating to resurfacing issues will be well addressed by the working group to which I have referred.

Michael McMahon: I have listened to the minister’s reassurances, and I made it clear that that is what I was seeking when I lodged the amendments. I am happy to withdraw amendment 131 and not to move amendments 132 and 133 because the minister is awaiting the outcome of a working group that he has set up, and because the utility companies will be given a proper opportunity to bring their engineering expertise to those discussions. In the fullness of time, something will emerge from those discussions that will reassure those companies.

I did not specifically mention amendment 134 in my opening comments. In relation to the amendments in the name of Fergus Ewing that we debated earlier, the minister said that he accepts in principle that something is required and that he intends to lodge an amendment at stage 3. I would like to move amendment 134 to ensure that the appeals mechanism is established in the bill. If the minister wants to lodge a stage 3 amendment that seeks to rectify what we have done, that is fine. However, I want to press amendment 134 to ensure that the provision is in the bill.

We must ensure that the bill tidies up such issues. As I said, I am quite happy for many matters to be addressed in codes of practice and by working groups, but the matter that amendment 134 addresses should be in the bill.

Amendment 131, by agreement, withdrawn.

Amendments 132 and 133 not moved.

Section 28 agreed to.

Section 29—Resurfacing: regulations and guidance

Amendment 134 moved—[Michael McMahon]—and agreed to.

Section 29, as amended, agreed to.

Sections 30 and 31 agreed to.

Schedule 3 agreed to.

The Convener: I propose to give members a five-minute break at this point.

16:11

Meeting suspended.

16:21

On resuming—

Section 32—Fixed penalty offences

The Convener: Amendment 89, in the name of the minister, is grouped with amendments 90, 148, 91, 149, 150 and 96 to 99.

Nicol Stephen: On amendments 89 and 90, I am grateful to the Subordinate Legislation Committee for drawing a technical matter to our attention. The bill, as currently drafted, does not state that an order made under it will be made in the form of a statutory instrument. Those amendments, by including the words “statutory instrument”, seek to rectify that error—my notes use the word “anomaly”, but I will say “error” and be done with it.

Amendments 91, 96, 97 and 98 are technical drafting amendments. They do not change in any respect the intent of the bill.

I am again grateful to the Subordinate Legislation Committee for drawing the matter raised in amendment 99 to my attention. The bill currently provides for the Scottish ministers to make regulations subject to the negative procedure to turn certain criminal offences under the 1991 act into civil offences. I fully endorse the Subordinate Legislation Committee’s proposal that any such regulations that change the status of offences from criminal to civil should be made subject to the affirmative procedure in order to give the Parliament the proper and appropriate opportunity to scrutinise the proposals.

On Fergus Ewing’s amendments 148 to 150, the central objective of the register is to allow for effective planning and co-ordination of road works. That could be seriously undermined if incorrect information were to be entered—inadvertently or otherwise—in the notice. An example of that could be the entering of the wrong date for the commencement of the works. That might be inadvertent, but it could have serious consequences for traffic operation and road works co-ordination.

The matter should therefore be pursued through a fixed-penalty notice. Any defence that the error was inadvertent and should not be subject to a fixed-penalty notice would significantly reduce the effectiveness of the penalty regime and, consequently, the whole functioning of the road works procedures in the bill. Furthermore, the question

“whether the effect of the offence was trivial”
misses the core point, which is that in different circumstances the same inadvertent offence could have a serious impact. The purpose of the bill’s provisions is to instil a level of discipline that ensures an appropriate duty of care is exercised and that appropriate checks and procedures are in place. Even if the majority of such errors have a trivial impact, the approach is justified if it prevents serious problems that may only rarely occur. In the Executive’s view, there should be no defence to the commission of the offence if it occurs in the way that I describe. However, there may be mitigating factors and we would expect roads authorities to behave reasonably in deciding whether a fixed-penalty notice should be issued.

Based on what I hope was a helpful explanation, I urge Fergus Ewing not to move amendments 148 to 150. There is the issue of natural justice and there would obviously have to be an appropriate procedure for dealing with situations where a penalty notice is inappropriately issued.

I move amendment 89.

**Fergus Ewing:** In speaking to amendments 148 to 150, I once again thank the clerks and NJUG for the work that they have done and for their assistance in drafting the amendments. The aim of the amendments is simple. The whole purpose of having an independent commissioner is to ensure that road works are carried out more promptly and more efficiently, and with less inconvenience to road users, within the practicalities of the system, about which we have heard so much this afternoon. However, “let the punishment fit the crime” is a pretty good maxim. We all recognise that some of the statutory offences are of a technical nature. The purpose of amendments 148 to 150 is to ensure that, when an offence is inadvertent and arises through a genuine error or misunderstanding, and when its effect is trivial, we should not waste anybody’s time in having a long, drawn-out procedure, the upshot of which presumably would be to exact a monetary penalty of low amount—we do not know what the sliding scale of fines will be or even whether there will be a sliding scale.

I put it to the minister that the severity of offences should be related to the degree of congestion. It has been put to me that a minor mistake, such as an inadvertent grammatical error, should not result in anybody’s time being wasted with a formal notice or the involvement of the road works commissioner. I believe that the commissioner’s office is to cost around £300,000. If there is to be an inundation of minor breaches—as must be the case, and as advocated by the minister—the commissioner will have his work cut out, because there will be only a handful of staff.

The argument that we must prosecute in all circumstances is not robust. If my amendments 148 to 150 simply stated that inadvertent errors should not result in an offence being pursued or, if pursued, should be taken account of in setting the penalty, I would agree with the minister, but that is not what they say. My amendments specifically state that two things must happen for offences not to be pursued or, if pursued, to be subject to a modest penalty: first, the error must be inadvertent and, secondly, the effect must be trivial.

The minister has not persuaded me that where the effect is trivial a penalty must be imposed. I do not know what the penalty is to be and the minister has not said what it should be. The minister argued that, even if the effect of the offence was trivial, in another case it might not be trivial, but I am not talking about another case; I am talking about when the impact is trivial. When the impact is not trivial, I agree with the minister that a commensurate penalty should be imposed.

I am not persuaded at all—in fact, quite the reverse—by the minister’s arguments. We do not want to clog up a new regulator with work of this nature. Frankly, the road works commissioner’s office could be brought into disrepute if he were seen to pursue things that were of a nugatory and minimal nature. I hope that those arguments persuade the minister to rethink his approach to my three amendments in the group.

16:30

**Mr Davidson:** We must always bear it in mind that any legislation that we pass must be pragmatic and practical. I do not want a situation to arise in which there is no real case to answer other than on a minor technicality, yet vast amounts of time, effort and money are tied up in legal advice and so on. I agree completely with Fergus Ewing, and with the minister, that any serious outcome must be investigated. Clearly, that is what the process is about. However, on this occasion, we should adhere to the spirit of what Fergus Ewing is saying.

**Nicol Stephen:** I will focus on the single point that Fergus Ewing and David Davidson have raised. I repeat that the Executive would expect roads authorities to behave reasonably in deciding whether a fixed-penalty notice should be issued.

I say to Fergus Ewing that, in normal circumstances, the roads authority would issue the notice and not the commissioner, although the commissioner will have powers in that regard. If the system were to become clogged up with notices that were issued by the commissioner, the new system would not be working well. That is not the way in which we intend the system to operate.
The provision in paragraph 12(a) of schedule 5 and paragraph 12(a) of schedule 7 allows Scottish ministers, by regulation, to
“prescribe circumstances in which fixed penalty notices may not be given”.

In the light of operational experience, we may find that there is scope to provide the details of the circumstances in which a road authority decides not to issue a fixed-penalty notice. I give Fergus Ewing the assurance that we will investigate the issue further. I hope that that allows him not to move amendment 148. Over time, we want to develop a sensible system under which we can ensure that we do not proceed in situations when the issue at question is trivial.

That said, I believe that, if the bill were to talk about an offence being “inadvertent” or about the effect of an offence being “trivial”, that could lead to a lot more administrative work. In a lot of circumstances, particularly initially, the utility companies will test the system and Fergus Ewing’s amendments would allow them to contend that the error or mistake that led to the fixed-penalty notice
“was inadvertent and that the effect of the offence was trivial”.

It is therefore inappropriate for that wording to be on the face of the bill.

Amendment 89 agreed to.
Amendment 90 moved—[Nicol Stephen]—and agreed to.
Section 32, as amended, agreed to.
Schedule 4 agreed to.

Schedule 5

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

The Convener: Amendment 148, in the name of Fergus Ewing, was debated with amendment 89. I ask Fergus Ewing whether he wants to move the amendment.

Fergus Ewing: Just to demonstrate my constant reasonableness, on the basis of the minister’s assurance, I will not move amendment 148.

Amendment 148 not moved.
Amendment 91 moved—[Nicol Stephen]—and agreed to.
Amendments 149 and 150 not moved.

The Convener: Amendment 92, in the name of the minister, is grouped with amendments 93, 104 and 105.

Nicol Stephen: We lodged amendments 92 and 104 in order to overcome a potential legal difficulty. The amendments propose:

“Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.”

That means that in circumstances in which a person is the subject of a formal prosecution for an offence, they cannot also be punished for non-payment of the fixed-penalty notice that is associated with that offence.

Amendments 93 and 105 reflect the necessary changes that are required to schedules 5 and 7, which relate respectively to the New Roads and Street Works Act 1991 and the Roads (Scotland) Act 1984.

I move amendment 92.
Amendment 92 agreed to.
Amendment 93 moved—[Nicol Stephen]—and agreed to.
Amendment 151 not moved.

The Convener: Amendment 94, in the name of the minister, is grouped with amendments 95, 106 and 107.

Nicol Stephen: Amendment 94 seeks to enable the Scottish ministers, by regulations, to permit road works authorities to retain a proportion of the revenue that is collected from fixed-penalty notices, so it will be warmly welcomed by road works authorities. The amount that is retained will be sufficient to meet any cost that is incurred through administering the scheme. The fact that the balance will be handed over to the Scottish consolidated fund will not be as warmly welcomed. However, the Scottish consolidated fund is the most suitable final destination for the fixed-penalty receipts, net of administrative costs. Scottish ministers will be able to allocate the penalties revenue from that fund to the funding of national, regional or local projects.

I move amendment 94.

Fergus Ewing: I have a question for the minister on amendment 94, which provides that the total amount of the penalties will go to the Scottish consolidated fund for ministers to spend. Has the minister estimated how much those penalties will amount to annually? For example, will the total be enough to cover the ministerial travel budget?

The Convener: As no other members have anything to say on what is a serious and important point, I invite the minister to respond.

Nicol Stephen: The important point is that there have been concerns that some local authorities might use the fines as an additional income
stream. As we have discussed, it is important that there is a level playing field and that we are able to assure committee members and utility companies that the regulations will be tightly drafted to ensure that only legitimate expenses will be met and that local authorities will have no such incentive. Provided that the terms of the legislation are complied with, we estimate that the amount that is generated from fines should be nil.

The Convener: To summarise the Executive’s position, it will receive the income from fines to prevent local authorities from having it as an additional income stream, but the income stream will be nil.

Amendment 94 agreed to.

Amendments 95 to 98 moved—[Nicol Stephen]—and agreed to.

Schedule 5, as amended, agreed to.

After section 32

Amendment 152 not moved.

Section 33—Civil penalties for certain offences under 1991 Act

Amendment 99 moved—[Nicol Stephen]—and agreed to.

Section 33, as amended, agreed to.

Section 34 agreed to.

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

The Convener: Amendment 100, in the name of the minister, is grouped with amendments 101 to 103, 108 and 109.

Nicol Stephen: I will attempt to explain why these technical amendments are necessary. Amendment 100 seeks to clarify that the offences set out in proposed new schedule 8A to the Roads (Scotland) Act 1984 are fixed-penalty offences. Amendment 101 seeks to enable Scottish ministers by order to modify the schedule if—for example, in the light of experience—it is necessary for some offences to cease to be fixed-penalty offences. Amendment 102 has been revised to ensure that the drafting is consistent with the 1984 act. Amendment 103 references section 143 of the 1984 act to confirm that any order made by virtue of the provision that is proposed in amendment 101 will be subject to affirmative resolution. Amendment 108 seeks to ensure that only the offences that are listed in proposed new schedule 8A can be considered for civil enforcement and amendment 109 seeks to ensure that any regulations that are made in connection with the creation of civil penalties should be subject to affirmative resolution.

I move amendment 100.

Amendment 100 agreed to.

Amendments 101 to 103 moved—[Nicol Stephen]—and agreed to.

Section 35, as amended, agreed to.

Schedule 6 agreed to.

Schedule 7

SCHEDULE 8B TO THE ROADS (SCOTLAND) ACT 1984

Amendments 104 to 107 moved—[Nicol Stephen]—and agreed to.

Schedule 7, as amended, agreed to.

After section 35

Amendment 153 not moved.

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

Amendments 108 and 109 moved—[Nicol Stephen]—and agreed to.

Section 36, as amended, agreed to.

Section 37 agreed to.

After section 37

The Convener: Amendment 1, in the name of Chris Ballance, is in a group on its own.

16:45

Chris Ballance (South of Scotland) (Green): Amendment 1 is about accountability and ensuring that the Parliament can scrutinise Executive targets. It also centres on the fact that transport is an integrated portfolio—for example, greater car use can affect the financial viability and success of public transport—and the amendment seeks to ensure that the Parliament can debate the whole transport strategy.

Amendment 1 also seeks to ensure that ministers who announce targets can be held responsible for their success or failure. I maintain that the current Executive target, which is set for 2021, is not accountable. After all, the ministers who have set it are unlikely to be in the same job at that time—although I will make no further comment on that. There is a real hole in Executive policy in that the Executive accepts the need for road traffic stabilisation—indeed, that is in the partnership agreement—but has no clear target or strategy for achieving that and no interim target for which it can be held accountable. That is the substance of the matter that amendment 1 addresses.
The need to stabilise road traffic growth is accepted by society and by most political parties. There are problems with congestion. Transport is responsible for 14 per cent of Scottish greenhouse gas emissions and the figure is rising fast. Traffic growth above a certain level is counterproductive to the economy. We should also consider the health effects of pollution, because 2,000 deaths in Scotland per annum are attributable to particulate pollution. However, amendment 1 is not principally about such problems; it would require the minister to set targets that Parliament would be required to debate and then support or oppose. Enshrined in the amendment is the principle that it would be for the minister, as the appropriate person, to set targets.

Amendment 1 has received a great deal of support from organisations such as TRANSform Scotland and Friends of the Earth Scotland; a large number of public transport providers; non-governmental organisations such as Barnardo's Scotland and the Ramblers Association; the Scottish Association for Public Transport; the Chartered Institute of Logistics and Transport in the UK; SPT; and statutory organisations such as the Scottish Environment Protection Agency and, in principle, Scottish Natural Heritage.

I move amendment 1.

The Convener: For clarification, the target to which you referred was not set by the current Minister for Transport—I think that it was set three transport ministers ago.

Nicol Stephen: As recently as that?

Bruce Crawford: I have considerable sympathy for what Mark Ballard—sorry, Chris; I have done that to you before—Chris Ballance is trying to achieve. It would be good if the bill reflected targets that have been set. The Executive's target is to stabilise road traffic at 2001 levels by 2021, but road traffic levels rose by 4.9 per cent in the two years after 2001, so there is work to be done. It would be useful if the Executive lodged an amendment to enable the Parliament regularly to have a proper debate on the issue. I agree that we need signposts whereby we can measure progress towards the target for 2021, because without such signposts we will not be able to measure whether policies to improve public transport or the transport infrastructure are having the desired impact. The year 2021 is a long way off.

Chris Ballance said that there was a need for a debate in the Parliament about the entire transport strategy. I do not disagree with him, but unfortunately amendment 1 does not mention the strategy; it mentions only one target and the approach that it proposes would not enable the Parliament to debate transport as a whole in the way that it should do. The amendment would require ministers only to set a target for reducing "the total distance travelled annually by road vehicles in Scotland".

Does that mean that as many cars as we wanted there to be could be stationary on the Edinburgh bypass all day, pumping out fumes, but it would not matter because they would not cover any miles? That would be the effect of amendment 1. Public transport between Scotland's main conurbations could be improved and the number of miles travelled by road vehicles could be reduced without reducing the amount of CO\textsubscript{2} that was pumped out by cars that were sitting in great big traffic jams. I am not sure that amendment 1 would have the effect that Chris Ballance wants it to have, although I support the intent behind it. The amendment is a little naive in what it is trying to achieve, although the principle behind it is not a bad idea.

It is a pity that no evidence was trailed to the committee on the matter before stage 2. There was nothing stopping the Scottish Green Party asking to give evidence on the matter during our inquiry. That would have allowed us to get underneath some of the issues before stage 2 and we could have come up with an amendment reflecting some of the concerns that Chris Ballance has expressed today. That would have been a more pragmatic way to involve people and go about our business.

Although it is well intentioned, amendment 1 is flawed. I hope that the minister will reflect on what Chris Ballance is attempting to achieve and will recognise that we need better signposts on the road to 2021, as well as considering how we are going to get there and the progress that has already been made. We should recognise that simply adding up the "total distance travelled annually by road vehicles in Scotland" is not going to get us there. That is not a measure that we can consider on its own, and there is certainly no reason to bring a debate to Parliament for one single target. We need something much more comprehensive.

Michael McMahon: My comments will not be dissimilar to those just made by Bruce Crawford. We have taken a substantial amount of time to consider how to improve the bill. We have listened to a lot of evidence and we have consulted a host of organisations that did not get the opportunity to send representatives to talk to the committee directly. We produced what I thought was a constructive and, in the main, consensual report on the evidence that we heard and the intentions behind the bill.
Within hours of completing that process, we discovered amendment 1. Members spent a lot of time talking to people, listening to people and addressing the concerns of those upon whom the bill will impact. Before any member of the committee had a chance to do anything on that basis, we found an amendment that was lodged as soon as it could have been and that did not address anything that the committee had considered with respect to the bill. Considering our desire to introduce measures to hold people to account, lodging that amendment displayed an absolute cheek. People had an opportunity to participate in the process. They had the ability to hold ministers to account, question the bill and examine the evidence, but they did not do so. Now they want to lecture us about holding the minister to account.

It takes some nerve and audacity to do what has been done, given the bill’s overarching strategies and the all-important desire to ensure accountability on the part of the Executive. I do not particularly want to hear what the minister has to say on the amendment, because I do not think that it deserves comment. There might be a place for the issue that has been raised to be debated, but it is not during discussion of the Transport (Scotland) Bill.

Dr Jackson: My points are similar. I wondered why Chris Ballance, another member of the Green group or the people with whom he says he has been liaising had not come before the committee previously to discuss the matter and put their points across. More substantially, I wonder whether there is some confusion between the national, overarching strategy and the individual transport management strategies, with which we have been dealing in conjunction with the regional transport partnerships.

The Subordinate Legislation Committee considered section 6, which is entitled “Procedure before and after the drawing up of transport strategies”. That committee raised issues about whether those strategies should be laid before the Parliament. Even the Subordinate Legislation Committee accepted—the minister confirmed this in his response—that those strategies are more local in nature. We were told by the minister that the strategies would be published and that the Executive would provide details about grants. We were also concerned about the financial arrangements. We have followed up the issue to an extent. In any case, there is much confusion in amendment 1.

Fergus Ewing: I cannot recall having spoken to a poorer, more flawed amendment than amendment 1 in six years in this Parliament. In almost every respect, the amendment ducks every question, dodges every issue, fails to provide any solution to problems that we all acknowledge and is inconsistent with itself and with the exposition that we have heard.

If the issue is such a major one, why does Chris Ballance say that the Scottish ministers will have a year after the date when the act comes into force in which to publish their target? If it is so important to him, should he not be arguing that the target should be determined now or within a short space of time? He says that the Scottish ministers should “publish a target for reducing … the total distance travelled annually by road vehicles”, but does not say what that target should be. Surely he should, because that is what the Scottish Green Party is supposed to be about. I have no idea what the target should be because he has not said what it should be.

In his remarks, Chris Ballance said twice that he wants to stabilise road traffic growth, but that is inconsistent with amendment 1, in which he says that he wants a reduction in, not the stabilisation of, distance travelled by road vehicles. He has contradicted his amendment in speaking to it. He also states that there should be “a target for reducing … the annual rate of growth of that amount”, but we do not know what that is, because he has not said so. He then invites the Scottish ministers to spell out what the Green policy should be. That is an invitation that they might decline.

All the committee members—unlike Chris Ballance—have attended 30 or 40 hours of meetings on the bill. We are serious about addressing the issues and have tried to introduce solutions. Chris Ballance has proposed no solutions at all. I will suggest some: a better public transport system and park-and-ride schemes. We also want other effective measures to tackle congestion to be introduced. For example, I would like working hours to be staggered so that public sector workers could avoid congestion. That would not cost much, would it?

The criticism really starts to bite when we consider the measures that Chris Ballance would take. How exactly will he persuade people who need to take Johnny to school or to travel to their work, but have no means of accessing public transport? How will he allow them to live their lives? I have absolutely no idea of the answer, but I know that my constituents would be appalled if the Scottish Green Party came along and told them that they could not take Johnny to school or travel to their work today.

There are solutions, but we do not know what the Scottish Green Party says that they should be. Is it advocating that the fuel tax that we have in Scotland—which is Europe’s leading oil
producer—and the United Kingdom is too low, although it is the highest in the world? If it is saying that that tax is too low, how much does it think fuel tax should be? Should it be increased by, for example, 50 per cent, 100 per cent or 200 per cent? Is Chris Ballance saying that cars are too cheap and, if so, would he introduce a car tax to tax people out of being able to buy cars? Those two measures would certainly take traffic off the road. They would be barmy and bonkers, but they might at least have the merit of achieving the objectives that Chris Ballance has not spelled out but says that others should spell out on his behalf.

As far as I can gather, Chris Ballance quoted no statistics, although many are readily available. “Scottish Transport Statistics” is quite a good start. The 2004 edition records that a total of 35,654 million vehicle kilometres were travelled in 1993 and that that figure increased over 10 years to 42,045 million vehicle kilometres. That is an increase of only roughly one seventh over 10 years, so the total traffic levels have not actually increased as much as the public might expect.

My final point—there is not much point in attacking some of the other flaws—is that the safest roads are motorways. Chris Ballance mentioned safety and saving lives; the statistics show clearly that the roads on which the risk of fatality is greatest are not on the motorway network and that the facility to drive on motorways increases the likelihood that lives will be saved. That is nowhere more the case than the M74. Given that Chris Ballance argues that we should very much bear road safety in mind and take whatever practical measures that we can take to protect lives, as indeed we should, I hope that he will agree that the M74 extension should become Scottish Green Party policy—when the Greens decide to have any.

17:00

Paul Martin: Chris Ballance might think that we are being a bit hard on him.

Chris Ballance: I expect no less from Fergus Ewing.

Paul Martin: Chris Ballance probably feels like a Scottish Executive minister today, but it is important that we are honest with him about amendment 1. He said that SPT and a number of other organisations support amendment 1 and it would be helpful if those organisations confirmed their support to the clerks, because I do not remember that SPT lobbied for such an amendment. I remember that Friends of the Earth Scotland lobbied us, but I received no representations from the other organisations that Chris Ballance firmly said had made representations to him. I would welcome clarification on the matter.

As Fergus Ewing suggested, we need a radical approach to a matter that is as important as the one that we are discussing. I have criticised ministers for using the word “strategy”. That is the wrong word; we need a transport action plan. However, the approach that is set out in amendment 1 would not radically overhaul transport in Scotland. The intentions behind the amendment are good, but the amendment would not deliver what Chris Ballance intends, given the focus of the party that he represents. He should rethink his approach and perhaps lodge more serious and radical amendments at stage 3. Fergus Ewing was correct to say that we must get into the detail of matters such as road tolls and the difficult decisions on transport that must be taken, but the Greens need to set out their stall clearly in that regard. We should not agree to amendment 1.

Margaret Smith (Edinburgh West) (LD): Colleagues have expressed many of my concerns about amendment 1. Paul Martin said that Chris Ballance should rethink his approach. Chris Ballance should also rethink the way in which members of the Green group deal with the Local Government and Transport Committee. My colleagues on the committee have been considering the bill for much longer than I have, because I became a member of the committee quite late in the day, but every MSP has the option to attend and take part in meetings from day one. If a party wants to address proposed legislation in the proper fashion and is serious about wanting members of the lead committee to take on board its views, it is not the best approach to get involved so late in the process.

Chris Ballance mentioned various organisations. Green organisations do not have to approach the committee through the Green party; the clerks and members are ready and willing to listen and learn and we want to do that early on in the process, so that we can question not only the minister but other people who give evidence on an important subject.

My major concern about amendment 1 is that its scope would be very narrow. Although, like Bruce Crawford, I have sympathy for Chris Ballance’s comments about the need for signposts that we can use to hold ministers to account over a long time, amendment 1 misses the mark by addressing the matter so narrowly. Even if we reduced “the total distance travelled annually by road vehicles in Scotland”, we would not know whether we had succeeded in building an integrated transport system. Only if we consider the matter in relation to improvements in public transport and many other areas will we know whether we have succeeded in that regard. Amendment 1 is far too narrow in its scope.
The Convener: I share the disappointment that several colleagues expressed about the Green group’s lack of engagement with the committee since its establishment after the most recent Scottish Parliament elections. At those elections, many voters used their second vote to vote Green, perhaps because they expected to hear a distinctive voice in the Parliament on environmental matters. I assure my Labour colleagues that I was not one of those people and that I used my second vote to vote Labour.

Margaret Smith: A wasted vote.

The Convener: Many people in Scotland will be disappointed that this is only the second time that the committee has had the honour of having a Green member attending a committee meeting. I would have thought that, of all the Parliament’s subject committees, the Green group would have made a priority of sending a member to the Local Government and Transport Committee. There is no Green member of the committee, but every member has the right to attend meetings of any committee that they wish. They can contribute to the committee’s work and listen to evidence. If a member of the Green group had attended meetings, they could have subjected what the Minister for Transport has said to detailed scrutiny. In the past two years, they could have done so when the committee dealt with the Budget (Scotland) Bill and scrutinised the Scottish Executive’s various transport targets and how it intended to achieve its targets with the available resources, for example. I take exception to amendment 1 because the Green group has failed to engage with the committee. I urge it to engage properly with the committee if it wants to be taken seriously in the future.

Amendment 1 is badly flawed. It seems to address solely "the total distance travelled annually by road vehicles in Scotland".

We would probably want to tackle three broad areas if we wanted to consider problems to do with motor vehicles. First, there is the issue of improving safety and reducing the number of accidents on our roads. As Fergus Ewing said, when roads and motorways are being built measures can often be taken that might improve their safety.

Secondly, we would want to address pollution, and CO₂ emissions in particular. Reducing the number of vehicle miles is not the only way of addressing pollution—promoting alternative fuel technologies is another way of doing so. Friends of mine who work in engineering have told me about engineering developments that may be another means of addressing pollution, rather than doing so simply by reducing the number of vehicles on the roads.

Thirdly, there is the issue of congestion. Reducing the number of miles that are travelled in Fergus Ewing’s constituency will have absolutely no impact on congestion in Edinburgh and Glasgow. There may be alternative ways of tackling congestion to the simplistic solution that has been proposed.

I will summarise. If the Green group is to be taken seriously by the committee and the people of Scotland, it must work much harder and it must think up more imaginative solutions to Scotland’s travel problems than that which it proposes in amendment 1.

Nicol Stephen: I will be brief. I simply question whether we should have legislation for every Executive target. We have several important transport targets and targets across the Executive. Sometimes, the number of targets the Government should have is a hotly debated political issue—and such debates are important—but it is important to have key targets. We have targets for increasing the number of rail passengers, increasing the number of bus passengers, taking freight off our roads, reducing CO₂ emissions, improving safety and reducing accidents. All those targets and others are important for transport, but a statutory underpinning of each and every Government target is inappropriate.

I assure Chris Ballance that we recognise the importance of the target to reduce traffic levels to 2001 levels by 2021. He knows that I have discussed that with the Environment and Rural Development Committee and that I have said that we are seriously considering interim targets. We are working with the Cabinet sub-committee on sustainable development, and external representatives with great authority on the environment—Simon Pepper and Jan Bebbington—are playing a constructive role. That work will continue and amendment 1 is unnecessary.

The Convener: Finally, Chris, you get the opportunity to respond to the debate and to indicate whether you intend to press amendment 1.

Chris Ballance: I would love to respond to the debate. First, I will dismiss the argument that was made about the Greens’ attendance at the committee. The fact that the Greens do not have a seat on the committee makes it almost inevitable that we will be in attendance less frequently than at other committees. I am far more likely to attend on a regular weekly basis the Enterprise and Culture Committee, on which I have a place and a vote, than this committee.

I point out to committee members that this evidence was led to the committee at stage 1. I
strongly recommend the submission from TRANSform Scotland to members of the committee who did not read it: it called for exactly the sort of amendment that I have lodged. TRANSform, the leading non-governmental organisation that represents Scottish public transport organisations, was deeply disappointed not to have been invited to give oral evidence to the committee, having sent in a written submission that had things to say that were quite different from what was stated in several other submissions that the committee received. I point out that amendment 1 is in response to a submission at stage 1. That is in perfect order.

As to what the targets and strategies should be, Fergus Ewing has missed the point. This is not a Green party transport policy in an amendment. Amendment 1 is an attempt to turn an Executive target and an Executive strategy into something that the Parliament can measure the success of and which back benchers can consider, debate and support or oppose. That is precisely why the amendment goes for the simplest form rather than for a large quantity of detail, which might be party specific. The responsibility of the minister and the majority party is to create targets and strategies. The responsibility of the Parliament is to scrutinise those and to vote on them. That is what the amendment enables us to do.

The current Executive target is to reduce—or stabilise, depending on whose words we use—road traffic to 2001 levels by 2021. That target is meaningless and unmeasurable. There is no clear strategy for how we will get there and there are no interim signposts. I very much welcome the minister’s comments that he hopes to study the idea of interim targets and to consider the possibility of bringing in interim signposts. I look forward to seeing what comes of that. I hope that something will come of it before the bill reaches stage 3, because it is important that we have a measure of whether transport policy is working.

I accept that there are many other possible signs of successful transport policy, but I maintain that road traffic levels are a key driver and a key indicator of how the entire transport policy is working. They are certainly key for inner-city congestion and for inner-city air quality and such matters. That is why amendment 1 has been brought before the committee today and that is why I have kept it as simple and as clean as possible.

I will wait to see what the minister does by way of announcing interim targets. At this point, I will withdraw the amendment.

Amendment 1, by agreement, withdrawn.
future the success that the RPCS has had in the past.

What would replace the current committee? We could have the UK body, which will have one person to represent the whole of Scotland, 335 stations, a huge network and a huge number of passengers per day. The idea that one person in London can solve the vast array of problems that will arise in Scotland is the sort of idea that I would have expected Margaret Thatcher to have proposed. However, it was Alastair Darling, not her, who proposed it.

I am indebted to The Times, as I so often am, for a series of articles in February in which it was pointed out that there are strong grounds for suspecting—although one can never prove such things—that the “defanging” of the rail passenger committees was brought about by pressure from Network Rail.

The purposes of amendment 2 and of the associated amendment, amendment 3—which deals with issues such as remuneration, public admission to meetings, proceedings and housekeeping matters—are to ensure that we have a Scottish committee, that we keep the existing expertise and that we have a passengers’ champion. If we do not have such a body, what will be put in its place? In the UK—let me speak up for England as well—the 120 regional passenger representatives will be replaced with 2,500 volunteer champions, which is one for each station in the country. An analogy would be for Tesco or House of Fraser to abolish their in-store customer service desks, centralise all complaints and pick one unpaid customer per store to deal with every complaint. I am sure that the minister would not support such an absurd regime. [Interruption.] I am corrected by Mr Crawford—I hope that the minister will not support such a regime.

The wording of amendment 2 has been arrived at with the technical skills and knowledge of the committee and, as always, the total commitment of Alastair Macfie and the clerks. I do not want to dwell on the details of the amendment, but if there are technical flaws, they can of course be amended at stage 3. I could say an awful lot more, but I do not want to trespass on the remaining time. I hope that the committee will agree to amendment 2, which is important, as it will ensure that in the future, as in the past, rail passengers in Scotland have an effective champion to fight on their behalf.

I move amendment 2.

Paul Martin: My main purpose in lodging amendments 2A, 2F, 2G, 2H, 2E, 2I and 2J is to accept the principles of Fergus Ewing’s amendment 2, but also to involve a number of other passengers in the proposed new body, including users of bus, ferry, tram and underground services. I thank the Rail Passengers Committee Scotland for asking me to include underground and tram services. A joined-up approach to delivering transport is crucial. Therefore, it is crucial to ensure that all users are represented at the top tier and that they work together to deliver the transport service.

Amendment 2 presents an opportunity to create a powerful lobby to improve transport services and to hold the various companies to account. For example, we have seen that FirstGroup has responsibilities for bus and rail transport. Therefore, we need a joined-up approach to user representatives at the top tier, but one that ensures that the various representative groups are autonomous within that organisation, through its sub-committee structure. That would be a welcome approach.

I have not heard of any opposition to my proposals. I ask the minister at least to accept the principles that are set out in my amendments and perhaps, at stage 3, to produce clarity about how the organisation would be delivered. The basic principle is that the representatives would work together in a transport user council, while at the same time respecting the various autonomies and the importance of retaining the existing expertise in the various organisations.

I move amendment 2A.

The Convener: I call Sylvia Jackson.

Dr Jackson: I hope that there has never been any doubt—

The Convener: Sorry, I have got the procedure slightly wrong. I should give the minister the opportunity to speak to amendment 111 before inviting you to speak, Sylvia.

Nicol Stephen: Amendment 111 seeks to extend the remit of the Bus User Complaints Tribunal. I am proposing the amendment as a direct response to issues raised by the committee in its report on the Transport (Scotland) Act 2001 and I thank the committee and the Bus User Complaints Tribunal for drawing the matter to my attention.

The extension of the tribunal’s remit is consistent with the intention of the 2001 act—that the tribunal should cover bus services that are available to the general travelling public. As members know, services such as some express services are currently excluded from the Bus User Complaints Tribunal’s consideration. That creates confusion in the mind of the travelling public, because all that people see is a bus or coach providing a scheduled service and they have no awareness of the statutory underpinning of the
tribunal. Amendment 111 will sort out that anomaly and should make things clearer and simpler for all members of the travelling public who use normal bus services and coach services.

The amendments lodged by Paul Martin and Fergus Ewing touch on passenger representation. We discussed that important issue briefly at stage 1, when I indicated to Paul Martin that I believed that there should be some sort of Scottish passengers council. That remains my view and I welcome the proposals that both Paul Martin and Fergus Ewing have made. I agree with the principles behind their amendments. I strongly support the involvement of passengers and users both in influencing the delivery of transport services and in the development of policy at all levels. A strong passenger voice is important if we are to achieve the kind of improvements across all modes of transport, and the integration between those modes of transport, that we all want. One of the moves in that direction was the establishment of the Bus User Complaints Tribunal in 2003. We are also currently reviewing the arrangements for ferry user representation, both for passengers and for freight interests.

The picture at the moment is sometimes complex. It involves a mixture of statutory and non-statutory bodies dealing with bus, rail and ferry services and with other modes of transport. There is not one multimodal body that looks across the spectrum of transport provision in Scotland and it is my view that we need such a body. However, the issue is significant and requires careful consideration and, if at all possible, some appropriate public consultation. That may be difficult within the time constraints of the Transport (Scotland) Bill, but I propose a solution, which I would like to mention to the committee at this stage to see whether members believe that it would be a satisfactory way forward.

I would like a statutory multimodal passenger representative body that covers all of Scotland. I believe that that is the thinking behind amendment 2 and the amendments to amendment 2. I propose to lodge an amendment at stage 3 to give Scottish ministers the power to create a wide-ranging passenger representation body by order. That body would have an overview of other passenger groups, as I believe that it is important that we should still have such groups for rail, for ferries, for buses and for other modes of transport.

I hope that members will respond positively to that approach. We would take the power to create such a body, but we would consult widely on the best form for that body to take and would then proceed by order. There would obviously then be a further opportunity for the committee to consider our proposals if members so wished or if there were any controversy. However, I hope that what I propose will work with the grain and will be seen as a positive announcement by everybody involved in passenger representation in Scotland and by passengers and users of transport services.

I hope that, based on that proposal, Paul Martin's amendments to amendment 2, in the name of Fergus Ewing, will be accepted, but I shall return at stage 3 with the sort of proposals that I have described today. In the meantime, I do not support amendment 155, in the name of Fergus Ewing. I do not think that it is appropriate to apply the Scottish Public Services Ombudsman Act 2002 provisions to companies such as Caledonian MacBrayne Ltd or NorthLink Orkney and Shetland Ferries Ltd. I suggest that that amendment should be resisted.

17:30

Dr Jackson: I can be even briefer now that the minister has come back on the matter. My impression is that we are all in agreement about the need to have groups that represent passengers. As the minister said, he has taken up the suggestion and has come back with proposals.

I agree with the thrust of Fergus Ewing's argument. I am intimately aware of the good work of the Rail Passengers Committee Scotland. I am also aware that the group that represents bus passengers gave us strong evidence about its lack of powers. The consultation that the minister mentioned is therefore important; we need to beef up some of the areas about which we heard in evidence. We need to strike the correct balance between taking an integrated approach and retaining the autonomy of the separate groups of travellers, particularly in relation to rail.

Bruce Crawford: I welcome the amendments that Fergus Ewing has lodged and the approach that Paul Martin has taken. Although I also welcome to some extent what the minister said, I am not sure that it takes us far enough. Surely, before stage 3, we need more than a commitment to undertake further work. Perhaps Fergus Ewing should press his amendments, in the hope that the minister will lodge further amendments at stage 3 to put something more specific on the table.

I accept that further work needs to be done. That said, I suspect that there will be disappointment on the subject of ferry passenger representation. Back in December 2004, the minister said in the "Clyde & Hebrides Ferry Services Draft Service Specification" that "a new Scottish Ferry Committee (SFC) with a wide-ranging membership should consider strategic interests."

We have moved some way down the road, but it is slightly disappointing that the minister has not taken the opportunity today of moving things
further forward in terms of what can be achieved on the ground. The Caledonian MacBrayne users consultative committee, which is to be abolished in the summer, is concerned, is concerned that it should not be replaced by a weaker or less representative structure. Like the consultative committee, we should encourage the Executive to bring forward a meaningful proposal to establish a genuinely independent consumer committee.

I share the view of the Caledonian MacBrayne users consultative committee that the Scottish ferry committee should be a statutory body. The minister has said that he plans to bring forward a proposal at stage 3, but I encourage him to provide for such a body on the face of the bill. The proposal should be for a statutory body, albeit that he might want to discuss the way in which it will operate. He should also ensure that the body has the power to call for persons and papers so that it can hold to account the providers of ferry services not only at public meetings but through papers that are submitted to ministers and the Parliament.

Another important issue that the Caledonian MacBrayne users consultative committee raised concerns the membership of the body. The committee holds the view that membership should be drawn from the communities that are served by the ferries, as that will provide local accountability.

If the minister does not want Fergus Ewing’s amendments to succeed today—although they should succeed, as the minister has time to come back on the issues at stage 3—I hope that he will replicate the intention behind them in anything that he brings forward at stage 3.

**Mr Davidson:** A number of interesting points have been made in the debate. It is important that the committee and the Parliament recognise the work that the Rail Passengers Committee Scotland has done in the past. It has proved its worth and it is vital that a new statutory body be established in its place.

I will not rehearse all the arguments that Fergus Ewing made. He could have gone much further. I note that Paul Martin recognises that different user groups need a statutory voice. That is a separate issue from that of having the multimodal structure that the minister talks about, which would be similar to an assembly of such groups. I do not want some user groups to influence others and to dilute the focus of passenger groups, whether they are for ferry, bus or rail passengers.

Groups have much work to share, but we do not start from that position. We start by ensuring that the basic representative body has the powers to deal reasonably with service providers. That must involve a bit of a partnership, which should not be held up as belonging to one side or the other. We have talked about having a level playing field, but I would like user bodies to work on a level playing field with operators and I would like the minister ultimately to be responsible for ensuring that they function well, because that is the purpose of making them statutory.

I am concerned about the dilution that seems to be suggested—perhaps Paul Martin can advise me whether I am wrong about that—by having all the groups in one body or as one function. The functions should be separate and distinct. If a mechanism is to allow groups to come together on general national issues that concern integrating transport, which will ultimately happen, that should be stated clearly, so that we move forwards. The minister said that he would return to the issue at stage 3, but he was a little unclear and gave no hostages to fortune in what he said today.

I support amendment 2, in the name of Fergus Ewing, and I hope that Paul Martin will explain further how the integration of bodies would work.

**Margaret Smith:** I pay tribute to the Rail Passengers Committee Scotland for its work and to the various passenger bodies—not only nationally, but locally—that many people give up much time to participate in. Those bodies are important, because national and local transport is important in people’s lives. Whatever the minister and the committee decide on the end, it is fundamental that we provide real powers to hold service providers to account. That must be strongly provided for in the bill. I would prefer to have more detail on that in the bill, rather than to say—with the greatest respect to the minister—that we will leave it to the minister to produce something by order.

Members around the table agree that much can be gained from a multimodal approach. I support Paul Martin’s amendments to develop that. However, in going down that road, we must retain real powers and not allow them to be diluted by saying that all that we need is to have everybody talking to one another. We need that, but we also need the real powers to hold service providers to account.

I appreciate that the minister said that we should consult and I have no problem with that, because through consultation we will be more likely to produce something that will work on both levels. However, I am a bit concerned about the slippage of time. We should agree to the amendments to encapsulate the multimodal approach that we have talked about, but I say strongly to the minister that we want service users to have real powers to tackle matters.

**The Convener:** I echo members’ comments about the important role that the Rail Passengers Committee Scotland has played. Members have drawn attention to many of its achievements. The committee has been a well-respected organisation
in the railway industry and has advocated railway users' views effectively.

Paul Martin will have the opportunity to wind up on his amendments, but I think that they are valid and worthy of support, because we want to have transport policies that achieve greater integration between the different modes of transport. Few of us are users of a sole mode of transport; we all use many different modes of transport. The more effectively those modes of transport are integrated, the more effectively the people of Scotland will be able to move around the country, which will help our economy to be successful. I certainly believe that it is important to get together in one body people who have different perspectives on, and experiences of, the use of different modes of transport, so that that body can represent consumers on behalf of all users of passenger transport. Paul Martin's amendments are worthy of support.

As regards the minister's proposal to lodge amendments at stage 3, my view is that we should agree to Paul Martin's amendments to Fergus Ewing's amendment 2 and to amendment 2, as amended. We will await with interest the minister's amendments at stage 3 and consider whether they adequately meet the committee's aims. I suggest the proviso that if amendment 2, as amended by Paul Martin's amendments, is agreed to, it might be appropriate for amendment 3 not to be moved, to allow the Executive to lodge an appropriate amendment at stage 3—if it intends to run with the changes that we propose to make to the bill at this stage. With that proviso, I encourage members to support Paul Martin's amendments and amendment 2, as amended.

Nicol Stephen: I am content with what the convener proposes, as it is a sensible way forward. I can guarantee that we will lodge an amendment at stage 3 that will seek to include on the face of the bill reference to a multimodal passenger committee. We will give as much detail on that as we can, but we must take into account the views of the existing committees. Such consultation is important. We must consider some of the complexities of the situation. For example, the Bus User Complaints Tribunal and the Mobility and Access Committee for Scotland are statutory bodies, which should be involved in what is an important change.

The other guarantee that I can give is that it is our intention to continue to have representative committees for rail, buses and ferries, although I do not think that those committees would need to be statutory. It is important that we continue to have a rail committee for Scotland in addition to the representative place that we have on the UK rail committee; I have already given reassurances on that. I support the convener's approach.

Fergus Ewing: First, I will address—

Bruce Crawford: On a point of order, convener. Will Paul Martin get a chance to respond?

The Convener: He will respond after Fergus Ewing, as I have already set out.

Bruce Crawford: I was in the loo at that point; I apologise.

Fergus Ewing: The effect of Paul Martin's series of amendments would be to transform the proposed rail passengers committee into a public transport users committee. In other words, the committee would be multimodal rather than unimodal—it would deal with all public transport rather than just rail.

My preference would be to stick with the proposal to have a rail passengers committee for Scotland because it is thought out and detailed and, in effect, it seeks to reinstate the status quo. Unlike some other amendments, amendment 2 is a solid piece of work that could become law, probably with only a little tweaking. Basically, it would reinstate an extremely satisfactory existing arrangement, which no member of the committee would have voted to scrap, had it been in our power to do so.

That said, I have listened carefully to the views of other members and it seems that there is consensus in favour of having a multimodal committee, to which I want to respond. Although, as I say, my preference is to stick with the rail passengers committee that is proposed by amendment 2, I am inclined, subject to what he says when he winds up, to support the amendments in the name of Paul Martin, provided that we consider three points. First, the proposed committee will need clear objectives and boundaries, which must be recognised by all those involved. Secondly, it must be properly resourced. Thirdly, it will need to walk before it is expected to run. Nonetheless, none of those barriers is insuperable, nor is there any reason—this is a key point—to delay establishing such a committee.

17:45

I must confess to having been slightly unclear as to what exactly the minister promised in his most recent remarks, which seemed to go further than his opening remarks. He said previously that he would lodge an amendment at stage 3 to insert an enabling provision, which would say not “There shall be a Rail Passengers Committee for Scotland” or “There shall be a Public Transport Users Committee”, but that ministers shall establish something at some later unspecified date. However, in his most recent remarks, if I understood them, he said that he would ensure on the face of the bill that such a committee was established.
In responding to the debate, I want to make two points that have not yet been made and that should provide reassurance to members. First, subsection (1) in amendment 2 states:

“The Scottish Ministers shall establish a Rail Passengers’ Committee for Scotland”.

By virtue of amendment 2A, the words “Rail Passengers” would be changed to “Public Transport Users”. Given that amendment 2 as amended would not specify when the proposed public transport users committee should be established, there could be an intervening period during which the consultation to which the minister referred could be conducted. The consultation need not take long, but the wording of amendment 2 does not tie ministers to establishing the proposed committee tomorrow or within any specified timescale. Such consultation as is necessary could be conducted after the bill is passed, although it could be instituted even before the bill becomes law.

Secondly, if the proposed committee is to have a multimodal responsibility covering ferry, bus and rail, that will have a bearing on the number of members that it should have. Amendment 2 proposes that the number of members should be “not less than ten nor more than twenty”.

That is probably a reasonable size, which should be sufficient to allow the range of knowledge and expertise that is required for all modes of transport to be considered.

In conclusion, I feel strongly that the amendments in this group are a test of whether we in the Scottish Parliament are prepared to do what we all believe in our heart of hearts to be correct, which is to stand up for Scotland. The proposals in question might not be of massive significance to the lives of everyone, but we all know them to be correct. Alistair Darling, in his wisdom, killed off the RPC; we have the chance to resurrect a Scottish RPC. The first step towards doing that is to agree to amendment 2 as amended by the amendments in the name of Paul Martin. We must first build on the consensus that exists, make any improvements that are needed to the bill at stage 3 and then carry out the necessary consultation. I very much hope that members support the approach that I have advocated.

Paul Martin: For the benefit of David Davidson, I clarify that I am advocating a multimodal transport users committee. I make no apologies for doing so, because we need to establish parity. I recognise that the RPCS was a successful and effective organisation, but the public transport users committee will be able to be more effective if it learns from the experiences of the RPCS. The multimodal committee will lend itself to ensuring parity of capacity among the various organisations. If the organisations can work together, they will be able to share that capacity and expertise in a more effective way than they might do if they remained in their current various forms. I want to see ferry, tram, bus and rail services all working together.

We have mentioned Stagecoach,Virgin and FirstGroup, three massive multimillion-pound public limited companies with interests throughout the world. For passengers to be represented seriously, those companies must work together and increase their capacity. Doing so in the forum of the new organisation would make users a much more effective lobbying power than they perhaps are now. As I am sure the RPCS would confirm, there is room for improvement. Working in partnership with companies and other organisations, the RPCS could increase its capacity to be an effective lobbying machine and help to ensure the delivery of a more effective service. I welcome the minister’s commitment to setting up an organisation in consultation with the various user groups that have been mentioned. We should start from the bottom up and set in place an ambitious multimodal system, respecting the various interests that are in place.

I am keen for the new organisation to be set up as soon as possible, but it is important to get it right. We must give the minister time to deliver a new, effective multimodal representative system, of which everyone can feel part. I do not want to say to the minister that, by stage 3, there should be full provisions for a new system, with all the details set out in the bill, if that means that we get things wrong. We should, however, put in place a timeframe at stage 3, stating an agreed time by which the new representative organisation will be delivered. At that point, we could consult the various organisations concerned and build up an effective passenger representation body to deal with some of the serious challenges that the transport industry faces.

Amendment 2A agreed to.

Amendments 2F, 2G, 2H, 2E, 2I and 2J moved—[Paul Martin]—and agreed to.

Amendment 2, as amended, agreed to.

After schedule 7

The Convener: Does Fergus Ewing wish to move amendment 3?

Fergus Ewing: Yes. Amendment 3 is the housekeeping amendment; it is not the one about the Scottish ferry committee. Amendment 3 follows on from amendment 2, I believe.

The Convener: I suggest that it might be better not to move amendment 3, on the basis that it might need tidied up after other amendments have been agreed to.
Fergus Ewing: Yes, I see. That is fair enough. Amendment 3 has not been amended in the way that amendment 2 has. I will leave it for the moment, in that case.

Amendment 3 not moved.

After section 37
Amendment 154 not moved.

After schedule 7
Amendment 156 not moved.

After section 37
Amendments 155 and 158 not moved.
Sections 38 to 42 agreed to.

After section 42
The Convener: Amendment 110, in the name of the minister, is in a group on its own.

Nicol Stephen: Amendment 110 seeks to change the word “institution” in the legislation relating to the disabled person’s badge—the blue-badge scheme—to the word “organisation”. I am sure that members will agree that the word “institution” is no longer appropriate.

I move amendment 110.

Amendment 110 agreed to.

Amendment 111 moved—[Nicol Stephen]—and agreed to.

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

The Convener: Members will be delighted to hear that we have reached the second-last group of amendments. Amendment 116, in the name of the minister, is grouped with amendments 117, 118, 112 and 119. Amendment 116 and amendment 113, which will be debated in the next group, are direct alternatives. If amendment 116 and amendment 113 are both agreed to, amendment 113 will replace amendment 116.

Nicol Stephen: I will start with amendments 116 and 117. I read the committee’s stage 1 report and its recommendation that I reconsider the proposal to provide councils in the west of Scotland with concurrent bus powers. I have reflected on that and have decided, on balance, to respond positively to the committee’s request. That is the Executive’s reason for lodging amendments 116 and 117.

I am, however, aware that some councils in the SPT area are lobbying to retain the concurrent powers provisions in the bill. It is important that the new regional transport partnerships work closely with councils in the west of Scotland to achieve the best for regional bus services and local services in council areas. In one view of the world, it should not be necessary to provide councils with concurrent powers if that happens. However, the west of Scotland regional transport partnership may, like partnerships in the rest of Scotland, be content for there to be concurrent powers.

The committee’s general view is that concurrent powers are coming and will be introduced once the regional transport partnerships have been developed. If the committee has been at all influenced by the latest round of lobbying, I would be interested to hear members’ views. I would be happy not to press amendments 116 and 117 and to reconsider our position for stage 3. I listened to the committee’s arguments and responded positively to them, but I sense that there may now be movement back to the original position. Concurrent powers may be constructive, if councils work in partnership with the new west of Scotland regional transport partnership. I do not have a firm view on the matter.

I turn to amendments 118 and 119. The Transport (Scotland) Act 2001 provides the powers that are necessary for local authorities to introduce road user charging schemes. Section 64 in particular makes provision for determination of disputes relating to charging schemes and appeals against such determinations. However, the 2001 act does not contain an express power to appoint an adjudicator to determine such disputes or to hear such appeals. That is the reason for section 43(4)(b) of the bill.

We think that, as well as having the power to appoint an adjudicator, we should have the option of conferring adjudication functions on another already existing or appointed body or person, which would provide us with maximum flexibility. Amendment 118 will do that and will ensure that we are well placed to make best use of existing skills and resources, if that is considered to be the best way forward, rather than duplicating effort. Amendment 119 will ensure that, should the adjudication function be conferred on an existing body, the regulations that effect the conferral will be subject to the affirmative procedure.

Amendment 112 will rectify a drafting imperfection in section 66(4) of the 2001 act by substituting “subsection (3)” with “subsection (2)”.

I move amendment 116.

18:00

Paul Martin: I ask the minister not to press amendments 116 and 117, in order to allow further clarification at stage 3 of the opportunities that would be created if local councils were empowered to deliver bus quality contracts and
bus corridors. I hope that the minister will take the opportunity to reconsider what I regard as the constructive approach of giving councils the same powers as regional transport partnerships will have.

**Nicol Stephen:** As I explained, I am content not to press amendments 116 and 117 to give us time to reconsider the issue. If there is a firm view that we should proceed with the approach that the amendments take, I will lodge amendments on the matter at stage 3. If there is no such view, I will not bring back amendments and what Paul Martin suggests will be achieved.

**Amendment 116, by agreement, withdrawn.**

**The Convener:** We come to the final group of amendments. Amendment 113, in the name of Chris Ballance, is grouped with amendments 114 and 115.

**Chris Ballance:** I speak to the amendments in the group with some trepidation, given the discussion on amendment 1, in which members of the committee objected to lodging of amendments by non-members.

TRANSform Scotland, which is the leading NGO for public transport providers and users in Scotland, asked me to lodge amendment 114. Although the amendment is long, it is fairly simple in that it would remedy what I suspect is an oversight in the bill. The bill will place regional transport strategies on a statutory footing, but local transport strategies will continue to be voluntary. However, local transport strategies are of greater importance for the vast majority of transport trips, because most transport trips are short and local. Statutory local transport strategies would be subject to environmental assessment, including strategic environmental assessment, and would have to meet the minimum requirement for public participation.

The approach would not be particularly onerous for local authorities, given that all local authorities have already produced local transport strategies; it would merely place a responsibility on local authorities to produce and update their local transport strategies, just as there will be a responsibility to produce regional transport strategies. Indeed, it could be argued that the existence of a local transport strategy should be a precondition for receipt of Executive funding. The equivalent tool in England—the local transport plan—is a statutory requirement. I suspect that there was an oversight in the drafting of the bill and I trust that the committee will agree that it is important that local transport strategies should be on a statutory footing, as regional transport strategies will be.

I move amendment 113.

**The Convener:** Chris Ballance does not need to speak to this group of amendments with such trepidation. I might be wrong, but I do not think that members intend him to suffer the experience that he suffered after speaking to amendment 1. However, for clarification, members of the committee certainly do not object to the lodging of amendments by other members of the Scottish Parliament. Members of the committee simply made the point that we would prefer other members to have a more sustained involvement with the committee before they lodge amendments.

**Fergus Ewing:** I would have liked to have heard evidence at stage 1 from local authorities on the matter that amendment 113 addresses. Given that we do not have a clear response from local authorities, we cannot support the amendment. The whole point of regional transport partnerships is to recognise that in modern European countries the way transport is organised is by having regions like the Lothians devise transport strategies at regional level.

I am not persuaded that amendment 114 would add anything to the bill, although without a great raft of evidence from all those who, ironically, Chris Ballance states in the amendment must be consulted, we are in the dark about what the proposal would mean.

At some time, the strategies must stop and the building of public transport must start. The requirement that there should be more than 30 additional strategies on top of the regional strategies, a national strategy, a UK strategy and no doubt a European strategy seems to me to add up to rather too many strategies, particularly when we have no idea what the evidential base is for the proposal.

In proposed subsection (2) in amendment 114, we learn that the

"local transport strategy shall set out how the authority proposes to promote and encourage transport facilities and services which—
(a) are safe, integrated, efficient, accessible and environmentally sustainable;
(b) meet the needs of the people living … in the area";
and
"(c) are required for the transportation of freight."

I give the amendment full marks if the aim is to set out the blindingly obvious. It is completely unnecessary for that to be stated in the bill.

Amendment 114’s proposed subsection (3) says that

"In preparing a local transport strategy, the authority shall" consult various people. As I said, we have heard from none of those people because Chris Ballance
has not carried out his work in such a way as to ensure that we had the chance to hear any evidence on the matter.

I will pick one paragraph at random. Paragraph (a) of proposed new subsection (3) states that the local authority shall consult

“persons … as appear to them to be representative of local residents, local businesses, road users, public transport users, pedestrians, people on low incomes, and elderly persons and persons with limited mobility.”

That would be a very large consultation. Is it really correct that the local authority should determine who represents others? I do not think so. I know whom I represent and I know whom councillors represent, but it is not at all clear to me that local authorities should be able to determine who represents people on low incomes. That proposal is flawed.

Finally, although the bill is inadequate in some ways, as I have argued at various meetings that Chris Ballance has not attended, at least it sets out a coherent idea that there should be regional strategies and that they should be prepared within a month of their bodies being set up. That idea can be criticised, but at least it is fairly clear. Goodness knows where local transport strategies would fit in. For those reasons I will not support the amendment.

Mr Davidson: I did not have a go at Chris Ballance last time round, but I will not necessarily do the same this time.

We have talked about integration; the focus of much of the bill is on integration, but amendment 114 is not about integration. If anything it is about a bureaucratic load of nonsense being added to work that is already being done elsewhere. The amendment is absolutely pointless.

Paul Martin: Can Chris Ballance clarify whether he said that local authorities currently carry out this function? I know that my local authority in Glasgow has a transport strategy and that it consults in similar terms to those that are suggested in amendment 114. I am only guessing because I am not an expert—but I think that most authorities throughout Scotland already carry out that function. What would be the point of introducing legislation to tell local authorities that they have to do this when they already do it?

Nicol Stephen: I will be brief. There are already existing local transport strategies and the Executive gives guidance on them. I am sure that they will continue and that councils will continue to play an important role in delivery of transport.

Fergus Ewing and others are correct to say that we are moving towards a new regional transport partnership model. It is important that those new strategies have statutory authority because they will place a duty on individual councils to act in accordance with the regional strategy, which is important if we are to put in place a coherent, effective strategy and ensure that it is delivered at local level. I do not see a need to place local strategies on a similar statutory footing.

Chris Ballance: I begin by responding to Paul Martin. Local authorities already carry out the function, but the purpose of amendment 114 is to give local transport plans the same emphasis as regional transport plans. Most journeys, and particularly most journeys by public transport, are local journeys of less than 3 miles. The danger in emphasising the importance of regional travel rather than local travel is that we start to put too much emphasis on long-distance travel and not enough emphasis on short-distance travel.

Fergus Ewing asked where regional transport plans would fit in if amendment 114 were agreed to, but I ask where local transport plans fit in at the moment. It is clear that they are not given the same importance as regional transport plans, which is why I lodged my amendment, which I wish to press.

The Convener: The question is, that amendment 113 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Davidson, Mr David (North East Scotland) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Smith, Margaret (Edinburgh West) (LD)

The Convener: The result of the division is: For 0, Against 7, Abstentions 0.

Amendment 113 disagreed to.

The Convener: Does Chris Ballance wish to move amendment 114?

Chris Ballance: No. It is consequential.

Amendment 114 not moved.

Amendment 117 not moved.

Amendments 118 and 112 moved—[Nicol Stephen]—and agreed to.

Amendment 115 not moved.

Amendment 119 moved—[Nicol Stephen]—and agreed to.

Section 43, as amended, agreed to.
Section 44—Orders and regulations
Amendments 39 and 40 moved—[Nicol Stephen]—and agreed to.
Amendment 157 not moved.
Section 44, as amended, agreed to.
Sections 45 and 46 agreed to.
Long title agreed to.

The Convener: Members will be delighted to know that that brings us to the end of stage 2 consideration of the Transport (Scotland) Bill. An announcement will be made in the Business Bulletin—I hope tomorrow, if it is not too late, or otherwise the day after—about the timetable for lodging amendments for stage 3 consideration. We look forward to participating in the stage 3 debate in a few weeks’ time.

I thank members of the public who have been with us for much of the afternoon and any members of the press who have been present. I also thank members, the minister and the Executive officials for their participation today, and indeed the official report staff and the clerks for their sterling work during the past four and a bit hours.

Meeting closed at 18:14.
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Chapter 1—Regional Transport Partnerships

Establishment etc. 10

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 and membership 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 one or more (but not more than four) councillors appointed by and from—

(i) each council the area or any part of the area of which falls within the Transport Partnership’s region; or

(ii) if that region is coterminous with a council’s area, that council,

(b) if any member of the Transport Partnership being a “councillor member” and each such council or, as the case may be, that council being, in relation to the Transport Partnership, a or the “constituent council”;

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.
(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 only councillor members may vote and that each
       councillor 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
    or council.
(2A) On dissolving a Transport Partnership, the Scottish Ministers may, by order, provide for any function of the Partnership to be carried out by the person who carried it out immediately before the coming into effect of—

(a) the order under section 10 below which transferred it to the Partnership; or

(b) if there have been two or more orders under that section transferring that function, the first of those orders.

(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—

(a) its constituent councils; or

(b) where there is only one, that council.

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

(2A) Only councillor members may vote on a question arising under subsection (2)(a) above.

(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 etc. of RTPs

Schedule 1 provides further as to Transport Partnerships and their members.

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 improving transport links between all inhabited parts of the region, and those respects which relate to future needs, including changes in population and land use;

(b) the respects in which the transport which is or might be provided or facilitated within the region affects or might affect—

(i) the meeting of statutory equal opportunities obligations;

(ii) the provision of transport services to a wide range of different users (including the socially excluded); and

(iii) the well-being (including the social and economic well-being) of persons there,

(iv) the promotion of sustainable economic growth, and

(v) the promotion of environmentally sustainable transport policies;

(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 or council 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 and to any current national transport strategy established 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 or council and such other persons as it thinks fit;
   (b) subject to subsection (1A) below, within 12 months of its creation under section 1 above, submit its transport strategy to the Scottish Ministers for approval.

(1A) The Scottish Ministers may—
   (a) at the request of a Transport Partnership made to them within 8 months of the creation of the Partnership; and
   (b) if satisfied that there are good reasons for doing so, authorise the Partnership to submit its transport strategy to them later than the time limit specified in subsection (1)(b) above but not later than such date as is specified in the authorisation.

(1B) A Transport Partnership making a request for the purposes of subsection (1A) above shall, if so required by the Scottish Ministers, provide them with reports or information of such kind and in such form as they, for the purposes of that subsection, specify in the requirement.

(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 or council that its transport strategy has effect, specifying the date when it took effect;
   (b) send each of them or, as the case may be, it 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.

(1A) In drawing up joint transport strategies, Transport Partnerships shall have regard to improving transport between any cities or other major centres of population within the area covered by the Partnerships.

(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.

9A RTP / Health Board transport strategies

(1) It shall be the duty of each Transport Partnership to prepare a strategy jointly with each Health Board whose area is covered wholly or partly by the area of the partnership.

(2) A strategy prepared under subsection (1) above must set out measures to secure the effective provision of public transport to persons using hospitals and other NHS facilities in the Health Board area.

Regional transport functions

10 Other transport functions of RTPs

(1) The Scottish Ministers may—

(za) as respects a Transport Partnership; and
(zb) by order,
provide for any statutory function relating to transport they 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.

(1A) In making an order under subsection (1) above after the coming into effect of the
Transport Partnership’s transport strategy, the Scottish Ministers shall have regard to
that strategy.

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

(2A) Functions referred to in an order under subsection (1) above may include—
(a) the planning, co-ordinating and implementation of measures to introduce road
user charging;
(b) those functions of a Roads Authority within the meaning of the Roads (Scotland)
Act 1984 (c.54)—
(i) to secure strategic planning across the Transport Partnership’s area;
(ii) to enhance the efficiency and effectiveness of arrangements for roads
maintenance;
(c) responsibility for tolled road bridges;
(d) developing and taking measures to support the development of rail services within
the Transport Partnership’s area;
(e) planning and co-ordinating ferry services; and
(f) responsibility for any airport having a strategic regional transport function within
a Transport Partnership’s area.

(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 or council 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 or council; 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.
10A Alteration of RTP’s functions

(1) The Scottish Ministers may, by order, provide for any function of a Transport Partnership to be carried out by the person who originally carried it out—

(a) instead of the Transport Partnership; or

(b) concurrently with the Transport Partnership.

(2) In so providing, the Scottish Ministers shall have regard to the Transport Partnership’s transport strategy.

(3) Subsections (3) to (6) of section 10 above apply to an order under this section as they apply to one made under that section.

(4) In subsection (1) above, the reference to the person who originally carried out a function is a reference to the person who carried out the function immediately before the coming into effect of—

(a) the order under section 10 above which transferred it to the Transport Partnership; or

(b) if there have been two or more orders under that section transferring that function, the first of those orders.

11 Manner of performance of RTPs’ functions

(1) 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.

(2) Where a function of a Transport Partnership falls to be carried out before its transport strategy comes into effect, the Transport Partnership shall carry out the function in accordance with such directions as the Scottish Ministers may give it.

(3) A Transport Partnership shall carry out its functions in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.

(4) In subsection (3) above, “equal opportunities” and “equal opportunities requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46).

CHAPTER 2

SCOTTISH MINISTERS’ TRANSPORT FUNCTIONS

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 statutory function—

(a) which relates to the provision or regulation of rail services; and

(b) which was immediately before the provision referred to in subsection (1) above carried out by—

(i) the Strathclyde Passenger Transport Authority; or

(ii) the Strathclyde Passenger Transport Executive.

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

12A Arrangements for performance by RTP of certain transport functions etc.

A Transport Partnership may enter into arrangements with the Scottish Ministers, a council or any other person having statutory functions relating to transport being arrangements under which the Partnership—

(a) does, on behalf of the Scottish Ministers, the council or that other person, such things relating to transport as are specified in the arrangements;

(b) provides such services for the purposes of, or in connection with, transport as are so specified.

CHAPTER 3

SUPPLEMENTARY AND CONSEQUENTIAL PROVISION

13 Transfer of staff, property, rights 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, rights and liabilities as are specified in or otherwise identified by the order.

(5) Subsection (4) above has effect in relation to property, rights 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.

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**PART 2**

**ROAD WORKS**

*The Scottish Road Works Commissioner*

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

(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.
(1A) In subsection (1) above, “works in roads” includes road works within the meaning given by section 107(3) of the 1991 Act, works for roads purposes within the meaning given by subsection (2) of section 145 of that Act and major works for roads purposes within the meaning given by subsection (3) of that section.

(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.

16 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 The Scottish Road Works Register

(1) 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.

(3A) The Scottish Ministers may by regulations—

(a) provide that the payment to the Commissioner of the prescribed fee is a condition of access to the SRWR as mentioned in subsection (3) (and different fees may be prescribed for access for different purposes), and

(b) make other provision as to the payment to the Commissioner by such persons as are prescribed of such amounts as are prescribed.

(3B) Amounts received by the Commissioner under subsection (3A) are to be applied by the Commissioner to the keeping of the SRWR.

(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—

(za) under subsection (2) of section 56 of the Roads (Scotland) Act 1984 (c.54), given an applicant for consent for road works or excavations notice of affected statutory undertakers,

(zb) under subsection (8) of that section, given notification of unlawful works removed or unlawful excavations filled in,
(zc) under section 58(1) of that Act, given permission for the occupation of part of a road for the deposit of materials or for the erection of staging or scaffolding projecting over part of a road,

(zd) under section 61(1) of that Act, given permission for the placing, leaving, retention, maintenance, repair or reinstatement of apparatus in or under a road or the breaking open of or having access to the road,

(a) under section 85 of that Act, 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.”.

(1A) In section 108(2) of the 1991 Act (roads authority to be regarded in certain circumstances as road works authority for purposes including those of section 112 of the Act) for “112” there is substituted “112B (duty to enter certain information in Scottish Road Works Register)”.

(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 or road works authority which is a local authority 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 or road works authority which is a local authority 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 or road works authority’s intention, or as the case may be, the fact that he has or they have 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)”;

(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.”.

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

“(2A) 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.”.

(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
(e) 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 shall 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 2005 (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 2005 (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 sections 118 and 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 sections 118 and 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 road works authorities and undertakers who fail to comply with duties imposed on them by sections 118 and 119 respectively,

(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 2005 (asp 00) (duty to provide Scottish 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 2005 (asp 00) (duty to provide Scottish 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) 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 undertaking 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.

(3A) Before making regulations under subsection (1), the Scottish Ministers shall consult any relevant association of undertakers and such other bodies as they consider appropriate.

(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 made by statutory instrument 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 the statutory instrument containing 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)”. 

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(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.

(7) Regulations shall not be made unless a draft of them has been laid before and approved by resolution of the Scottish Parliament.”.

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”.

Resolution of disputes under 1991 Act
(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) Any offence under this Act which is listed in the first column of Schedule 8A to this Act (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Act.
(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.

(2A) The Scottish Ministers may, by order, modify that Schedule so as to provide that an offence is to cease to be a fixed penalty offence.

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

(4) An order under subsection (2A) above may make transitional provision.”.

(1A) In section 143 of that Act (which includes provision as to orders under the Act), in subsection (2)(b)(ii), after “section” there is inserted “130A or”.

(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

(1) 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 the offences which, under section 130A of this Act, are fixed penalty offences;

(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.”.

(2) In section 143 of that Act (which includes provision as to regulations under the Act), in subsection (2)(b)(i) after “17” there is inserted “or 130B”.

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.

37A Public Transport Users’ Committee for Scotland

(1) The Scottish Ministers shall establish a Public Transport Users’ Committee for Scotland (“the Committee”).

(2) The Committee shall consist of—

(a) a convener appointed by the Scottish Ministers; and

(b) such other members, being not less than ten nor more than twenty in number, as the Scottish Ministers may from time to time appoint after consultation with the convener.

(3) The convener and other members of the Committee established under subsection (1) above shall hold and vacate office in accordance with the terms of the instruments appointing them and shall, on ceasing to hold office, be eligible for re-appointment.

(4) The provisions of schedule shall have effect.

(5) It shall be the duty of the Committee to investigate any matter which relates—

(za) to the provision of bus services;

(zb) to the provision of ferry services;

(zc) to the provision of tram services;

(a) to the provision of rail transport services; or

(b) to the provision of station services by any person in a case where the operator of the station in question is authorised by a station licence,

if the condition specified in subsection (6) below is satisfied in relation to the matter in question.

(6) The condition mentioned in subsection (5) above is satisfied if the matter—

(a) is the subject of a representation made to the Committee by a user or potential user of—

(i) bus services;

(ii) ferry services;

(iii) tram services; or

(iv) railway passenger services,

and does not appear to the Committee to be frivolous or vexatious;

(b) is referred to the Committee by the Scottish Ministers; or

(c) appears to the Committee to be one which it ought to investigate.
(7) If, on investigating any matter, the Committee considers it appropriate to do so, the Committee shall make representations to—

(a) the person providing the service in question; and

(b) in the case of a service provided under a franchise agreement, the franchisee,

about the matter, or any matter to which it relates or which appears to the Committee to be relevant to the subject of the matter investigated.

(8) Where the Committee—

(a) having made representations under subsection (6) above, is of the opinion that it is unable to achieve a satisfactory resolution of the matter by that means; or

(b) on investigating any matter, has reason to believe that the holder of a passenger licence or a station licence is contravening, or is likely to contravene, any condition of the licence,

it shall refer the matter (or, if it was referred to the Committee by the Scottish Ministers, refer it back) to the Scottish Ministers with a view to the Scottish Ministers exercising such of their powers as they consider appropriate in the circumstances of the case.

(9) Where the Committee investigates any matter pursuant to subsections (5) to (7) above, it may prepare a report of its findings and lay it before the Scottish Parliament.

(10) At the request of the Scottish Ministers, the Committee shall make a report to them on such matters relating to the quality of—

(a) bus services;

(b) ferry services;

(c) tram services;

(d) railway passenger services; and

(e) station services,

as may be specified in the request.

(11) The Scottish Ministers may arrange for the publication of any report under subsection (10) above in such manner as they consider appropriate.

(12) If the Scottish Ministers so request, the Committee shall assist the Scottish Ministers, to such extent and in such respects as may be specified in the request, in ascertaining whether, in the case of any franchise agreement, the franchise operator is attaining the standards set for the provision of the franchised services.

(13) Where the Committee has investigated any matter pursuant to subsections (5) to (7) or subsection (10) above, it shall neither—

(a) include in any report or representations a proposal for any steps to be taken by any person in relation to that matter, nor

(b) refer the matter under subsection (8) above by reason only of the failure of any person to take any steps in relation to that matter,

unless, balancing the cost of taking those steps against the benefits which the Committee considers will be enjoyed by any person in consequence of the taking of those steps, the Committee is of the opinion, on the basis of the information available to it, that the expenditure involved represents good value for money.

(14) In this section—
“bus service” means any regular scheduled service for the carriage of passengers by bus or coach;

“ferry service” means any transport service by water (including such a service by means of a hovercraft) which carries passengers and operates regularly between two or more points;

“franchise agreement” means an agreement with the Scottish Ministers under which another party undertakes either—

(a) to provide; or

(b) to secure that a wholly owned subsidiary of that party provides,

throughout the franchise term those services for the carriage of passengers by railway to which the agreement relates;

“passenger licence” means a licence authorising a person—

(a) to be the operator of a train being used on a network for the purpose of carrying passengers by railway; and

(b) to be the operator of a train being used on a network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in paragraph (a) above;

“railway passenger service” means any service for the carriage of passengers by railway (including underground railway), and includes bus substitution services required to be provided in place of any such services;

“station licence” means a licence authorising a person to be the operator of a station;

“station service” means any service which consists of, or is comprised in, the provision or operation of a station.

“tram service” means any service for the carriage of passengers employing parallel rails which provide support and guidance for vehicles carried on flanged wheels.

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.

42 **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.

42A **Badges for vehicles used for disabled people: change of terminology**

In section 21(4) of the Chronically Sick and Disabled Persons Act 1970 (c.44) (badges for display on motor vehicles used by institutions concerned with the care of disabled people) for “institution”, in both places where it occurs, there is substituted “organisation”.

42B **Extension of remit of Bus User Complaints Tribunal**

In section 41 of the Transport (Scotland) Act 2001 (asp 2) (Bus User Complaints Tribunal)—

(a) in subsection (7), for “local” in both places where it occurs, there is substituted “bus”;

(b) after that subsection there is inserted—

“(8) In subsection (7) above, “bus service” means—

(a) a local bus service; or

(b) a service which—

(i) uses one or more public service vehicles for the carriage of passengers by road at separate fares;

(ii) operates between places at least one of which is in Scotland; and
(iii) is not a local service.”.

43 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.

(1C) Provision made by virtue of subsection (1A) above may—

(a) include provision conferring the functions referred to in paragraphs (a) and (b) of that subsection on persons appointed to carry out functions similar to those functions; and

(b) where it does so, may, so as to give the provision full effect, apply and modify any enactment.”.

(4A) In section 66(4) (application of Act to motor vehicles and persons in public service of the Crown), for “subsection (2)” there is substituted “subsection (3)”.

(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)”.

(5A) In section 81(4)(b) (which specifies the regulations that are to be made by way of affirmative resolution procedure), after “Act” there is inserted “or which consist of or include provision made by virtue of section 64(1C) of this Act.”.

(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

(1) 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) or (2A), 10(1) or (7), 10A(1), 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 2005.

(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
(introduced by section 4)

ADMINISTRATIVE FUNCTIONS ETC. OF RTPs

Staff

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

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.

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.

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.

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.

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

Land

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 acquire or purchase land under sub-paragraph (1) 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 (1) A Transport Partnership may, if it thinks fit, promote or oppose private legislation in the Scottish Parliament.

(2) The power conferred by sub-paragraph (1) above on a Transport Partnership includes power to continue the promotion or opposition of private legislation in the circumstances set out in sub-paragraph (3) below.

(3) Those circumstances are—

(a) where the function in pursuance of which the legislation was first promoted or opposed was transferred to the Transport Partnership under section 10 above after the introduction of the Bill for the legislation;

(b) in a case where that function was transferred to the Scottish Ministers under section 12 above after the introduction of that Bill, where the Scottish Ministers have directed that the Transport Partnership specified in the direction is to continue the promotion or opposition of that legislation; or

(c) a combination of the circumstances set out in sub-sub-paragraphs (a) and (b) above.

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 2005 (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)”.

Forming companies

8A A Transport Partnership may (whether alone or with others, who need not be Transport Partnerships) form or promote companies within the meaning of the Companies Act 1985 (c.6).

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 2005 (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 2005 (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 2005 (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 2005 (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 2005 (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 2005 (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 2005 (asp 00).”

Expenses of non-councillor members and observers

13A A Transport Partnership may pay to—

(a) those of its members who are appointed by virtue of sub-paragraph (i) or (ii) of paragraph (b) of subsection (2) of section 1 above;
(b) persons who are, as respects the Partnership, appointed as observers under paragraph (g) of that subsection,

such expenses as the Partnership determines.

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 2005 (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 2005 (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.

15 (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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Schedule 4—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 may be prescribed.

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 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.

5 (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.

5 (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.

5 (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.

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

6 (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.

6 (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.

6 (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.

7 (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.

7 (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.

7 (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.

Effect of prosecution on notice

8A Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

Recovery of unpaid fixed penalties

9 Subject to paragraphs 8 and 8A, 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 (1) | The road works authority shall, subject to sub-paragraph (2), remit the money
|        | received by them by way of fixed penalties under this Schedule to the Scottish
|        | Ministers.

| 11 (2) | The Scottish Ministers may, by regulations, provide that the road works
|        | authority may retain as much of that money as is sufficient to meet such of
|        | their expenditure as is described in the regulations.

| 11 (3) | The Scottish Ministers may make regulations about the keeping of accounts,
|        | and the preparation and publication of statements of account, relating to fixed
|        | penalties under this Schedule.

| 12 (1) | Fixed penalty notices may not be given in such circumstances as may be
|        | prescribed.

| 12 (2) | The method or methods by which fixed penalties may be paid may be
|        | prescribed.

| 12 (3) | The Scottish Ministers may by regulations modify paragraph 4(2) or 5(1) so as
|        | to substitute a different period for the period for the time being specified
|        | there.”

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**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. Failure of owner of skip or other person to ensure conditions of permission complied with.”</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.

5 (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.

5 (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.

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

6 (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.

6 (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.

6 (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.

7 (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.

7 (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.

7 (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.

**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.

(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.

**Effect of prosecution on notice**

8A Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

**Recovery of unpaid fixed penalties**

9 Subject to paragraphs 8 and 8A, 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 (1) The roads authority shall, subject to sub-paragraph (2), remit the money received by them by way of fixed penalties under this Schedule to the Scottish Ministers.

(2) The Scottish Ministers may, by regulations, provide that the roads authority may retain as much of that money as is sufficient to meet such of their expenditure as is described in the regulations.

(3) The Scottish Ministers may make regulations about 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 AMENDED AT STAGE 2]

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
INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Transport (Scotland) Bill as amended at Stage 2. The Bill was introduced on 27 October 2004.

2. 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

3. The Bill takes forward the proposals in the White Paper Scotland’s transport future and fulfils commitments in the Partnership Agreement (A Partnership for a Better Scotland: Partnership Agreement 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;

This document relates to the Transport (Scotland) Bill as amended at Stage 2 (SP Bill 28A)

- 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.

4. A number of significant amendments were introduced at Stage 2 to bring forward legislation to:
   - Create a Public Transport User’s Committee for Scotland;
   - change the terminology on badges for vehicles used for disabled people; and
   - extend the remit of the Bus User Complaints Tribunal.

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

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 at least one but not more than four councillors from each council that is a member of the Transport Partnership. It defines the terms “councillor member” and “constituent council”. A Transport Partnership may contain a single 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 councillor member will have one vote but, under section 1(4), councillor members shall have their votes weighted by making them count as one, two, three or four 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 and that weighting votes to count as two, three or four votes will only be used if a Transport Partnership is formed with only one (or, conceivably, two) councillor members per council. 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. Section 1(d)(i) ensures that non-councillor members may not vote.

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 or council.

15. Under section 2(2A) the Scottish Ministers can ensure, by making provision by order, that on the dissolution of a Transport Partnership any of its transport functions can be performed by the person who was responsible for those functions prior to their transfer to the Partnership. The inclusion of this sub-section seeks to avoid the situation of an hiatus, in the delivering of transport functions, between the dissolution of a Transport Partnership and the creation of a new Transport Partnership required by section 1.

16. 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

17. Section 3 requires the constituent councils or council 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.

18. Under section 3(2) the share of the expenses to be paid by each constituent council or where there is only one, that 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.

19. Section 3(2A) states that only councillor members may vote on matters regarding funding contributions from councils. This sub-section will need to be deleted since section 1(2)(d)(i) states that only councillor members may vote.

20. 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).

21. 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

22. Section 4 provides as to the administrative functions of Transport Partnerships, Schedule 1 provides the details.

Regional transport strategies

Section 5: Formulation and content of regional transport strategies

23. 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.

24. 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 sub-section (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 and the Transport Partnerships are under a duty to have regard to that guidance and to any current national transport strategy established by the Scottish Ministers.
Section 6: Procedure before and after the drawing up of transport strategies

25. Section 6 places a duty on Transport Partnerships to draw up, and submit to the Scottish Ministers, their first transport strategy within 12 months 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.

26. Sections 6(1A) and (1B) enable each Transport Partnership to request, within 8 months of their creation, an extension to the 12 month time limit to produce its regional transport strategy. The Scottish Ministers prior to granting an extension have the power at sub-section (1B) to require Transport Partnerships to produce reports or documentation which might, for instance, include details of progress made to date.

27. 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.

28. 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

29. 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

30. 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 can be placed on other public bodies as specified by order.

Section 9: Joint transport strategies

31. Section 9 enables two or more Transport Partnerships to produce a joint transport strategy for their combined regions. Under section 9(1A) Transport Partnerships drawing up a joint transport strategy are placed under a duty to have regard specifically to improving transport between cities and major population centres within their combined regions. Under section 9(2) a joint transport strategy is to be subject to all the same provisions in Part 1 that apply to a transport strategy.
Section 9A: RTP/Health Board transport strategies

32. Section 9A places a duty on Transport Partnerships to prepare a transport strategy jointly with each Health Board within its area. The strategy is expected to cover provision of public transport to hospitals and other NHS facilities.

Regional transport functions

Section 10: Other transport functions of RTPs

33. Section 10(1) gives the Scottish Ministers powers to confer, by order, transport functions on Transport Partnerships. 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.

34. Section 10(1A) requires that the Scottish Ministers must, when conferring functions by order on a Transport Partnership, have regard to the Partnership’s transport strategy, if one is in place.

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

36. Section 10(2A) provides a non-exclusive list of functions that could be conferred on Transport Partnerships by order under section 10(1).

37. Sections 10(3) and (4) requires a Transport Partnership proposing to request the making of an order conferring functions on them, prior to making that request, to consult with its constituent councils or council and also to make that request in line with guidance produced by the Scottish Ministers.

38. Section 10(5) requires the Scottish Ministers, before making an order under section 10(1), to consult the Transport Partnership to which the order will apply (except where the order is to be made at their request), that Partnership’s constituent councils or council and such other persons as they think fit.

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

40. 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 10A: Alteration of RTP’s functions

41. Section 10A allows the Scottish Ministers to return the functions of a Transport Partnership to the person that previously undertook the function. The alteration may occur, for example, where in the light of operational experience or a change in strategic approach a Transport Partnership concludes that it would be appropriate for a particular function to be exercised by the person who was previously responsible (in most cases the constituent councils or the Scottish Ministers). Without this provision the Scottish Ministers would need to invoke the provisions within section 2 to dissolve a Transport Partnership (and re-create under section 1) if they wished to transfer functions from a Transport Partnership back to a council.

Section 11: Manner of performance of RTPs’ functions

42. 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. Sub-sections (3) and (4) place Transport Partnerships under a duty to carry out their functions in a manner which encourages equal opportunities.

CHAPTER 2: SCOTTISH MINISTERS’ TRANSPORT FUNCTIONS

Section 12: Transport functions of Scottish Ministers

43. Section 12 gives powers to the Scottish Ministers, by order, to transfer rail transport functions from Strathclyde Passenger Transport Authority or Strathclyde Passenger Transport Executive to the Scottish Ministers.

Section 12A: Arrangements for performance by RTP of certain transport functions etc.

44. Section 12A enables a Transport Partnership to enter into arrangements to carry out such things relating to transport as specified in those arrangements on behalf of a council, the Scottish Ministers or any other person having statutory transport functions. It is expected that any arrangements would be explicit about the bounds on the extent of the Transport Partnership’s discretion.

CHAPTER 3: CONSEQUENTIAL PROVISION

Section 13: Transfer of staff, property and liabilities

45. 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.

46. 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, rights or liabilities linked to those functions.
PART 2: ROAD WORKS

47. 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 for information with the deleted text scored out and new text in italics.

The Scottish Roadworks Commissioner

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

48. Section 14 of the Bill creates the office of a Scottish Road Works Commissioner (“the 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

49. 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). 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.

50. A definition for works in roads is provided at sub-section (1A) so as to include both road works and works for road purposes as defined in the New Roads and Street Works Act 1991. This ensures that works carried out in roads by both statutory undertakers and roads authorities will be caught within the Commissioner’s role in monitoring activity. The term “works in roads” covers all the activities that are required to be recorded on the Scottish Road Works Register, which will be the principal tool by which the Commissioner will monitor the carrying out of “works in roads” in Scotland.

Section 16 Duty of road works authority and undertakers to provide Commissioner with information

51. 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.

52. 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

53. 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.

54. The SRWR will be self-financing. Those that are required to place information on the register will, by regulations, be charged a fee.

55. 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 co-ordinate road works. The reasons for restricting information (for example, national security) will be prescribed in regulations.

56. 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 113-115 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.

57. The content and format of information required by Section 112B will be prescribed in regulations.
58. Section 108(2) of the 1991 Act has been amended to reflect the insertion of section 112B.

59. 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.

60. Sub-section 17(3) introduces section 114(3A) to the 1991 Act and requires statutory undertakers and road works authorities which are also local authorities to give notice of start date of works to the SRWR, again by inputting information directly. The provisions do not however place a requirement on the Scottish Ministers, who are also a road works authority responsible for the trunk road network, to give notice.

61. Sub-section 17(4) introduces section 116(3A) to the 1991 Act and requires undertakers and road works authorities which are also local authorities to give notice of emergency works to the SRWR, again by inputting information directly. The provisions do not however place a requirement on the Scottish Ministers, who are also a road works authority responsible for the trunk road network, to give notice.

62. Section 117(2) of the 1991 Act has been amended to require information on the restriction of works to be entered in the SRWR.

**Miscellaneous**

**Section 18 Directions as to timing of road works**

63. 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**

64. 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 are placed under a duty to make regulations to make provision for appeals against directions, and the procedure to be followed.

**Section 20 Restriction on works following substantial road works**

65. 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 212.
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.

66. 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 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

67. 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).

68. 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.

69. 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.

70. 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.

71. 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

72. 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 and road works
This document relates to the Transport (Scotland) Bill as amended at Stage 2 (SP Bill 28A)

authorities who have failed to comply with the duties imposed upon them, respectively, in sections 118 and 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**

73. 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.**

74. 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**

75. 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.

**Resurfacing**

**Section 27 Notices requiring remedial works relating to reinstatements**

76. 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.

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

77. 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.

78. 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.

79. 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.

80. 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

81. 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.

82. The Scottish Ministers are placed under a duty to consult any relevant association of undertakers prior to the making of regulations within sections 132A, 132B and 132C. The Scottish Ministers are not under an obligation to consult road work authorities but may do so and such other bodies as they consider appropriate.

83. 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

84. 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.
85. 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.

86. 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 the 1991 Act**

87. 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**

88. 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).

89. 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.

90. 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.
91. 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 the 1991 Act

92. 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 the 1991 Act

93. 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

94. 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

95. 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

96. 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.

97. 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.

98. 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 37A Public Transport Users’ Committee for Scotland

99. Section 37A places a duty on the Scottish Ministers to establish a Public Transport Users’ Committee for Scotland. The committee will be charged with investigating complaints and other matters relating to bus, ferry, tram and rail services referred to it by the general public or the Scottish Ministers. If the committee after investigation and representation to the
appropriate public transport provider is unable to resolve the matter it will refer the matter to the Scottish Ministers. The section also contains a list of definitions.

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

100. 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

101. 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

102. 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

103. 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

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

Section 42A Badges for vehicles used for disabled people: change of terminology

105. Section 42A changes the word ‘Institution’ to ‘Organisation’ in the legislation relating to the disabled person’s badge (known as the Blue Badge Scheme). The Scottish Executive supported a recommendation, from the Blue Badge review carried out by the Department of Transport, that the name “institutional badge” be changed to the less stigmatising “organisational badge”.

Section 42B  Extension of remit of Bus User Complaints Tribunal

106. Section 42B extends the remit of the Bus User Complaints Tribunal. The Tribunal currently provides users of local bus services (i.e. those bus services which are available to the general travelling public) with a voice in improving local services by the means of a statutory complaints mechanism, for instance where a bus operator has failed to resolve a complaint in a satisfactory manner. The section extends the remit so as to include scheduled services such as Express and long-distance coach services. This now means that all bus services that are available to the general travelling public are able to be considered.

Section 43  Minor amendments of Transport (Scotland) Act 2001

107. 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.

108. 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.

109. 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.

110. Section 43(4A) rectifies a typographical inaccuracy within the Transport (Scotland) Act 2001.

111. 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.

112. 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.

113. 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

114. 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

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

SCHEDULES

Schedule 1 Administrative functions of RTPs

116. 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.

117. 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.

118. 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.

119. Paragraph 7 provides that Transport Partnerships may promote or oppose private legislation in the Scottish Parliament. Sub-paragraphs (2) and (3) provide circumstances where a Transport Partnership can assume responsibility for the promotion or opposition of private legislation that was previously initiated by another body because the transport functions of that body were transferred either to the Transport Partnership or the Scottish Ministers and the latter has then directed the Transport Partnership to continue the promotion or opposition of the private legislation.

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

121. Paragraph 8A ensures that Transport Partnerships have similar powers to councils to create companies, much in the same manner as, for example, that City of Edinburgh council created tie (transport initiatives edinburgh).
122. 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.

123. 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.

124. Paragraph 11 applies to Transport Partnerships certain of the rules governing finance that already apply to local authorities. Paragraph 11(2) adds Transport Partnerships to the list of bodies to which Part VII (Finance) of the Local Government (Scotland) Act 1973 applies. One consequence of this is that section 14 of the Local Government in Scotland Act 2003 applies part 1 of that Act to those bodies to which Part VII of the 1973 Act applies. So the provisions of part 1 of the 2003 Act apply to Transport Partnerships: these include, notably, the duty to secure best value (sections 1 and 2) and provisions governing the disposal of land at less than full value (section 11) which should be read alongside paragraph 6 of this schedule.

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

126. 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.

127. Paragraph 13A enables Transport Partnerships to reimburse non-councillor members and observers their expenses.

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

129. 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

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

131. 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.

132. 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.

133. Paragraph 3 confirms a duty on the Commissioner at the end of each financial year, to give 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

134. 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

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

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

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

137. 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.

138. 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.

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

140. 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 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.

141. 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.
142. Paragraph 8A ensures that where proceedings have commenced for an offence, in respect of which a fixed penalty notice has been given, that the fixed penalty notice is to be treated as withdrawn. This means that a person may be prosecuted for an offence but in such a circumstance cannot also be punished for non-payment of the fixed penalty notice associated with that offence.

143. 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.

144. 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.

145. 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.

146. Paragraph 11 permits the road works authorities to retain a proportion of the monies raised from the application of fixed penalty notices raised to cover their costs in administering the fixed penalty notice process. All surplus monies will revert to the Scottish Ministers via the Scottish Consolidated Fund.

147. 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.

148. 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

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

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

150. Schedule 7 contains similar provisions to those contained at Schedule 5.

151. 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.
This document relates to the Transport (Scotland) Bill as amended at Stage 2 (SP Bill 28A)
NEW ROAD AND STREET WORKS ACT 1991 PART IV ROAD WORKS IN SCOTLAND

Introductory provisions

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 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.

(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 112B (duty to enter certain information in the Scottish 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 FN3

(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 [FN4 under this section of such road works authorities as he may specify] to be discharged by means of one or more central registers kept by a person appointed in pursuance of the arrangements.

FN5-FN4 (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[FN6 the] road works authorities[FN6 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
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.

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.

(3A) The Scottish Ministers may by regulations—

(a) provide that the payment to the commissioner of the prescribed fee is a condition of access to the SRWR as mentioned in subsection (3) (and different fees may be prescribed for access for different purposes), and

(b) make other provision as to the payment to the commissioner by such persons as are prescribed of such amounts as are prescribed.

(3B) Amounts received by the Commissioner under subsection (3A) are to be applied by the Commissioner to the keeping of the SRWR.

(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—

(za) under subsection (2) of section 56 of the Roads (Scotland) Act 1984 (c.54), given an applicant for consent for road works or excavations notice of affected statutory undertakers,
This document relates to the Transport (Scotland) Bill as amended at Stage 2 (SP Bill 28A)

(zb) under subsection (8) of that section, given notification of unlawful works removed or unlawful excavations filled in,

(zc) under section 58(1) of that Act, given permission for the occupation of part of a road for the deposit of materials or for the erection of staging or scaffolding projecting over part of a road,

(zd) under section 61(1) of that Act, given permission for the placing, leaving, retention, maintenance, repair or reinstatement of apparatus in or under a road or the breaking open of or having access to the road,

(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.

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 or road works authority which is a local authority 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),

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.

(2A) 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.

(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 shall 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 or road works authority which is a local authority 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 or road works authority’s intention, or as the case may be, the fact that he has or they have 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 3 years 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, or first 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.
This document relates to the Transport (Scotland) Bill as amended at Stage 2 (SP Bill 28A)

(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 any direction given to them by the Commissioner 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 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 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 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 road works authorities and undertakers who fail to comply with duties imposed on them by sections 118 and 119 respectively,

(b) the payment of such penalties.

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

(a) the notification and enforcement of penalty charges, penalties,

(b) the level of penalties,

(c) appeals against the imposition of penalty charges 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-

(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.

(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.

(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) 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

(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.

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>A road works authority</th>
<th>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).</th>
</tr>
</thead>
<tbody>
<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>
</table>

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

(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-

(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,
   (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).

(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.

(3A) Before making regulations under subsection (1), the Scottish Ministers shall consult any relevant association of undertakers and such other bodies as they consider appropriate.

(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:

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Trunk roads.</td>
</tr>
<tr>
<td>2</td>
<td>Principal roads.</td>
</tr>
<tr>
<td>3</td>
<td>Other classified roads.</td>
</tr>
<tr>
<td>4</td>
<td>Other roads.</td>
</tr>
</tbody>
</table>

(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.

Duties and liabilities of undertakers with respect to apparatus

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 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.

(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

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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.

(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-
(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 made by statutory instrument 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 the statutory instrument containing 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.

(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.

(7) Regulations shall not be made unless a draft of them has been laid before and approved by resolution of the Scottish Parliament.
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 references 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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<tr>
<td>working day</td>
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</tr>
<tr>
<td>works for road purposes</td>
<td>section 145(2).</td>
</tr>
</tbody>
</table>
TRANSPORT (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED FINANCIAL MEMORANDUM

CONTEXT AND OVERVIEW

1. As required under rule 9.7.8B of the Parliament’s Standing Orders, this revised Financial Memorandum is published to accompany the Transport (Scotland) Bill as amended at Stage 2. The Bill was introduced on 27 October 2004.

2. The Scottish Executive Departmental Expenditure Limit (DEL) transport budget for 2004/5 is £823m¹. 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.

3. 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 £0.56m, 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 Regional Transport: sections 1-11

Chapter 1

Background

4. Though the final number has not yet been confirmed, and will not be until orders are confirmed by Parliament, the expectation is that 6 Transport Partnerships will be created. There are currently 4 voluntary regional partnerships² covering together most, but not all, of Scotland. One of the existing voluntary regional transport partnerships, WESTRANS, incorporates the Strathclyde Passenger Transport (SPT) area.

² 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).
5. 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.

6. The functions that the Transport Partnerships will perform will not be known with precision until the regional transport strategies have been produced.

7. 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.

**Staffing and administration costs – start up**

8. 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 additional staff and this is likely to generate a cost of approx. £1m of which 80% relates to staffing costs and the balance to associated general administration costs arising as a direct consequence of the Bill. (The Scottish Executive currently provides some funding to support the 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 transport partnerships were voluntary or statutory and therefore this continuing contribution is not conditional on the provisions of the Bill).

**Members expenses – start up**

9. 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.

**SPT transitional costs**

10. 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**

11. 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.
Ongoing running costs

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

Financial Management

17. 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.

Other impacts

18. 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.

19. 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.

Chapter 2 Scottish Ministers’ Transport Functions: section 12

20. 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 - 36

21. 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.

Scottish Road Works Commissioner: sections 14 and 15

22. 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.

23. 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. Based on the initial funding level costs in subsequent years are estimated to be in the region of £160,000.

Scottish Road Works Register: section 17

24. 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.

25. 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.

26. 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% 3. 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.

27. 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.

Training: sections 24 and 25

28. 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.

29. 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 associated costs arising from these provisions should derive as part of the ongoing training and awareness that employers provide to their employees.

30. 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

3 Susiephone Ltd 2003/4 Operations Report
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 27-30

31. 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.

32. 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.

33. 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.

34. 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 31-36

35. 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.

36. 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

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4 Susiephone Ltd Quarterly Reports for 2003/4
only a small percentage of future cases will involve the courts and therefore there will be a significant reduction in potential court involvement.

37. 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.

Indirect benefits

38. 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.

39. 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\(^5\). 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 Concessionary Schemes: section 37

40. 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 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.

41. 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

\(^5\) OFCOM website
the management of concessionary travel from local authorities, then there might be a positive shift in the administrative costs of bus operators.

42. 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.

Public Transport Users’ Committee for Scotland

43. The Public Transport Users’ Committee for Scotland will represent the interests of users or potential users of bus, ferry, railway and tram services. The Rail Passengers Council (Scotland) which will be replaced by a new Britain–wide body as a consequence of the Railways Act 2005 currently covers ferry and railway interests. It has annual running costs approaching £400,000 and these are supported by funds from the Strategic Rail Authority. The Bus User Complaints Tribunal representing the interests of bus passengers currently expends £100,000. There are currently no trams in operation in Scotland. Whilst there may be opportunities for economies of scale it is expected that total operating costs of the new committee could be contained with £0.5m. The Executive currently provides the financial support to Bus User Complaints Tribunal and therefore the only additional costs will be approximately £400,000. Start-up costs for initial recruitment and establishment are deemed to be relatively minor.

Pedestrian Crossings: section 38

44. The Scottish Executive receives on average twenty formal notifications per annum 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

45. 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.

Amendment of procedures for dealing with applications for harbour orders: sections 40–42

46. 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.

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6 Scottish Executive Transport Group
47. 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 consequential 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 COSTS ON THE SCOTTISH ADMINISTRATION**

**Start-up Costs**

<table>
<thead>
<tr>
<th>Description</th>
<th>£m</th>
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<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>
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<tr>
<td>Members’ expenses to attend Transport Partnerships*</td>
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</tr>
<tr>
<td>SPT transition costs resulting from creation of successor Transport</td>
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<tr>
<td>Partnership</td>
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<tr>
<td>Initial accommodation costs for Transport Partnerships*</td>
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<tr>
<td>Initial Staffing and administration costs for SRWC</td>
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</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>3.7</td>
</tr>
</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>Description</th>
<th>£m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ongoing costs to the Scottish Executive</td>
<td></td>
</tr>
<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>Public Transport Users’ Committee for Scotland</td>
<td>0.4</td>
</tr>
</tbody>
</table>

Table 2: Breakdown of ongoing costs to the Scottish Executive arising from provisions contained within the Bill.
Delegated powers scrutiny: The Committee considered the delegated powers provisions in the following bill—

Transport (Scotland) Bill as amended at Stage 2

and agreed the terms of its report.
Transport (Scotland) Bill: as amended at Stage 2

The Convener: Members will note that there is a stage 3 debate on the Transport (Scotland) Bill next week, on Wednesday 29 June. I therefore recommend that we do as we did with the Smoking, Health and Social Care (Scotland) Bill and put the points that we raise into a report. Is that agreed?

Members indicated agreement.

The Convener: Section 1 provides for the establishment of regional transport partnerships. Are members content with the largely technical amendments that have been made to section 1?

Members indicated agreement.

The Convener: Section 2 deals with the dissolution of the RTPs. It provides ministers with the power to dissolve partnerships, places a duty on them to consult prior to making an order, and provides for the order to modify any enactment. New subsection (2A) includes a provision that empowers ministers, on the dissolution of an RTP, to transfer functions back to the original person who carried out the functions before they were transferred to the RTP. That reflects a comment made by the committee at stage 1. Are members happy with that change?

Members indicated agreement.

The Convener: Section 10 concerns other transport functions of RTPs and allows ministers to transfer statutory functions to an RTP by order. The committee raised concerns at stage 1 about the width of the power and the lack of detail in the bill as to how it would be exercised. As a result of our concerns and those of the lead committee, section 10 has been subject to considerable amendment. The Executive intends to remove subsection (7) at stage 3, following amendment to section 12(2). It does not intend to transfer any of the relevant functions to an RTP by order under section 10.

An illustrative list of the type of function that may be included in an order has been included at subsection (2A). There are technical difficulties with the drafting of that subsection, and the Executive proposes to revisit the amendment at stage 3. Are members happy with that position?

Members indicated agreement.

The Convener: A new subsection has also been added to section 10. Subsection (1A) obliges ministers, when making an order, to have regard to the transport strategy of an RTP, if that strategy has been published before the making of the order. That amendment was also welcomed by the lead committee. Are we content with that amendment?

Members indicated agreement.

The Convener: Section 10A concerns alteration of an RTP’s functions. The new section reflects a point that the Subordinate Legislation Committee made at stage 1, which was that section 10, as originally drafted, provided only for a one-way transfer to an RTP. Section 10A now allows for the making of an order to transfer the functions back to the original holder, or for those functions to be exercised jointly with that person. A similar amendment was made to section 2, as discussed earlier.

Does Mike Pringle have a point about this section?

Mike Pringle (Edinburgh South) (LD): No.

The Convener: Okay. I just saw you chattering there and thought that you must have a point to make.

Are members quite happy with section 10A?

Members indicated agreement.
The Convener: Section 12 concerns the transport functions of Scottish ministers. Section 12(1) provides ministers with powers to make an order to enable them to carry out the rail transport function of the Strathclyde Passenger Transport Authority and the Strathclyde Passenger Transport Executive. At stage 1, the Executive indicated that the drafting of the section was provisional and subject to the making of an order under section 30(2) of the Scotland Act 1998 to transfer the necessary legislative powers to the Scottish Parliament. The order has been approved and section 12(1) refined accordingly. Are members content to note that amendment?

Members indicated agreement.

The Convener: Section 13 concerns the transfer of staff, property and liabilities. Section 13(4) provides for the transfer of property and other matters from one body to another. A small technical amendment has been made to include the word “rights” as well as “property” and “liabilities”. Are members content with the section as amended?

Members indicated agreement.

The Convener: Section 17 inserts new section 112A into the New Roads and Street Works Act 1991 and provides for the setting up of the Scottish road works register. New section 112A(3A), which provides ministers with a power to make regulations regarding the payment of fees as a condition of access to the register, reflects an observation made by the committee at stage 1. The regulations will be made by statutory instrument and subject to the negative procedure. Are members happy with that amendment?

Members indicated agreement.

The Convener: Section 18 concerns directions on the timing of road works. Section 18(3A), which inserts section 115(2A) into the 1991 act, again reflects a comment made by the committee at stage 1 and provides ministers with the power to make provision for appeals against the direction of road works authorities regarding the timing of works. Members will note that ministers are not placed under a duty to make regulations; they have been given only a power to allow them to do that. A regulation-making power is only rarely expressed as a mandatory duty.

However, an amendment to section 19, which also relates to this section, changed a “may” to a “shall”. As paragraph 76 of the legal briefing makes clear, section 115(2A) of the 1991 act, which is inserted by section 18 of the bill, should therefore be tidied up by changing the word “may” to “shall”. I suggest that we put that into our report. Are members agreed?

Members indicated agreement.

The Convener: Section 19(1), which inserts new section 115A(4) into the 1991 act, provides ministers with the power to prescribe the procedure for the giving of directions by the road works authority to the undertaker on the placing of apparatus. However, new section 115A(5), which confers powers on ministers by regulations to make provision for appeals against such directions and is similar to the new power in section 18 that we have just discussed, has been amended to alter the power to oblige ministers to make the appropriate regulations. Are members content with the amendment?

Christine May (Central Fife) (Lab): Given that this amendment and the previous amendment relate to each other, both provisions should be consistently worded to ensure that the policy is consistently applied.

The Convener: Are members agreed?

Members indicated agreement.

The Convener: Section 23 concerns enforcement of section 119 of the 1991 act. Section 23(2) extends section 119 to ensure that penalties are applied both to road works authorities and to undertakers. That was a big issue for the Local Government and Transport Committee. Are members content to note that amendment?

Members indicated agreement.

The Convener: Section 29, which concerns regulations and guidance on resurfacing, inserts new section 132D into the 1991 act and provides ministers with a power to make regulations in relation to obligations on an undertaker to resurface roads. The provisions were amended at stage 2 to include new section 132D(3A), under which ministers, before they make regulations, will be obliged to consult any relevant association of undertakers and other such bodies as they consider appropriate. Do members agree with that amendment?

Members indicated agreement.

Gordon Jackson (Glasgow Govan) (Lab): Bearing in mind that we always want the Executive to consult on everything, we should perhaps say in our report that we are rather pleased to find that, on this occasion, it is doing so.

The Convener: Absolutely. We can put that in.

Section 32(1), which inserts new section 154A into the 1991 act, empowers ministers to modify schedule 6A of the act to provide for certain offences to be fixed-penalty offences. In response to the committee’s comments at stage 1, the provision has been amended to ensure that any order made under this section will be made by a statutory instrument that will be subject to the
affirmative procedure. I take it that the committee welcomes such an amendment.

Christine May: We are delighted with it.

Mr Maxwell: I would not go that far.

Christine May: I am trying to follow Margaret Curran's example and find different ways of saying the same thing.

The Convener: Section 33, which concerns civil penalties for certain offences under the 1991 act, inserts new section 154B into the 1991 act to enable ministers to make regulations in relation to the imposition and payment of charges for certain offences that will be subject to civil penalties. In response to the committee's suggestion, the procedure for regulations under this section has been changed from negative to affirmative. I am sure that members are happy with that.

Members indicated agreement.

Christine May: It is a significant victory.

The Convener: Section 35, which concerns fixed-penalty offences under the Roads (Scotland) Act 1984, has been amended to remove the requirement for such offences in effect to be selected from the list in schedule 8A by regulations and now provides for all offences that are listed to be fixed-penalty offences. However, the section confers a power on ministers by order to modify the schedule to provide that an offence will cease to be a fixed-penalty offence. That is more restrictive as no power is conferred on ministers to add to the list or to restore removed offences.

The committee had suggested that the regulation-making power should be subject to the affirmative procedure. However, that has been superseded by the redrafted provision, which is more restrictive than the earlier version and is subject to the negative procedure. Are we happy with the provision?

Mr Maxwell: It seems slightly odd that although we can remove offences from the list, we cannot add any. Perhaps that is the Executive's policy intention but, on the face of it, it seems more logical to have the power to remove, to add and to put back offences that have already been removed. Otherwise, the provision seems slightly strange.

I take it that we have to report on this matter.

The Convener: Yes.

Mr Maxwell: I wonder whether it is worth making the point that we do not know why this provision has been drafted in this way. It might be helpful if the Executive made it clear before the stage 3 debate whether that was the policy intention or whether it was just a small error.

The Convener: The suggestion is that we should ask the Executive to make it clear whether it has purposely drafted the provision in this way or whether it has made an error. Are members agreed?

Gordon Jackson: Presumably, if the Executive decides that it wants the power to subtract but not the power to add, that is a policy decision. We are interested only in how—[Interruption.]

Mike Pringle: Sorry for sneezing, Gordon.

Gordon Jackson: I am very rarely thrown, Mike, but you managed that on this occasion.

My theory is that if the Executive is going to add offences for citizens, it should do so by affirmative instrument. Perhaps it is the lawyer in me, but I do not really mind it using negative procedure to remove offences.

Mr Maxwell: That might well be, but I simply seek clarification as to whether that is the Executive's policy intention. If that is the case, I am fine with it.

Gordon Jackson: Sure.

The Convener: We will say that we are a little bit concerned about whether that is the Executive’s policy intention.

I welcome Adam Ingram to the committee.

Mr Adam Ingram (South of Scotland) (SNP): I am sorry that I am late.

The Convener: We are now discussing amendments to section 36 of the Transport (Scotland) Bill, which concerns civil penalties for certain offences under the Roads (Scotland) Act 1984. The section, which inserts section 130B(1) into the 1984 act, confers powers on ministers to make regulations in relation to the imposition and payment of charges for offences that will be subject to civil penalties. Are we content to note the amendment?

Members indicated agreement.

The Convener: Section 43 concerns minor amendments to the Transport (Scotland) Act 2001. Section 43(4) amends section 64 of the 2001 Act to provide ministers with regulation-making powers for the appointment of persons to determine disputes and appeals against determinations under charging schemes. New subsection (1C) has been added to section 64 to allow ministers to confer such determining powers on those who currently carry out a similar function. Are members content with the amendment?

Members indicated agreement.

provides ministers with the power to make regulations to specify the amount of receipts from fixed penalties that road works authorities may retain to meet the administrative costs associated with managing fixed-penalty notices. That will prevent authorities from using the receipts as a revenue stream. Such regulations will be subject to the negative procedure. Are members content to note the amendment?

Members indicated agreement.

The Convener: I wish that there was another way of doing this.

Christine May: I tried.

The Convener: As schedule 7, which inserts new schedule 8B into the Roads (Scotland) Act 1984, makes similar provision to schedule 5, the issues that arise are the same as those that have been set out for schedule 5. Are members content to note the amendment?

Members indicated agreement.

The Convener: That brings us to the end of item 3.

Murray Tosh (West of Scotland) (Con): I should point out that an alternative way of proceeding would be to publish the legal briefing paper. If you could refer to it, you could substantially truncate the proceedings.

The Convener: Perhaps only marginally.
Subordinate Legislation Committee

27th Report, 2005 (Session 2)

Delegated Powers of Transport (Scotland) Bill at amended at Stage 2
Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

   (a) any-

      (i) subordinate legislation laid before the Parliament;

      (ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter,

   and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

   (c) general questions relating to powers to make subordinate legislation; and

   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Dr Sylvia Jackson (Convener)
Mr Adam Ingram
Gordon Jackson (Deputy Convener)
Mr Stewart Maxwell
Christine May
Mike Pringle
Murray Tosh
Committee Clerking Team:

Clerk to the Committee
Ruth Cooper

Senior Assistant Clerk
David McLaren

Support Manager
Catherine Fergusson
The Scottish Parliament

Subordinate Legislation Committee

27th Report, 2005 (Session 2)

Delegated Powers of Transport (Scotland) Bill as amended at Stage 2

The Committee reports to the Parliament as follows—

Introduction

1. At its meeting on 21 June 2005, the Committee considered the inserted or substantially amended delegated powers provisions in the Transport (Scotland) Bill as amended at stage 2. The Committee reports to the Parliament on such provisions under Rule 9.7.9 of Standing Orders.

2. Under Rule 9.7.10, the Executive provided a supplementary subordinate legislation memorandum to the Committee, which is published at Annex A to this report.

Section 1 – Establishment of Regional Transport Partnerships

3. The Committee noted that a number of amendments have been made to this section, which provides for the establishment, by order, of RTPs. The Committee at stage 1 considered that the drafting of this section could be clearer. The Committee is content with the technical amendments made to this section at stage 2.

Section 2 – Dissolution of RTPs

4. Section 2 provides Ministers with the power to dissolve Transport Partnerships; places a duty on them to consult prior to making an order; and provides for the order to modify any enactment.

5. New subsection (2A) includes a provision which empowers Ministers, on the dissolution of a RTP, to transfer functions back to the original person who carried out the functions before they were transferred to the RTP. This addresses the concerns that the Committee expressed at Stage 1 and the Committee was therefore content with this amendment.
Section 10 – Other transport functions of RTPs

6. Section 10 allows Ministers to transfer statutory functions to an RTP by order. The Committee expressed concerns at Stage 1 about the width of the power and the lack of detail in the Bill as to how it would be exercised. The Committee noted that this section has subsequently been subject to considerable amendment. The Committee noted in particular, that the Executive does not intend to transfer any of the relevant functions to an RTP by order under section 10.

7. The Committee noted that an illustrative list of the type of function that may be included in an order has been included at subsection (2A). However, the Committee noted the Executive’s indication that, whilst it would not oppose this amendment at stage 2, it would revisit the amendment at Stage 3.

8. A new subsection 1A has also been added which obliges Ministers when making an order to have regard to the transport strategy of an RTP if that strategy has been published before the making of an order. The Committee was content to note the position and await further technical amendments at stage 3.

Section 10A – Alteration of RTP’s functions

9. This new subsection reflects a point made by the Committee at Stage 1 that section 10, as originally drafted, provided only for a one-way transfer to an RTP.

10. Section 10A now allows for the making of an order to transfer the functions back to the original holder or for them to be exercised jointly with that person. The Committee was content with this amendment.

Section 12 – Transport functions of Scottish Ministers

11. Section 12(1) provides Ministers with the power to make an order to enable them to carry out the rail transport function of Strathclyde Passenger Transport Authority and Strathclyde Passenger Transport Executive.

12. At Stage 1 the Executive indicated that the drafting of this section was provisional and subject to the making of an order under section 30(2) of the Scotland Act to transfer the necessary legislative powers on the Scottish Parliament. The order has been approved and Section 12(1) refined accordingly. The Committee was content to note the amendment.

Section 13 – Transfer of staff, property and liabilities

13. Section 13(4) provides for the transfer of property etc from one body to another. A small technical amendment has been made to include the word “rights” as well as property and liabilities. The Committee was content with the amendment.

Section 17 – The Scottish Road Works Register

14. Section 17 inserts section 112A(2) to the New Roads and Street Works Act 1991 and provides for the setting up of the Scottish Road Works Register.
15. New Section 112A (3A) provides Ministers with a power to make regulations regarding the payment of fees as a condition of access to the register and reflects an observation made by the Committee at Stage 1. The regulations will be made by statutory instrument and subject to negative procedure. The Committee was content with the amendment.

Section 18 – Directions as to timing of road works

16. Section 18(3A) inserts section 115(2A) into the 1991 Act and again reflects a comment made by the Committee at Stage 1. It provides Ministers with the power to make provision for appeals against the direction of road works authorities regarding the timing of works.

17. The Committee noted that this section currently contains “may” whereas an amendment to section 115A(5) introduced by section 19 substituted “shall” for “may” in a similar provision. This is brought to the attention of the Executive in order that they may address this point in advance of stage 3.

Section 19 – Directions as to placing of apparatus in roads

18. Section 19(1) inserts section 115A(4) to the 1991 Act and provides 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. Subsection (5) confers powers on Ministers by regulations to make provision for appeals against such directions and is similar to the new power introduced by section 18.

19. Subsection (5) has been amended to alter the power to oblige Ministers to make the appropriate regulations. The Committee was content to note the amendment, but draws attention to the current drafting differences, as stated above at section 18.

Section 23 – Enforcement of section 119 of 1991 Act

20. Section 23(2) inserts section 119A (1) to the 1991 Act to enable the Scottish Ministers to make regulations amongst other things to make provision for penalties for failure to comply with duties imposed under section 119.

21. The section has been extended to so that penalties may be applied to both road works authorities and undertakers. The Committee was content to note the amendment.

Section 29 – Resurfacing: regulations and guidance

22. Section 29 inserts section 132D into the 1991 Act and provides Ministers with a power to make regulations in relation to obligations on an undertaker to resurface roads.

23. Powers were amended at Stage 2 to include a new subsection (3A), which obliges Ministers before making regulations to consult any relevant association of undertakers and other such bodies as they consider appropriate. The Committee strongly welcomed the inclusion of a statutory requirement to consult.
Section 32 – Fixed penalty offences

24. Section 32(1) inserts section 154A into the 1991 Act and empowers Ministers to modify Schedule 6A of the 1991 Act to provide for certain offences to be fixed penalty offences.

25. In response to the Committee’s comments at Stage 1, this has been amended to provide that an order under this section will be made by statutory instrument which will be subject to affirmative procedure. The Committee strongly welcomed this amendment.

Section 33 – Civil penalties for certain offences under 1991 Act

26. Section 33 inserts section 154B into the 1991 Act and enables Ministers to make regulations in relation to the imposition and payment of charges for certain offences that will be subject to civil penalties.

27. In response to the Committee’s suggestion, the procedure for regulations under this section has been changed from negative to affirmative. The Committee strongly welcomed this amendment.

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

28. The section has been amended so as to remove the requirement for offences to be selected from the list in Schedule 8A by regulations. The section now provides for all offences listed to be fixed penalties. However, a power is conferred on Ministers by order to modify the Schedule to provide that an offence is to cease to be a fixed penalty offence. The Committee noted that this is a restriction on the exercise of the power as it does not allow Ministers to add to the list, or for removed offences to be restored.

29. The Committee has received clarification from the Executive that this is the policy intention of the power and is content to note the amendment.

30. The Committee had suggested that the regulation-making power should be subject to affirmative procedure. However this has been superseded by the redrafted provision which is more restrictive than the earlier version and is subject to negative procedure.

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

31. Section 36 inserts section 130B(1) into the 1984 Act and confers powers on Ministers to make regulations in relation to the imposition and payment of charges for offences that will be subject to civil penalties. The Committee was content to note the amendment.

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

32. Section 43 subsection (4) amends section 64 of the 2001 Act to provide Ministers with regulation-making powers in relation to the appointment of persons
to determine disputes and appeals against determinations under charging schemes.

33. The Committee noted that a new subsection (1C) has been added to allow Ministers to confer these determining powers on those who currently carry out a similar function. **The Committee was content to note the amendment.**

**Schedule 5 – Schedule 6B to the new Roads and Street Works Act 1991**

34. Paragraph 11(2) of the Schedule provides Ministers with the power to make regulations specifying the amount of receipts from fixed penalties that may be retained by them to meet the administrative costs associated with managing fixed penalty notices. Regulations will be subject to negative procedure. **The Committee was content to note the amendment.**

**Schedule 7 – Schedule 8B to the Roads (Scotland) act 1984**

35. As Schedule 7 makes similar provision to schedule 5 in relation to the Roads (Scotland) Act 1984, the issues arising were the same as those at Schedule 5 above. **The Committee was content to note the amendment.**
ANNEX A

MEMORANDUM TO THE SUBORDINATE LEGISLATION COMMITTEE
BY THE SCOTTISH EXECUTIVE – PRE STAGE 3

TRANSPORT (SCOTLAND) BILL

Purpose

36. This memorandum, revised as a consequence of Stage 2 consideration, has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.7.9 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. All revisions are underlined.

Outline and Scope of the Bill

37. 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.

38. 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

39. 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.
40. 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.

41. 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.

42. 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
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 2(2A) provides the Scottish Ministers with a power, on dissolving a Transport Partnership, to return a function of that Transport Partnership to the person who was carrying out that function immediately prior to it having been transferred to the Transport Partnership by an order under section 10. If there have been two or more orders under section 10 transferring that function, then the order-making power at section 2(2A) may be used to return the function to the person who originally exercised it before the first section 10 order.

Reason for taking power

There is a need to ensure that should a Transport Partnership be dissolved its functions can be performed by another party. This is to avoid a situation of a void or hiatus between the dissolution of a Transport Partnership and the creation of a new Transport Partnership. An hiatus is a possibility in that any newly created Transport Partnership would have up to 12 months from being created to produce its strategy and unless the Scottish Ministers imposed functions on the new Transport Partnership from the outset the transfer of functions would be conditional on the need to await approval of the strategy.

Orders under section 2(2A) will be subject to affirmative resolution procedure and this ensures that the substance of the order will be subject to parliamentary scrutiny and approval. Given that orders under section 10(1) transferring transport functions to Transport Partnerships are subject to affirmative resolution procedure the Scottish Ministers believe it is appropriate to apply the same procedure to orders under section 2(2A), which, on dissolution of a Transport Partnership, transfer functions back to the persons who originally exercised them.

Section 3 – Funding and borrowing

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. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.

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. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.

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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<th>Relevant provisions:</th>
<th>Section 10(1)</th>
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<td>Power conferred on:</td>
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<td>Power exercisable by:</td>
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Section 10(1) provides the Scottish Ministers with the power to confer transport functions on a Transport Partnership.

Section 10(1A) places a duty on the Scottish Ministers to have regard to the strategy, once produced, of a Transport Partnership before conferring functions.

Section 10(2A) provides examples of the functions that may be included within an order made under section 10(1).

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. The order making power at section 10(1) enables the Scottish Ministers to make an order conferring functions on a Transport Partnership at any time. However, once the strategy is in place the Scottish Ministers under section 10(1A) have to have regard to the strategy before conferring any function on the Transport Partnership. 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. Section 10(2A) provides an non-exhaustive list of the functions that may be conferred on a Transport Partnership. 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.
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 10A – Alteration of RTP’s functions
Relevant provisions: Section 10A(1)
Power conferred on: The Scottish Ministers
Power exercisable by: Order by Statutory Instrument
Parliamentary procedure: Affirmative resolution by the Scottish Parliament

Section 10A(1) provides the Scottish Ministers with the power to enable a function of a Transport Partnership to be carried out solely or concurrently by the person who previously carried out that function prior to its transfer to that Transport Partnership.

Reason for taking power
These provisions allow the Scottish Ministers to return, by order, a function or functions of a Transport Partnership to the person that previously undertook the function or functions for reasons, for example, where in the light of operational experience the Transport Partnership is not exercising the function or functions as well as its predecessor. Without these provisions permitting alterations to the execution of functions held by a Transport Partnership the Scottish Ministers
would need to invoke the dramatic provisions within section 2 to dissolve a Transport Partnership in order to transfer functions back to a predecessor.

As the transfer of functions occurred under secondary legislation it is appropriate return transfer (either solely or concurrently) is similarly pursued via an order. The affirmative procedure, however, ensures that the substance of the order will be subject to parliamentary scrutiny as there will be considerable public interest in the reasons at to why a function should be returned and it is appropriate that such matters are given a public airing.

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 the rail 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 approved by both the Scottish Parliament and Westminster to extend the legislative competence of the Scottish Parliament and 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. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.

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. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.

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. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.

**Relevant provisions:** Section 17(1), 112A(3A)

**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(3A) to the 1991 Act provides the Scottish Ministers with power to make regulations regarding the payment of fees, as a condition of access to the register.

**Reason for taking power**

The provision ensures that the cost of operating the register is met by contributions from those who are required to place information on the register, which is the case currently. There is no intention of charging for those who merely wish to inspect the details on the register. The regulations will set the schedule of fees that parties will need to contribute to fund the operation of the register. It is appropriate for the matter to be addressed through regulations so that any changes in the operating costs of register as a consequence, for instance, of technological improvement can be reflected in the contribution that parties have to make. It is however expected that parties, as is the case currently, will agree to the fee levels set for access to the register however having the ability to lodge regulations will enable any potential non-statutory difficulties to be overcome. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.

**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. The Scottish Ministers do not believe that the
issue will be contentious and therefore a negative resolution by the Scottish
Parliament is appropriate.

**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. The Scottish Ministers do
not believe that the issue will be contentious and therefore a negative resolution by
the Scottish Parliament is appropriate.

**Section 18 - Directions as to timing of road works**

Relevant provisions: Section 18(3A), 115(2A)

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations by statutory instrument

Parliamentary procedure: Negative resolution by the Scottish Parliament

Section 18(3A) inserting section 115(2A) to the 1991 Act provides the Scottish
Ministers with power by regulations to make provision for appeals against the
directions of road works authorities regarding the timing of works.

**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. The Scottish Ministers do not believe that the
issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.

Section 19 - Directions as to placing of apparatus in roads

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<tr>
<th>Relevant provisions:</th>
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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. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.

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Section 19(1) inserting section 115A(5) to the 1991 Act places a duty on the Scottish Ministers to make provision by regulations 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 duty 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. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.
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. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.

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.
Subordinate Legislation Committee, 27th Report, 2005 (Session 2)

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
Relevant provisions: Section 26(c), 129(5A)(a)
Power conferred on: The Scottish Ministers
Power exercisable by: Regulations by statutory instrument
Parliamentary procedure: Negative resolution by the Scottish Parliament

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 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 re-instatement 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. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.
**Section 27 – Notices requiring remedial works relating to reinstatements**

**Relevant provisions:** Section 27(1), 131(3)

**Power conferred on:** The Scottish Ministers

**Power exercisable by:** Regulations by statutory instrument

**Parliamentary procedure:** Negative resolution by the Scottish Parliament

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. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.

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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. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.
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.

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
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. Prior to making the regulations the Scottish Ministers are placed under a duty to consult any relevant association of undertakers as well as any other body they consider appropriate.
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), 154A(4)

**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) and details that any order made is to be by statutory instrument.

**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:** Affirmative 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.

The use of an affirmative resolution recognises that there will be considerable public interest in decriminalising offences and permits Parliament to conduct an open scrutiny of all the issues.
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.
Subordinate Legislation Committee, 27th Report, 2005 (Session 2)

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. The Scottish Ministers do not believe that the issue will be contentious and therefore a negative resolution by the Scottish Parliament is appropriate.

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.
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**

<table>
<thead>
<tr>
<th>Relevant provision:</th>
<th>Section 43(4)(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power conferred on:</td>
<td>The Scottish Ministers</td>
</tr>
<tr>
<td>Power exercisable by:</td>
<td>Order made by Statutory Instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative resolution by Scottish Parliament</td>
</tr>
</tbody>
</table>

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(2) provides the Scottish Ministers with power to make regulations specifying the amounts of monies that should be retained by road works authorities to meet the administrative costs associated with managing fixed penalty notices.

Paragraph 11(3) provides the Scottish Ministers 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.
Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 46  Schedules 1 to 7
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Mr David Davidson

65 In section 1, page 1, line 12, leave out <shall> and insert <may>

Mr David Davidson

66 In section 1, page 1, line 14, leave out <each> and insert <any>

Mr David Davidson

67 In section 1, page 1, line 18, leave out <carrying out the duty> and insert <exercising the power>

Pauline McNeill

68 In section 1, page 1, line 18, at end insert—

< ( ) shall secure that the total number of councillor members of a Transport Partnership is not more than 20;>

Pauline McNeill

69 In section 1, page 1, line 20, leave out <four> and insert <five>

Nicol Stephen

10 In section 1, page 2, line 12, leave out from <only> to end of line 13 and insert <councillor members may vote on all matters and other members only on such matters as the Transport Partnership determines are appropriate (but not on a question arising under section 3(2)(a) below or on whether to make a request for the making of an order under 10(1) below);>

Nicol Stephen

11 In section 1, page 2, line 26, at end insert—

< ( ) may provide for the delegation by the Transport Partnership of any of its functions to any committee established by the Partnership;>
Nicol Stephen

12 In section 1, page 2, line 32, at end insert—

<((  ) may provide for the payment by a Transport Partnership of—
(i) remuneration to its members or some of them;
(ii) reimbursement of its members’ expenses.>
(a) the respects in which transport in the region needs to be provided, developed or improved having regard to, among other things—

   (i) future needs including those occasioned by demographic and land use changes; and

   (ii) what can be done, taking account of cost, funding and practicability;

(b) meeting the needs of all inhabited places, in particular, those which the Partnership considers different from the remainder of the region by reason of their remoteness or the sparsity of their populations;

(c) meeting the need for efficient transport links between heavily populated places;

(d) how transport in the region will be provided, developed, improved and operated so as—

   (i) to enhance social and economic well-being;

   (ii) to promote public safety, including road safety and the safety of users of public transport;

   (iii) to be consistent with the principle of sustainable development and to conserve and enhance the environment;

   (iv) to promote social inclusion;

   (v) to encourage equal opportunities and, in particular, the observance of the equal opportunities requirements;

   (vi) to facilitate access to hospitals, clinics, surgeries and other places where a health service is provided;

   (vii) to integrate with transport elsewhere;

(e) the order of priority in which different elements of the provision, development and improvement of transport should be undertaken;

(f) how the Transport Partnership’s functions will be exercised so as to fulfil its transport strategy and, if the Partnership considers that the conferring of further functions is necessary for that purpose, what those functions are;

(g) how the Transport Partnership, so as to enable it to fulfil its transport strategy, will seek to influence its constituent councils or council in the performance of their functions relating to transport;

(h) the measuring and monitoring of the achievement of the strategy.>

Fergus Ewing

17A As an amendment to amendment 17, line 7, at end insert—

   <( ) identifying specific projects to be implemented in order to meet the objectives set out in paragraph (a), and setting an order of priority in which those projects should be implemented;>

Fergus Ewing

17B As an amendment to amendment 17, line 18, at end insert—
to promote a reduction in the use of private motor vehicles;

Fergus Ewing

17C As an amendment to amendment 17, line 18, at end insert—

   to promote bicycle use;

Mr David Davidson

17D As an amendment to amendment 17, line 23, at end insert <and to support or promote voluntary organisations providing, or helping to provide, access to such places;>

Fergus Ewing

17E As an amendment to amendment 17, line 23, at end insert—

   to promote wider public access to all forms of public transport provided within the region;

Fergus Ewing

17F As an amendment to amendment 17, line 26, at end insert (including a list, in order of priority, of specific projects to be undertaken)

Nicol Stephen

18 In section 5, page 5, line 4, at end insert—

   In subsection (2)(d)(v) above, “equal opportunities” and “equal opportunities requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46).

Section 6

Nicol Stephen

19 In section 6, page 5, line 8, leave out <and> and insert—

   each Health Board the area or part of the area of which falls within the Transport Partnership’s region (or, if that region is coterminous with a Health Board’s area, that Health Board); and

( )>
Nicol Stephen

20 In section 6, page 5, line 9, leave out from <within> to <above> in line 10 and insert—

<(  ) in the case of a Partnership created under section 1 above on or before 31 March 2006, by 31 March 2007;
(  ) in any other case, within 12 months of its creation,>

Nicol Stephen

21 In section 6, page 5, line 16, after <above> insert <in relation to the Partnership>

Section 8

Nicol Stephen

22 In section 8, page 6, line 12, after <Each> insert—

<(a) Health Board; and
(b)>

Nicol Stephen

23 In section 8, page 6, line 15, at end insert—

<(  ) The Scottish Ministers shall, as respects each Health Board, specify by order which Transport Partnership’s transport strategy is, or which Transport Partnerships’ transport strategies are, for the purposes of subsection (2) above, the strategy or strategies consistently with which the Board is to perform its functions.>

Nicol Stephen

24 In section 8, page 6, line 16, after <“specified”> insert <in relation to a public body mentioned in paragraph (b) of that subsection>

Section 9

Nicol Stephen

25 In section 9, page 6, line 24, leave out subsection (1A)

Section 9A

Nicol Stephen

26 Leave out section 9A
Section 10

Nicol Stephen

27 In section 10, page 7, line 11, leave out subsection (2A) and insert—

<(2A) The functions which may be the subject of an order under subsection (1) above may, without prejudice to the generality of that subsection, include any of the following—

(a) those conferred on local transport authorities by or under Part 2 of the Transport (Scotland) Act 2001 (asp 2) (bus services) and Part 3 of that Act (road user charging);

(b) those conferred by or under any enactment and which relate to the management and maintenance of a bridge constructed in pursuance of functions conferred by, or by an order made under or confirmed by, any enactment;

(c) those conferred on traffic authorities by sections 1 to 4 of the Road Traffic Regulation Act 1984 (c.27) (traffic regulation orders) and on local traffic authorities by section 19 of that Act (regulation of use of roads by public service vehicles);

(d) those conferred on councils by sections 63 and 64 of the Transport Act 1985 (c.67) (securing the provision of passenger transport and related consultation and publicity).

(2B) The following are examples of the functions which may be the subject of an order under this section—

(a) entering into quality partnership schemes;

(b) entering into quality contract schemes;

(c) entering into ticketing arrangements and ticketing schemes;

(d) providing information about bus services;

(e) installing bus lanes;

(f) providing subsidised bus services;

(g) making and implementing road user charging schemes;

(h) operating ferry services;

(i) managing tolled bridges;

(j) operating airports and air services;

(k) entering into public service contracts.>

Nicol Stephen

28 In section 10, page 7, line 37, leave out subsections (7) and (8)

Section 11

Nicol Stephen

29 In section 11, page 8, line 23, leave out from <progress> to end of line 24 and insert <the achievement of the strategy.>
In section 11, page 8, line 28, leave out subsections (3) and (4)

After section 11

Mr David Davidson

*71 After section 11, insert—

SECTION
TRANSPORT FUNCTIONS OF DESIGNATED PUBLIC AUTHORITIES

Application of transport functions to designated public authorities

(1) The Scottish Ministers may by order provide that, in a region where a Transport Partnership has not been created under section 1(1) above, sections 5, 6, 7, 8, 9 and 10 shall apply in respect of a designated public authority as they would in respect of a Transport Partnership.

(2) For the purposes of this section—

(a) a reference to a Transport Partnership’s constituent councils or council in any of the sections listed in subsection (1) above shall be construed as a reference to any council wholly or partly within the region, and

(b) the reference to two or more partnerships drawing up joint transport strategies in section 9 shall be construed as a reference to two or more designated authorities, or one or more designated authorities and one or more Transport Partnerships, drawing up joint transport strategies.

(3) In this section “designated public authority” means a Scottish public authority (within the meaning set out on section 126(1) of the Scotland Act 1998 (c.46)) exercising functions wholly or mainly relating to transport, (including any body to which functions, property, rights and liabilities have been transferred under section 85 of the Transport Act 1985 (c.67)), which has been designated in an order under subsection (1).

Section 12

Mr David Davidson

72 Leave out section 12

Section 13

Mr David Davidson

73 In section 13, page 9, line 23, leave out <, 10 or 12> and insert <or 10>

Mr David Davidson

74 In section 13, page 9, line 29, leave out <, 10 or 12> and insert <or 10>

Mr David Davidson

75 In section 13, page 9, line 34, leave out <, 10 or 12> and insert <or 10>
Nicol Stephen
31 In section 13, page 9, line 35, at end insert—
<(  ) For the purposes of subsection (2) above, a function is to be regarded as transferred irrespective of whether arrangements relating to it are made under section 12A above.>

Mr David Davidson
76 In section 13, page 10, line 1, leave out <, 10 or 12> and insert <or 10>

Section 17

Nicol Stephen
32 In section 17, page 12, line 29, at end insert—
<(  ) A road works authority proposing to execute works in any such road shall, not later than such time before the date proposed for the start of the works as may be prescribed, enter in the SRWR such information relating to that matter (including such information about the start of the works) as may be prescribed.>

Nicol Stephen
33 In section 17, page 12, line 35, at end insert—
<(2A) A local roads authority proposing to execute works in roads in pursuance of section 1 of the Roads (Scotland) Act 1984 (c.54) (management and maintenance of certain public roads) shall enter in the SRWR such information relating to that matter as may be prescribed.

(2B) If the Scottish Ministers (as roads authority) propose to execute works in roads under section 2 of that Act (management and maintenance of trunk, special and certain other public roads) they shall enter in the SRWR such information relating to that matter as may be prescribed.

(2C) On the completion of works of the kind referred to in subsection (2A) or (2B) the roads authority which executed them shall enter in the SRWR such information about their completion as may be prescribed.>

Nicol Stephen
34 In section 17, page 14, line 4, leave out from <or> to <authority> in line 5

Nicol Stephen
35 In section 17, page 14, line 15, leave out from <or> to <authority> in line 16

Nicol Stephen
36 In section 17, page 14, line 19, leave out <or road works authority’s>

Nicol Stephen
37 In section 17, page 14, line 20, leave out <or they have>
Section 18

Nicol Stephen
38  In section 18, page 14, line 38, leave out <(4)> and insert <(5)>

Nicol Stephen
39  In section 18, page 15, line 15, leave out <may> and insert <shall>

Nicol Stephen
40  In section 18, page 15, line 21, at end insert—

<(5) In subsection (4), for “may” there is substituted “shall”.>

Section 19

Nicol Stephen
41  In section 19, page 16, line 15, leave out <may> and insert <shall>

Section 20

Nicol Stephen
42  In section 20, page 16, line 24, leave out <“3 years”> and insert <“such period”; and

( ) at the end there is inserted “as may be prescribed.”>

Nicol Stephen
43  In section 20, page 16, line 26, at end insert <; and

( ) at the end there is inserted—

“(9) The Scottish Ministers may issue or approve for the purposes of this section a
code of practice giving practical guidance as to the performance by road works
authorities of their functions under this section; and in carrying out those
functions a road works authority shall have regard to the code of practice.”>

Section 25

Nicol Stephen
44  In section 25, page 19, line 32, leave out <112B(3)> and insert <112B(2A) to (3)>

Section 29

Nicol Stephen
45  In section 29, page 22, line 14, leave out <may> and insert <shall>
In section 29, page 23, leave out lines 9 to 11

In section 29, page 23, line 18, leave out <may> and insert <shall>

After section 36

After section 36, insert—

Consultation on regulations and codes of practice

After section 163 of the 1991 Act there is inserted the following section—

“163A Consultation of regulations and codes of practice

(1) Before—

(a) making, amending or revoking regulations under or for the purposes of any provision of this Part; or

(b) issuing, amending or revoking a code of practice under or for the purposes of any such provision or approving any such code of practice or its amendment or revocation,

the Scottish Ministers shall consult the persons and authorities set out in subsection (2).

(2) Those persons and authorities are such—

(a) persons considered by the Scottish Ministers to be representative of the interests of undertakers;

(b) road works authorities;

(c) other persons,

as the Scottish Ministers think appropriate.”

Before section 37

Duty of Scottish Executive transport agency to consider sustainable economic growth

Any transport agency established by the Scottish Ministers must have, as its primary consideration in delivering transport for Scotland, the promotion of sustainable economic growth.
After section 37

Fergus Ewing

50 After section 37, insert—

<Rail Passengers’ Committee for Scotland

(1) The Scottish Ministers shall establish a Rail Passengers’ Committee for Scotland (“the Committee”).

(2) The Committee shall consist of—

(a) a convener appointed by the Scottish Ministers; and

(b) such other members, being not less than ten nor more than twenty in number, as the Scottish Ministers may from time to time appoint after consultation with the convener.

(3) The convener and other members of the Committee established under subsection (1) above shall hold and vacate office in accordance with the terms of the instruments appointing them and shall, on ceasing to hold office, be eligible for re-appointment.

(4) The provisions of schedule (Rail Passengers’ Committee for Scotland) shall have effect.

(5) It shall be the duty of the Committee to investigate any matter which relates—

(a) to the provision of rail transport services; or

(b) to the provision of station services by any person in a case where the operator of the station in question is authorised by a station licence,

if the condition specified in subsection (6) below is satisfied in relation to the matter in question.

(6) The condition mentioned in subsection (5) above is satisfied if the matter—

(a) is the subject of a representation made to the Committee by a user or potential user of railway passenger services and does not appear to the Committee to be frivolous or vexatious;

(b) is referred to the Committee by the Scottish Ministers; or

(c) appears to the Committee to be one which it ought to investigate.

(7) If, on investigating any matter, the Committee considers it appropriate to do so, the Committee shall make representations to—

(a) the person providing the service in question; and

(b) in the case of a service provided under a franchise agreement, the franchisee,

about the matter, or any matter to which it relates or which appears to the Committee to be relevant to the subject of the matter investigated.

(8) Where the Committee—

(a) having made representations under subsection (7) above, is of the opinion that it is unable to achieve a satisfactory resolution of the matter by that means; or

(b) on investigating any matter, has reason to believe that the holder of a passenger licence or a station licence is contravening, or is likely to contravene, any condition of the licence,
it shall refer the matter (or, if it was referred to the Committee by the Scottish Ministers, refer it back) to the Scottish Ministers with a view to the Scottish Ministers exercising such of their powers as they consider appropriate in the circumstances of the case.

(9) Where the Committee investigates any matter pursuant to subsections (5) to (7) above, it may prepare a report of its findings and lay it before the Scottish Parliament.

(10) At the request of the Scottish Ministers, the Committee shall make a report to them on such matters relating to the quality of railway passenger services and station services as may be specified in the request.

(11) The Scottish Ministers may arrange for the publication of any report under subsection (10) above in such manner as they consider appropriate.

(12) If the Scottish Ministers so request, the Committee shall assist the Scottish Ministers, to such extent and in such respects as may be specified in the request, in ascertaining whether, in the case of any franchise agreement, the franchise operator is attaining the standards set for the provision of the franchised services.

(13) Where the Committee has investigated any matter pursuant to subsections (5) to (7) or subsection (10) above, it shall neither—

(a) include in any report or representations a proposal for any steps to be taken by any person in relation to that matter, nor

(b) refer the matter under subsection (8) above by reason only of the failure of any person to take any steps in relation to that matter,

unless, balancing the cost of taking those steps against the benefits which the Committee considers will be enjoyed by any person in consequence of the taking of those steps, the Committee is of the opinion, on the basis of the information available to it, that the expenditure involved represents good value for money.

(14) In this section—

“franchise agreement” means an agreement with the Scottish Ministers under which another party undertakes either—

(a) to provide; or

(b) to secure that a wholly owned subsidiary of that party provides, throughout the franchise term those services for the carriage of passengers by railway to which the agreement relates;

“passenger licence” means a licence authorising a person—

(a) to be the operator of a train being used on a network for the purpose of carrying passengers by railway; and

(b) to be the operator of a train being used on a network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in paragraph (a) above;

“railway passenger service” means any service for the carriage of passengers by railway, and includes bus substitution services required to be provided in place of any such services;

“station licence” means a licence authorising a person to be the operator of a station;

“station service” means any service which consists of, or is comprised in, the provision or operation of a station.
Section 37A

Fergus Ewing

51 In section 37A, page 30, line 6, at end insert—

<(7A) The Committee may require any person—

(a) to attend its proceedings for the purpose of giving evidence; or

(b) to produce documents in the person’s custody or under the person’s control,
concerning any matter the Committee is investigating by virtue of subsection (5).>

Fergus Ewing

3 In section 37A, page 30, line 8, leave out <(6)> and insert <(7) and, as it considers appropriate, used the power in subsection (7A)>

Fergus Ewing

4 In section 37A, page 30, line 9, after <that> insert <or those>

Fergus Ewing

78 In section 37A, page 30, line 41, at end insert—

<( ) The Committee established under section (Rail Passengers’ Committee for Scotland) shall cease to exist once a Committee has been established under this section.>

Nicol Stephen

52 Leave out section 37A and insert—

Public Transport Users’ Committee for Scotland

1 (1) The Scottish Ministers shall, by order, establish a body corporate to be known as the Public Transport Users’ Committee for Scotland (in this section, the “Committee”).

2 (2) An order under this section may include provision—

(a) about the constitution and membership of the Committee (including how members and office-holders are to be appointed);

(b) about the proceedings of the Committee;

(c) about its staff;

(d) about the discharge of its functions (including provision for the discharge of functions by sub-committees with members who are not all members of the Committee);

(e) about the making of reports by the Committee to the Scottish Ministers;

(f) about the making of payments by way of—

(i) allowances to office-holders, other members of the Committee and members of sub-committees who are not members of the Committee;

(ii) remuneration to its staff;
(iii) the meeting of the expenses of the persons mentioned in sub-paragraphs (i) and (ii) above;

(iv) pensions and other payments to or in respect of former staff of the Committee;

(g) about the keeping of accounts by the Committee and their audit and submission to the Scottish Ministers.

(3) The Scottish Ministers may—

(a) make payments to the Committee of such amounts, at such times and on such conditions (if any);

(b) make available to the Committee such staff, accommodation, furniture and equipment,
as they consider appropriate.

(4) 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 75 there is inserted the following entry—

“75A The Public Transport Users’ Committee for Scotland.”.

Fergus Ewing

52A As an amendment to amendment 52, line 33, at end insert—

<( ) The Committee established under section (Rail Passengers’ Committee for Scotland)
shall cease to exist once a Committee has been established under this section.>

After section 37A

Nicol Stephen

53 After section 37A, insert—

<Functions of the Committee

(1) The Committee may consider and make recommendations to the Scottish Ministers about any matter relating to public transport services in, from or to Scotland.

(2) The Committee shall consider and make recommendations about any other matter if asked to do so by the Scottish Ministers.

(3) The Scottish Ministers may, by order—

(a) confer further functions on the Committee;

(b) remove functions from the Committee;

(c) make changes to any function of the Committee;

(d) transfer any function of the Committee to another person (including the Scottish Ministers).

(4) An order under subsection (3)(a) or (c) above may confer a function or change a function only if the new function or, as the case may be, the function as changed relates to public transport services in, from or to Scotland or facilities for those services.>
(5) The Committee may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions.

(6) In this section, “public transport services” means all those services (including ferry services used also for carrying freight) on which members of the public rely for getting from place to place when not relying on facilities of their own but does not include—

(a) services provided under permits under section 19 of the Transport Act 1985 (c.67) (permits in relation to use of buses by educational and other bodies) other than services provided wholly or mainly to meet the needs of members of the public who are elderly or disabled;

(b) excursions or tours.

Nicol Stephen

54 After section 37A, insert—

<i>Guidance and direction to Committee</i>

The Committee shall—

(a) have regard to any written guidance issued to it by the Scottish Ministers;

(b) comply with any written direction given to it by them, as to how it is to discharge its functions.

Section 43

Mr David Davidson

80 In section 43, page 35, line 4, leave out <(2)> and insert <(3)>

Mr David Davidson

81 In section 43, page 35, line 5, leave out subsection (2)

Nicol Stephen

55 In section 43, page 35, line 6, leave out <for “and” there is substituted “or”> and insert <in paragraph (a)—

(a) after second “authority” there is inserted “(i)”; and

(b) at the end there is inserted “; or

(ii) any policies formulated by them from time to time in accordance with that strategy which, were the area to which those policies relate not in a passenger transport area, could have been formulated by them under that provision and which relate to matters which may be the subject matter of a quality partnership scheme or a quality contract scheme;”>

Section 44

Nicol Stephen

56 In section 44, page 36, line 17, leave out <or (7)>
Mr David Davidson

82 In section 44, page 36, line 17, leave out <, 12(1)>.

Section 46

Fergus Ewing

57 In section 46, page 36, line 33, leave out <and section 44 above> and insert <, section (Rail Passengers’ Committee for Scotland), section 44, and schedule (Rail Passengers’ Committee for Scotland)>.

Fergus Ewing

7 In section 46, page 36, line 33, after <above> insert <, and section 37A above, which comes into force 6 months after the date of enactment>.

Fergus Ewing

8 In section 46, page 36, line 33, after <above> insert <, and section 37A above, which comes into force on 1 April 2006>.

Schedule 1

Nicol Stephen

58 In schedule 1, page 38, line 14, at end insert—

<(4A) A Transport Partnership may develop its land for the purposes of its functions in such manner as it thinks fit.

6A(1) A Transport Partnership may—

(a) develop, for use by other persons, any of its land no longer required for the purposes of its functions; or

(b) develop for use wholly or partly by other persons any of its land the use of which for the purposes of its functions (not including those conferred by this paragraph) can be combined with that other use,

with a view to selling or otherwise disposing of the land (or any right or interest in or over it) after the development is carried out.

(2) A Transport Partnership may acquire land adjacent to its own for the purposes of developing it under paragraph (1) above together with its own.

6B In paragraphs 6 and 6A above, references to the functions of a Transport Partnership do not include those conferred by paragraph 6A above.

6C>

Nicol Stephen

59 In schedule 1, page 38, line 15, leave out from <shall> to end of line 17 and insert <may dispose of land; and section 74(2) to (2H) of the Local Government (Scotland) Act 1973 (c.65) (disposal for best consideration) applies in relation to a Transport Partnership as it applies in relation to a local authority.
The power to dispose of land under sub-paragraph (5) above includes power to dispose of a servitude or other right in or over the land by the creation of a new right.

Mr David Davidson

83 In schedule 1, page 38, leave out lines 28 to 33

Nicol Stephen

60 In schedule 1, page 40, leave out lines 30 to 33 and insert <persons appointed, as respects the Partnership, as observers under section 1(2)(g) above>

Schedule 2

Nicol Stephen

61 In schedule 2, page 41, line 36, at end insert—

<Freedom of information

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 97 there is inserted the following entry—

“97A The Scottish Road Works Commissioner.”.>

Schedule 5

Nicol Stephen

62 In schedule 5, page 47, line 20, at end insert—

<13 The Scottish Ministers may issue or approve for the purposes of this Schedule a code of practice giving guidance to road works authorities and their authorised officers as to the performance of their functions under this Schedule; and in performing those functions those authorities and officers shall have regard to that code of practice.>

Schedule 7

Nicol Stephen

63 In schedule 7, page 51, line 18, at end insert—

<13 The Scottish Ministers may issue or approve for the purposes of this Schedule a code of practice giving guidance to roads authorities and their authorised officers as to the performance of their functions under this Schedule; and in performing those functions those authorities and officers shall have regard to that code of practice.>
After schedule 7

Fergus Ewing

64 After schedule 7, insert—

<SCHEDULE
(introduced by section (Rail Passengers’ Committee for Scotland))

RAIL PASSENGERS’ COMMITTEE FOR SCOTLAND

Remuneration of, and allowances for, members

1 There shall be paid to the convener and other members of the Committee such remuneration, and such travelling and other allowances, as the Scottish Ministers may determine.

2 The Scottish Ministers shall make arrangements for the Committee to be provided with office accommodation and with such services as they consider appropriate to enable them to carry out their functions.

Proceedings

3 (1) Subject to the following provisions of this paragraph and paragraph 4 below, the Committee may regulate its own procedure, including quorum.

(2) The Committee shall meet when convened by the convener, and in any case shall meet at least twice a year.

(3) Without prejudice to the discretion of the convener to call a meeting whenever he or she sees fit, he or she shall call a meeting when required to do so by any three members of the Committee.

(4) Minutes shall be kept of the proceedings at every meeting of the Committee; and copies of those minutes shall be sent to the Scottish Ministers.

(5) The Committee shall have regard to any general recommendations which the Scottish Ministers may from time to time make with regard to any matter affecting the procedure or functions of the Committee.

(6) The validity of any proceedings of the Committee shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

Admission of public to meetings

4 (1) Subject to sub-paragraph (2) below, meetings of the Committee shall be open to the public.

(2) The public shall be excluded during any item of business where—

   (a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the Committee by the Scottish Ministers would be disclosed in breach of the obligation of confidence;

   (b) the Committee has resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded;

   (c) it is likely, were members of the public to be present during that item, that there would be disclosed to them—

      (i) any matter which relates to the affairs of an individual; or
(ii) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate;
where public disclosure of that matter would or might, in the opinion of the Committee, seriously and prejudicially affect the interests of that individual body;
(d) the circumstances are such as are specified in, or determined by resolution of the Committee in accordance with, an order made by the Scottish Ministers.

(3) The Committee shall give such notice—
(a) of any meeting of the Committee which is open to the public; and
(b) of the business to be taken at that meeting (other than items during which the public is to be excluded);
as it considers appropriate for the purpose of bringing the meeting to the attention of interested members of the public.

Sub-committees
5 (1) The Committee may—
(a) establish local and other sub-committees through which it may carry out such of its functions as it may determine;
(b) appoint such persons (including persons who are not members of the Committee) to be members of any such sub-committee as they may determine; and
(c) regulate the procedure of any such sub-committee.

(2) Persons appointed under sub-paragraph (1) above who are not members of the Committee may be reimbursed for their travelling expenses and such of their out-of-pocket expenses as do not relate to loss of remuneration.

Financial provisions
6 (1) There shall be paid by the Scottish Ministers—
(a) any sums payable to or in respect of any person under paragraph 1 or 5 above; and;
(b) any expenses incurred by the Committee (provided that the Committee complied with its financial duties in incurring them).

(2) The Scottish Ministers may determine the financial duties of the Committee; and different determinations may be made for different functions of the Committee.

(3) The Scottish Ministers shall give the Committee notice of every determination of its financial duties; and such a determination may—
(a) relate to a period beginning before, on or after the date on which it is made;
(b) contain supplementary provisions; and
(c) be varied by a subsequent determination.

Fergus Ewing
9 After schedule 7, insert—

<SCHEDULE
(introduced by section 37A)
Remuneration of, and allowances for, members

1. There shall be paid to the convener and other members of the Committee such remuneration, and such travelling and other allowances, as the Scottish Ministers may determine.

2. The Scottish Ministers shall make arrangements for the Committee to be provided with office accommodation and with such services as they consider appropriate to enable them to carry out their functions.

Proceedings

3. (1) Subject to the following provisions of this paragraph and paragraph 4 below, the Committee may regulate its own procedure, including quorum.

(2) The Committee shall meet when convened by the convener, and in any case shall meet at least twice a year.

(3) Without prejudice to the discretion of the convener to call a meeting whenever he or she sees fit, he or she shall call a meeting when required to do so by any three members of the Committee.

(4) Minutes shall be kept of the proceedings at every meeting of the Committee; and copies of those minutes shall be sent to the Scottish Ministers.

(5) The Committee shall have regard to any general recommendations which the Scottish Ministers may from time to time make with regard to any matter affecting the procedure or functions of the Committee.

(6) The validity of any proceedings of the Committee shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

Admission of public to meetings

4. (1) Subject to sub-paragraph (2) below, meetings of the Committee shall be open to the public.

(2) The public shall be excluded during any item of business where—

(a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the Committee by the Scottish Ministers would be disclosed in breach of the obligation of confidence;

(b) the Committee has resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded;

(c) it is likely, were members of the public to be present during that item, that there would be disclosed to them—

(i) any matter which relates to the affairs of an individual; or

(ii) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate;

where public disclosure of that matter would or might, in the opinion of the Committee, seriously and prejudicially affect the interests of that individual or body;

(d) the circumstances are such as are specified in, or determined by resolution of the Committee in accordance with, an order made by the Scottish Ministers.
(3) The Committee shall give such notice—
    (a) of any meeting of the Committee which is open to the public; and
    (b) of the business to be taken at that meeting (other than items during which the public is to be excluded);

as it considers appropriate for the purpose of bringing the meeting to the attention of interested members of the public.

Sub-committees

5 (1) The Committee may—
    (a) establish local and other sub-committees through which it may carry out such of its functions as it may determine;
    (b) appoint such persons (including persons who are not members of the Committee) to be members of any such sub-committee as they may determine; and
    (c) regulate the procedure of any such sub-committee.

(2) Persons appointed under sub-paragraph (1) above who are not members of the Committee may be reimbursed for their travelling expenses and such of their out-of-pocket expenses as do not relate to loss of remuneration.

Financial provisions

6 (1) There shall be paid by the Scottish Ministers—
    (a) any sums payable to or in respect of any person under paragraph 1 or 5 above; and
    (b) any expenses incurred by the Committee (provided that the Committee complied with its financial duties in incurring them).

(2) The Scottish Ministers may determine the financial duties of the Committee; and different determinations may be made for different functions of the Committee.

(3) The Scottish Ministers shall give the Committee notice of every determination of its financial duties; and such a determination may—
    (a) relate to a period beginning before, on or after the date on which it is made;
    (b) contain supplementary provisions; and
    (c) be varied by a subsequent determination.
Transport (Scotland) Bill

Groupings of Amendments for Stage 3

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must (subject to Rules 9.8.4A or 9.8.5A of Standing Orders) be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Non-establishment of RTPs and retention of transport functions**
65, 66, 67, 70, 71, 72, 73, 74, 75, 76, 82, 83

**Group 2: RTPs: membership, administration, and remuneration, etc**
68, 69, 10, 11, 12, 15, 60

**Group 3: Dissolution of RTPs: consultation**
13, 14

**Debate to end no later than 40 minutes after proceedings begin**

**Group 4: Regional transport strategies**

**Group 5: Procedure before and after drawing up of transport strategies**
20, 21

**Group 6: Joint transport strategies: duty to have regard to improving transport between cities**
25

**Debate to end no later than 1 hour 10 minutes after proceedings begin**

**Group 7: Transfer of transport functions to RTPs**
27, 28, 56

**Group 8: Transfer of staff, property, rights and liabilities**
31

**Group 9: Duty to enter information in Scottish Roads Works Register**
32, 33, 34, 35, 36, 37, 44

**Group 10: Road works: regulations and codes of practice**
38, 39, 40, 41, 43, 45, 46, 47, 48

**Group 11: Restriction on works following substantial road works**
42

**Debate to end no later than 1 hour 40 minutes after proceedings begin**
Group 12: Duty of Scottish Executive transport agency to consider sustainable economic growth
49

Group 13: Passenger representation
50, 51, 3, 4, 78, 52, 52A, 53, 54, 57, 7, 8, 64, 9

Group 14: Bus services
80, 81, 55

Group 15: Use of land by RTPs
58, 59

Group 16: Application of Freedom of Information Act to Road Works Commissioner
61

Group 17: Road works: guidance on issuing fixed penalties
62, 63

Debate to end no later than 2 hours 25 minutes after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

**Business Motion:** Ms Margaret Curran, on behalf of the Parliamentary Bureau, moved S2M-3059—That the Parliament agrees that, during Stage 3 of the Transport (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated (each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended or otherwise not in progress):

- Groups 1 to 3 – 40 minutes
- Groups 4 to 6 – 1 hour and 10 minutes
- Groups 7 to 11 – 1 hour and 40 minutes
- Groups 12 to 17 – 2 hours and 25 minutes

The motion was agreed to.

**Transport (Scotland) Bill – Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to without division: 68, 69, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 52, 53, 54, 58, 59, 60, 61, 62 and 63

The following amendments were agreed to (by division)—

- 27 (For 93, Against 14, Abstentions 0)
- 55 (For 95, Against 18, Abstentions 0)
- 56 (For 96, Against 16, Abstentions 1)

The following amendments were disagreed to (by division)—

- 65 (For 14, Against 89, Abstentions 0)
- 17A (For 29, Against 80, Abstentions 0)
- 17B (For 30, Against 79, Abstentions 0)
- 17C (For 32, Against 80, Abstentions 0)
- 49 (For 21, Against 79, Abstentions 7)
- 50 (For 50, Against 64, Abstentions 1)
- 80 (For 18, Against 94, Abstentions 0)
- 81 (For 17, Against 92, Abstentions 0)
- 8 (For 49, Against 63, Abstentions 1)
Amendments 66, 67, 70, 17D, 17E, 17F, 17G, 71, 72, 73, 74, 75, 76, 51, 3, 4, 78, 52A, 82, 57, 7, 83, 64 and 9 were not moved.

**Transport (Scotland) Bill – Stage 3:** The Deputy Minister for Finance and Public Service Reform (Tavish Scott) moved S2M-3039—That the Parliament agrees that the Transport (Scotland) Bill be passed.

After debate, the motion was agreed to ((DT) by division: For 98, Against 17, Abstentions 0).
Transport (Scotland) Bill: Stage 3

14:36

The Presiding Officer (Mr George Reid): The next item of business is stage 3 of the Transport (Scotland) Bill. I make the usual announcement about the procedures that will be followed. We will first debate amendments to the bill and thereafter debate the motion to pass the bill.

For stage 3, members should have a copy of the bill—that is, SP bill 28, as amended at stage 2—the marshalled list, which contains all the amendments that I have selected for debate, and the groupings, which I have agreed. An extended voting period of two minutes will be allowed for the first division. Thereafter, a voting period of one minute will be allowed for the first division after debate on a group. All other divisions will last 30 seconds.

Section 1—Establishment of regional Transport Partnerships

The Presiding Officer: Group 1 concerns non-establishment of regional transport partnerships and retention of transport functions. Amendment 65, in the name of David Davidson, is grouped with amendments 66, 67, 70 to 76, 82 and 83.

Mr David Davidson (North East Scotland) (Con): I apologise to members who cannot hear me because of my bad throat.

Amendment 65 would make the power to establish regional transport partnerships permissive rather than obligatory. More important, it would allow existing models to remain intact if they are delivering. It is entirely wrong to force local authorities to form statutory partnerships: they are sick and tired of being told what to do by the Executive, so rather than tell them that they shall join regional transport partnerships and that is that, we should give councils the option of joining RTPs if they wish to do so and we should allow them to choose which one to join.

Some councils might prefer to stick with the existing voluntary arrangements—the north-east Scotland transport partnership in my region, which is also Nicol Stephen’s region, works extremely well—but others might decide to form a unitary RTP. Therefore, I ask the minister to confirm that he will allow any council that requests unitary RTP status to be granted it, as was sensibly done for Dumfries and Galloway Council. Other local authorities might decide that they would rather do without the increased bureaucracy that will be involved in setting up an RTP, and prefer to sit it out.
If existing voluntary or statutory arrangements work, it is also wrong for the Executive to impose a top-down model in a bid to create a uniform structure throughout Scotland. The case of Strathclyde Passenger Transport deserves particular mention. As my Conservative colleagues argued at stage 1, we do not need major structural changes to transport delivery in the west of Scotland because SPT functions perfectly well as it is. As SPT’s chair Alistair Watson asked, why commit time and resources to reinventing the wheel? Amendment 71 would specifically allow Strathclyde Passenger Transport to continue operations in its current form without the disruption of being morphed into an RTP. If the Executive refuses to acknowledge the logic of my argument, I seek an assurance from the minister that the well-recognised SPT name and branding—replacement of which would be hugely expensive and a retrograde step—will be retained for the new partnership.

Arguably, the most disturbing section of the bill is section 12, which seeks to strip SPT of its rail powers, which have proved to be an unprecedented success. Amendments 72 to 76, plus amendments 82 and 83, seek to address that by removing section 12 altogether.

During stage 2, the Minister for Transport was at pains to emphasise that, as amended, section 12 would apply only to the rail powers of SPT, but those rail powers are the subject of much concern. The minister should remember that SPT provides almost 70 per cent of ScotRail services with just 55 per cent of the ScotRail subsidy, and that residents of the west of Scotland make more use of rail journeys per head than do people in any other part of the United Kingdom apart from London. Clearly, the system is doing its job, but the minister has been less than clear about what will happen to SPT’s rail powers. At stage 2, he said that SPT’s successor will have

“a continuing role in the development, management and monitoring of rail services.”—[Official Report, Local Government and Transport Committee, 10 May 2005; c 2486-87]

The bill will strip away those powers, but also appears to give them back so that they can be administered on behalf of the new national transport agency. That sounds like a recipe for disaster, it is some of the amendments that Mr Davidson has lodged, which would result in a disjointed and unintegrated patchwork hotch-potch of different authorities acting in different ways across Scotland.

At best, the changes are unnecessary and disruptive. At worst, they threaten to undo entirely SPT’s hard-won gains for rail commuters in the Strathclyde area in recent years. It is not Parliament’s job to pick apart a successful model of delivery merely in the interests of administrative uniformity. I urge members, particularly those who represent constituencies in the west of Scotland, to support my amendments.

I move amendment 65.

Bristow Muldoon (Livingston) (Lab): David Davidson’s amendments seek to undermine the bill completely. The establishment of regional transport partnerships has come before Parliament from the Labour manifesto of 2003. The issue was debated fully in Parliament months ago and David Mundell and his colleagues were roundly defeated in that debate. When the Local Government and Transport Committee was considering the establishment of regional transport partnerships, Mr Mundell—Mr Davidson’s predecessor—was the sole member of the committee to dissent completely from the intention to introduce RTPs. The other members of the committee, including SNP members who had expressed reservations, argued that if we are to have regional transport partnerships, they should be strong partnerships.

Mr Davidson’s argument becomes incoherent. He praises SPT—quite rightly—for its successes over the years in delivering transport improvements in the west of Scotland, but he still wants weak partnerships for other parts of Scotland, instead of sharing the strengths and record of SPT throughout the country. On that basis, I encourage members to reject every single one of Mr Davidson’s amendments, so that we can build on the success that SPT has had in the west of Scotland through delivery of strong regional partnerships throughout Scotland.

Bruce Crawford (Mid Scotland and Fife) (SNP): I agree with some of what Bristow Muldoon said. I think that David Davidson described the bill as a recipe for disaster. If I have ever seen a recipe for disaster, it is some of the amendments that Mr Davidson has lodged, which would result in a disjointed and unintegrated patchwork hotch-potch of different authorities acting in different ways across Scotland.

Mr Davidson: Does the SNP support the Executive in the view that it knows best and that we must have a centralised system in Scotland, which the Executive will decide on?

Bruce Crawford: I will come to the Executive’s position when we talk about the powers of RTPs. There can be improvements in that area, as have been proposed by Fergus Ewing.

On David Davidson’s amendments, there was in respect of Dumfries and Galloway a well-argued case that rested on geographical circumstances and which suggested that that authority should have its own powers. However, no other part of Scotland emerged in that light, as the Conservatives suggest might happen in the future.
In effect, the Conservatives’ proposals would deliver a situation in which there was no continuity throughout Scotland in any way, shape or form. Major projects would not be deliverable and there would be a disjointed and unintegrated system. That would be madness and would reflect much of what we have heard from the Conservatives today.

14:45

Margaret Smith (Edinburgh West) (LD): There is no doubt that a major strength of the Scottish Parliament is the co-operative and constructive way in which its committees tend to work. The bill reflects that, in that we now have a better bill than we had at the beginning of the process. The amendments in David Davidson’s name are therefore disappointing—they are essentially wrecking amendments.

The bill seeks to establish throughout the country a consistent and coherent system of regional transport partnerships, under arrangements that are similar to those for which Mr Davidson praises SPT. The RTPs are intended to address issues that we want to deal with, such as integration of transport systems, but David Davidson’s amendments would prevent that from happening. For that reason, the Liberal Democrats will oppose them.

Paul Martin (Glasgow Springburn) (Lab): I will oppose the amendments for reasons that are similar to those which Bristow Muldoon gave. It is all well and good for David Davidson to support Strathclyde Passenger Transport, but it is a pity that such support was not given in the mid-1990s. The amendments from David Davidson were a surprise. The Executive and the Local Government and Transport Committee worked well and hard together on the bill through stages 1 and 2. Difficult issues were identified, and resolved in virtually every case, and the bill that is now before Parliament commands the broad support of the committee and the Executive.

Amendments are to be worked through this afternoon, but they will largely make refinements or respond to points that were made at stage 2. None of David Davidson’s amendments was lodged or suggested at stage 2 and none has had the benefit of analysis or consideration by the committee. His amendments have two main objectives. The first is to remove the requirement on ministers to create regional transport partnerships and instead to allow them to establish in some areas hybrid public bodies. The second objective is to remove the provision that will enable Scottish ministers to transfer SPT’s rail powers to ministers.

Now is not the time to shrink from a bold step forward in delivery of better transport. I urge David Davidson to withdraw amendment 65 and not to move his other amendments.

Mr Davidson: We have heard all that time and again. To be fair, I was not involved in the committee at the beginning of stage 2; I came in late to replace my colleague David Mundell. However, I had long conversations with him and what he was concerned about at stage 1 is manifesting itself again this afternoon: everything is about central control and a one-size-fits-all prescriptive approach to running Scotland, although organisations such as NESTRANS in the minister’s and my region were formed voluntarily. If it is not broken, why fix it?

The Executive constantly drives for a one-size-fits-all approach. We have seen that in the health service, where it is patently not appropriate, and we see it again today. I intend to press amendment 65.

The Presiding Officer: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (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)
Johnstone, Alex (North East Scotland) (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)
Tosh, Murray (West of Scotland) (Con)

Against
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eddie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Locharber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (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)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
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)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Jen Stewart (West of Scotland) (SNP)
Mcaveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
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)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatle, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Swimney, Mr John (North Tayside) (SNP)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 14, Against 89, Abstentions 0.
Amendment 65 disagreed to.
Amendments 66 and 67 not moved.

The Presiding Officer: Group 2 is headed “RTPs: membership, administration, and remuneration, etc.” Amendment 68 is grouped with amendments 69, 10 to 12, 15 and 60.

Pauline McNeill (Glasgow Kelvin) (Lab): I will speak first to amendment 69 because it is the reason for amendment 69.

Given the need for fair representation of all local authorities on the new regional transport partnerships, there might be a case for larger local authorities to have five seats rather than the four that the bill currently provides for. Amendment 69 would not change the levels of representation but would simply allow a debate on such issues to take place.

Having previously expressed concerns about the position of SPT in the west of Scotland, I want to ensure that the bill as it will be enacted will work. Therefore, I want to ensure that my local authority—Glasgow City Council—has appropriate representation on the new RTP. Local authorities will have their representation on SPT reduced because of the requirement for fewer members on the new transport bodies, but the reduction needs to be proportionate. Agreement to amendment 69 would not per se change the current weighting of local authorities, but if the maximum number of council members is kept at four, it will never be able to be increased without primary legislation.
Amendment 69 would simply delete “four” and insert “five”.

Amendment 68 is designed to ensure that, although the representation of individual local authorities might be increased, the maximum number of local authority members would never go above 20. That would be in keeping with the desire to keep the regional transport partnerships small.

I will support amendment 10 in the name of Nicol Stephen. Although I strongly support the committee’s decision at stage 2 to remove full voting rights from private sector representatives, I believe that amendment 10 will achieve the right balance by allowing partnership authorities to decide on which matters non-elected members should be able to vote.

I believe that SPT is an organisation that has worked well and that it is broadly the right model to be followed. I do not want to see a huge departure from its structure, so I support the amendments that the minister has lodged because they will make the transition much easier.

I move amendment 68.

Nicol Stephen: I start by speaking to Executive amendments 10 and 15. At stage 2, the Local Government and Transport Committee voted to remove voting rights from external members of RTPs. I acknowledge the concerns of committee members about the role of non-councillor members, which were shared by a number of witnesses who gave evidence at stage 1. Some balancing arguments were made by others—I know that in some parts of the country councils and existing voluntary partnerships very much want outside, non-councillor members to continue to be able to vote.

I do not expect many issues to go to a vote in the RTPs. They will work well only if there is a partnership approach and broad consensus. However, having considered the issue further and having reflected on the committee’s concerns, I believe that amendments 10 and 15 are appropriate. The intention behind the amendments is that regional transport partnerships will be permitted to allow outside representatives serving on the partnerships to be full and equal voting members when councillor members want that. There is one exception, which reflects a concern of all members—I refer to situations in which a regional transport partnership is deciding on requisition of funds from local councils and on requests for transfer of new functions to RTPs from councils, which is covered by Executive amendment 10.

I will support Pauline McNeill’s amendment 68, which would limit the number of councillor members of any RTP to a manageable figure. I agree that partnerships should be effective and focused on decision making and that they should have a relatively small number of members to help them to achieve that. The intention that was set out in the draft order that was submitted to the committee ahead of stage 2 was that the largest partnership—for the west of Scotland—should have 17 councillor members. In broad terms, that number is consistent with amendment 68, which would cap the number of councillor members of any RTP at a maximum of 20.

Amendment 69 would increase from four to five the maximum number of councillor members that would be appointed by each council. As Pauline McNeill correctly said, the amendment would not change the allocation that has already been suggested. I had some reservations about making the change. Discussions have already taken place between councils on the structure of the new regional transport partnerships in their regions, so I did not want to cause uncertainty or delay in the creation of RTPs and shadow RTPs, which I encourage. However, the prospect of one council having five votes rather than four—which will not be universally popular, especially with some of the smaller councils—offers a bit more flexibility in the allocation of councillor members and votes. On balance, the Executive supports amendment 69.

Amendment 11 responds to an amendment that Paul Martin lodged at stage 2. I was grateful to Paul Martin for not moving the amendment and thereby allowing the Executive time to consider issues further. First, he wanted the order that will establish RTPs to empower the partnerships to establish committees. I assure him today that they will be able to do so without provision for that having to be made in primary legislation. That provision will be included in the order on regional transport partnerships, which will be laid before Parliament in due course.

Secondly, Paul Martin wanted regional transport partnerships to be able to devolve certain decisions to committees or their convener. Amendment 11 provides for decisions to be devolved to committees. The provision does not extend to committee conveners or chairs, because I do not regard delegation to one individual as being good practice. I accept that there may be occasions when a decision needs to be taken quickly—[Interuption.] However, I think that we can put in place pragmatic arrangements that will avoid one RTP member’s being made responsible for a decision that would bind the rest.

Amendment 12 is a response to another amendment that Paul Martin lodged at stage 2. I am grateful to Paul Martin not only for raising the issue of remuneration of RTP members, but for giving the Executive the chance to come up with a solution. As I explained at stage 2, the review of
councillor remuneration post 2007 is on-going. As none of us can predict its outcome, I am keen that we have flexibility to ensure that the RTPs have the necessary powers when the need arises. For the sake of simplicity, I have added the provisions on expenses that were agreed to at stage 2. Amendment 60 is consequential and will delete that provision from its position in schedule 1.

15:00

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I point out to the minister that, in the last line of amendment 10, the word “section” appears to have been omitted.

Paul Martin: On amendment 10, the minister knows that I successfully raised concerns at stage 2 in the form of an amendment about voting rights of non-elected members of RTPs. I felt strongly that such members should have the same voting capacity because I did not see why they should be prevented from voting on financial matters, but could take part in other aspects of the regional transport partnership. My colleague Richard Baker made a powerful case that the partnership with non-elected members works successfully in the regional transport partnership in his area.

I am satisfied that it will be up to the elected members whether they want that power to be exerted. I will support amendment 10 on that basis.

Mr Davidson: I raised the subject that is now in Nicol Stephen’s amendment 10 several times in committee. All of us in the north-east have received deputations, e-mails and letters from NESTRANS, which is concerned that its basis as a transport partnership would be lost and that some people in the proposed new RTPs would be able to vote on anything because it is a proper partnership.

I was asked by NESTRANS to have available an amendment to lodge should the minister not lodge his late and welcome amendment 10. I am surprised that he did not lodge the amendment earlier because as far as we are concerned, it is absolutely correct that transport partnerships should decide on their own voting arrangements.

I understand where Pauline McNeill is coming from with amendments 68 and 69. However, her concerns are covered by the idea that if a transport partnership were left to its own devices, it would come to a suitable arrangement that would match needs in its locality. I would be worried if some partnerships had as many as 20 councillor members because that would lead inevitably to a whole new bureaucratic system of sub-committees that tried to examine different matters at the same time, which would be a problem. However, I am content to accept Pauline McNeill’s arguments. The minister obviously accepts them, too.

Bruce Crawford: First, I apologise to the minister for kicking over my glass as he was speaking. I am just glad that we are not discussing the Licensing (Scotland) Bill or people might have thought that I had been somewhere else previously.

I am glad that the minister accepts amendment 69 in the name of Pauline McNeill. If we look forward to the 2007 local government elections under the single transferable vote system that was announced by the new Minister for Transport, judging by the circumstances that have been outlined by Professor Curtice, it is likely that five councils in Scotland will remain under overall Labour control. In those circumstances, it is likely that councils will take much more of a rainbow approach to ruling councils and to membership make-up. An increase in the number of members of an RTP to five will begin to take cognisance of that inevitable change from 2007. The amendment is worth while in that respect alone.

On amendment 10, the committee thought at stage 1 that it would be inappropriate for non-council members of RTPs to vote. However, given the check mechanism that will be included by the minister’s party in amendment 10, and the argument that has been made in other parts of Scotland that that might be a positive way forward, we are prepared to accept the amendment.

Bristow Muldoon: Amendments 68 and 69 sensibly seek to give the Executive greater flexibility by acknowledging that some larger local authorities will not only be responsible for bringing to the table much of the funds for regional transport partnerships but, as in Glasgow, will act as a focal point for much of the region’s transport network. I welcome the proposal to give such authorities more recognition in the RTPs’ voting structure. In amendment 68, Pauline McNeill has included the backstop of stipulating the maximum number of councillors on RTPs to ensure that we do not end up with so many people on them that they become unworkable. I welcome that proposal, and the fact that the minister supports those amendments.

On whether non-councillor members should be able to vote, councillor members are different from non-councillor members because they are elected by the people in the area and come from the appropriate local authorities. Moreover, they are responsible for public resources. The bill already contains a protection in that only councillors will be able to vote on the requisition of local authority funds. However, amendment 10, which seeks to allow each partnership to decide whether to
extend the voting powers of non-councillor members, is acceptable because it comes with the proviso that such powers will not apply to requisition of local authority resources. I feel that it would be inappropriate for a non-elected person to exercise such a power.

Brian Adam (Aberdeen North) (SNP): Over the past few weeks the existing voluntary partnership NESTRANS has lobbied members strenuously to give non-councillor members voting rights. I understand the committee’s concerns about that and feel that amendment 10, in the name of the minister, meets the general concern that people who are not elected should not have the right to disburse public money, which is, after all, appropriately the function of elected members. I am sure that other members will have received representations from the private sector members of the north-east voluntary partnership to the effect that, although they value the opportunity to serve, they feel that their role would be devalued if their position in the new partnership were different from their current one. They are content—in fact, delighted—with amendment 10. I commend the minister for lodging it, and committee members for taking the view that it should be accepted.

Nicol Stephen: I have very little to add, except to say that officials have assured me that the drafting error that has been drawn to my attention can be tidied up. I thank Fergus Ewing for pointing out the error.

Pauline McNeill: I have nothing further to say, other than to welcome the minister’s acceptance of amendments 68 and 69.

Amendment 68 agreed to.

Amendment 69 moved—[Pauline McNeill]—and agreed to.

Amendments 10 to 12 moved—[Nicol Stephen]—and agreed to.

Amendment 70 not moved.

Section 2—Dissolution of RTPs

The Deputy Presiding Officer (Trish Godman): Group 3 concerns consultation on the dissolution of RTPs. Amendment 13, in the name of the minister, is grouped with amendment 14.

The Deputy Minister for Finance and Public Service Reform (Tavish Scott): As Mr Crawford has already caused some tidying up to be done in the chamber this afternoon, amendments 13 and 14 will, largely, tidy up certain matters.

Section 2 already provides for dissolution of RTPs, but amendment 14 seeks to extend the duty on ministers to consult before dissolving an RTP or RTPs to cover

“such other persons as the Scottish Ministers think fit”.

That provision will ensure that, in the future, ministers who wish to dissolve one or more partnerships will not be restricted in who they can consult. The repositioning of the material on the duty to consult is proposed to make it clearer to the reader that the duty applies to orders that will be made under section 2(2A) as well as to those that will be made under section 2(1).

I move amendment 13.

Amendment 13 agreed to.

Amendment 14 moved—[Tavish Scott]—and agreed to.

Section 3—HRA action plans

Amendment 15 moved—[Tavish Scott]—and agreed to.

The Deputy Presiding Officer: We move now to the fourth group of amendments, on regional transport strategies. Amendment 16, in the name of the minister, is grouped with amendments 17, 17A, 17B, 17C, 17D, 17E, 17F, 17G, 18, 19, 22, 23, 24, 26, 29 and 30. The amendments to amendment 17 will be disposed of before the question on amendment 17 itself is put.

Nicol Stephen: I will be pleased to move amendment 16 and to speak on this important issue. As members can see from the complexity of this group of amendments, there has been much debate on the issue. Much hard work has been done since stage 2.

At stage 2, the Local Government and Transport Committee agreed to a number of amendments to section 5 from Sylvia Jackson, Paul Martin and Michael McMahon that sought to give greater clarity on the matters that a regional transport strategy should address. I welcomed the intention behind the amendments and agreed to come back with proposals for Executive amendments. As a consequence, we are having to reverse out the amendments that were agreed at stage 2 and to bring back in Executive amendments. I hope that the Executive amendments reflect the wishes and intentions of the committee.

In response to an amendment from Fergus Ewing, I said that I thought that RTPs should be given a general power to give grants. That is now proposed in amendment 16, which will give a power to make loans.

Executive amendment 17 is a revision of section 5(2) that seeks to capture the intent of the amendments that the committee agreed to. It takes the opportunity also to revise the Executive’s proposals and to present the section in what I hope is a clearer and more coherent way. A lot of hard work has gone into drafting amendment 17 and I thank the bill team, Executive transport officials, the lawyers and the legal draftsmen.
Proposed new section 5(2)(d)(v) will introduce a specific requirement for regional transport strategies to encourage equal opportunities. That captures the intention of a stage 2 amendment from Paul Martin. Two consequential amendments flow from that: amendment 18 will ensure that equal opportunities are defined; and amendment 30 will delete the existing provision in section 11.

Proposed new section 5(2)(d)(vi) will introduce a specific requirement for regional transport strategies to make provision for improved access to health care facilities. During the debate in committee, everyone was struck by the strong feelings on that subject, which led to the adoption of an amendment that now appears in the bill as section 9A. I have considered carefully the implications of section 9A and have discussed the issues with the Minister for Health and Community Care. We have identified a number of existing and proposed legislative and non-legislative measures that should achieve the committee's objectives.

Participation in community planning applies to health boards and will apply to RTPs. National health service boards are under a statutory duty to consult on proposals for service change. The recently established Scottish Health Council is responsible for quality assuring and monitoring such consultation. The Scottish Executive requires health boards to co-operate with local authorities to draw up travel strategies to ensure that NHS facilities are accessible by public transport, by walking or by cycling.

Executive guidance is being amended to ensure that health boards undertake a full transport impact assessment in developing new buildings or major service changes. That will include clarification. If a health board is considering operational changes that will impact on other parts of the public sector—in this instance, transport authorities—it must discuss them with the relevant authorities and operators in advance of a decision being taken.

15:15

The Executive's statutory guidance to the RTPs on drawing up the regional transport strategies will include a section on how the partnerships should address the issue of serving health facilities in their regions. We have also decided to strengthen the relationship between transport and health through three further changes that will improve on and replace the provisions in section 9A, which amendment 26 will delete. As I said, amendment 17 will require the regional transport strategies to cover access to health care facilities. Amendment 19 will make health boards statutory consultees in the preparation of regional transport strategies. Amendments 22, 23 and 24 will oblige health boards, when exercising any of their functions that impact on or relate to transport, to act, as far as possible, consistently with the regional transport strategy.

Those are all important developments since stage 2. Taken together, those existing and proposed statutory and non-statutory measures represent a substantial package of policy levers that will require RTPs and health boards to work together to address issues of access to health care. Amendment 29 is consequential and is needed as a result of the revision of section 5(2).

I will comment briefly on Fergus Ewing's and David Davidson's amendments, although I have longer notes on them. I am happy to take on board the intention behind the amendments and to capture that in the guidance, but it would not be appropriate to have the amendments in the bill. Therefore, I oppose the amendments—I hope that Fergus Ewing and David Davidson will accept that approach in the spirit in which it is offered.

I move amendment 16.

Fergus Ewing: My colleague Bruce Crawford will deal with the substance of amendments 17B and 17C and I will address the remaining topics. We all agree that the voluntary partnerships throughout Scotland have done excellent work. In my area, the Highlands and Islands transport partnership has shown that it can work cohesively and well while covering the largest geographical territory in Scotland. However, the SNP believes that we need to go a step further—if we are to have regional transport partnerships, they should have strong powers. I was pleased to work with other members of the Local Government and Transport Committee on the issue and I support the recommendation in paragraph 9 of the committee's report.

We broadly welcome the minister's amendment 17, which is the most important amendment with which we will deal today. The purpose of giving the RTPs a duty to come up with a strategy is to give them not simply power and influence, but responsibility. If the RTPs are to take the politics out of transport, they will have to take some rather hard decisions. That might be why proposed new section 5(2)(a)(ii) states that the RTPs must have regard to "what can be done, taking account of cost, funding and practicability".

We support amendment 17, although it is unfortunate that the provisions were not in the bill originally. If they had been, we would have had a coherent debate on the provisions now. However, as someone who always looks on the brighter side, I welcome the late arrival of amendment 17 and will offer suggested improvements to it, which will add to it. There is one fundamental issue that I will come to last.
Under amendment 17E, the regional transport partnerships would have to have regard to promoting
“wider public access to all forms of public transport provided within the region”.

I am surprised that there is no specific reference to public transport in amendment 17. Of course, there is a reference to
“the safety of users of public transport”, but that is only one aspect of public transport. Given that there is a lack of bus services, particularly in rural areas, I would like the RTPs to have a duty under the bill to promote wider public access to public transport.

I know that members of the committee will be with me in spirit; I hope that they are also with me in substance. I cannot see what the objection would be to including amendment 17E in the bill. The minister says that he has longer speaking notes—no doubt we will hear from them later. However, in the absence of any reason why we should not have a specific reference to wider access to public transport, it seems very surprising indeed that the provisions that amendment 17E would introduce were not included in amendment 17.

On amendment 17G, it is important that the regional transport partnerships make specific provision for each mode of transport. Amendment 17G is a rewording of an amendment that I lodged at stage 2. The regional transport partnerships’ work needs to be comprehensive and must cover all modes of transport. I did not list the modes of transport on this occasion, because I think that I might have omitted some rather obscure ones in my stage 2 amendment—unicycle, hansom cab, that sort of thing—but I hope that the RTPs will have that specific duty.

The main argument that I will advance today is that, for the RTPs to work, they should not just provide a strategy as specified in section 5, as it will be amended by amendment 17. To fulfil the provisions of proposed new subsection (2)(e), they must work out a scheme of priorities. They cannot just produce a wish list of transport schemes that they might want to see in place. The regional transport partnerships’ work needs to be comprehensive and must cover all modes of transport. I did not list the modes of transport on this occasion, because I think that I might have omitted some rather obscure ones in my stage 2 amendment—unicycle, hansom cab, that sort of thing—but I hope that the RTPs will have that specific duty.

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If the RTPs do come up with a list of priorities, that will have a number of benefits. First, instead of having futile debates about everything being impossible when we know that it is not, the public will be asked to focus on what can be achieved, Secondly, it will be of huge benefit to central Government for each region to have a clearly stated list of priorities. An RTP would not be bound by that list, but it would be strongly persuasive. Thirdly, the regions that do their job properly and set out a comprehensive list of priorities will be in a strong position to argue their case when it comes to funding.

If the minister does not accept my amendments, as he has indicated is the case, I hope that he will tell Parliament why he feels that they are a bad idea. Proposed new subsection (2)(e) in amendment 17 will not require the RTPs to take the really tough action that Scotland needs.

Mr Davidson: My chief concern about the bill as a whole is its lack of reference to existing transport arrangements that are working well, such as the excellent work that is being done by a network of voluntary transport partnerships. My amendment 17D acknowledges the contribution of the voluntary organisations that are actively engaged in facilitating access to health services, particularly in rural communities across Scotland, such as the many dial-a-bus schemes and the St John Ambulance service. If we fail to acknowledge specifically in the bill the role of those bodies that are already engaged in aspects of transport delivery, there is a danger that they will feel threatened by its provisions. Nowhere is that more important than in the vital area of hospital transport. Therefore, I urge members to support amendment 17D.

I cite the example of the Buchan dial-a-bus service, which is based in Mintlaw. It is run by a voluntary sector organisation and provides hospital transport, not just for out-patient clinics, at times when the NHS system does not deliver the transport service that people need. It used to be partly funded by the health board, but the health board no longer gives it funding, so the organisation is finding it difficult to guarantee the service’s continuation. While the minister has referred to giving grants to organisations, I would like to see the bill, in addition to what the minister has laid out in amendment 17, mention the voluntary organisations that deliver such services.

I welcome some of the minister’s comments. I have little doubt that his guidance notes will cover all that Fergus Ewing has talked about. I find some of Fergus Ewing’s amendments unnecessary and overly prescriptive, but I presume that the minister is giving us the hint that whatever is good in them will be dealt with in guidance. I ask the minister and the Parliament to put the wonderful role of the voluntary sector in the bill.
The Deputy Presiding Officer: A considerable number of back benchers want to speak on this group. I give them each a minute and a half at the most.

Paul Martin: All too often a committee can be accused of being critical of a bill that is put before it. On this occasion we were critical, but I welcome the fact that the minister has come back with what I think is a very constructive and comprehensive amendment to the bill to deal with the points that our stage 2 amendments addressed.

Amendment 17 is comprehensive and will deliver much more effective transport services to health facilities and the other facilities that are mentioned. It is important that we ensure that those strategies are enforced and are not seen as welcome additions to bookcases in RTP headquarters throughout Scotland.

Bruce Crawford: There has been a rise in car use of approximately 7 billion km over the past 10 years. If no action is taken, we are on course for a 27 per cent increase in road traffic figures between 2001 and 2021. Those are the Executive’s own statistics.

If it is good enough to say in the bill that we will promote public safety, including road safety and the safety of users of public transport, I am sure that it is good enough to say that we should promote less use of the private car. That would be a good step forward. I know that that would not get to where Friends of the Earth wanted to get to with the amendments that it submitted, but it would at least acknowledge in the bill that there is a significant job to be done and would perhaps help us to set some milestones that others want to be established.

Nicol Stephen: Does Bruce Crawford recall, as I do, that on many occasions in the Parliament Fergus Ewing has supported the use of the private motor car, particularly in rural areas and in the Highlands of Scotland? The fact that he has lodged an amendment to ensure that the opposite happens is very encouraging.

Bruce Crawford: I am not surprised. He has a very nice Honda that he drives himself, so I am sure that he does support the use of the private car.

On cycling, John Thurso, the MP for somewhere north of Caithness, said:

“The Government have failed to tackle congestion in our towns and cities and it is no wonder that people have been giving up cycling. Labour have broken promise after promise they made to cyclists, and done little to improve conditions for those who actually do choose to cycle.”

Sarah Boyack (Edinburgh Central) (Lab): Bruce Crawford might be interested to know that cycle use has been going up in Edinburgh through the council’s policies. Had we been able to employ congestion charging, we might have been able to tackle the issue with even more vigour, as they have done in London.

Bruce Crawford: The quote is not from me; it is from John Thurso, the Liberal member for Caithness. Perhaps we should think about what he says. Tavish Scott, in his new position, should take on board the Liberals’ five point plan for cycling. Perhaps we can also see a provision in the bill, given that 45 per cent of children want more use of the cycle to be made to get to school and 75 per cent of all our journeys are of less than 5 miles. It seems sensible to put the provisions in Fergus Ewing’s amendments in the bill.

15:30

Margaret Smith: I welcome amendment 17. It is comprehensive and puts much meat on the bones of the bill. One of the key points about the bill is that more meat has been put on the bones as it has progressed. We started off with quite a sketchy piece of legislation. The Local Government and Transport Committee and the minister should be thanked for their amendments to the bill, so that we know exactly what it will mean for the people of Scotland.

Amendment 17 contains key provisions. I will not take up time by going through many of them, but I pick up on two matters. First, it is crucial that the bill should provide that transport strategies must prioritise different elements of transport provision. Fergus Ewing mentioned the matter, but the amendments that he lodged are unnecessary because amendment 17 covers the issue well. Secondly, it is important that health care and transport should be integrated. Lothian NHS Board has done much work recently on acute services, as have many health boards in Scotland. Time and again, transport is one of the biggest issues to do with health care. By including the matter in the bill, we will ensure that in future situations do not arise such as the one that is presented by the proposed tramline, which will go close to but not to the door of the Western general hospital in my constituency. That is irresponsible and unacceptable.

Bristow Muldoon: I do not disagree with the amendments that Fergus Ewing lodged but I think that they are unnecessary. Amendment 17 builds on the amendment to which the committee agreed at stage 2 and clearly refers to the principle of sustainable development.

It seems clear that the promotion of public transport will be a major aspect of strategies that have regard to that principle. Amendment 17 also refers to the promotion of social inclusion, a major aspect of which must surely be the promotion of
opportunities to travel for people who have no access to a private car. The requirement to “facilitate access to hospitals, clinics, surgeries and other places where a health service is provided” again appears to relate to people who have no access to a private car and rely on public transport. The provisions in amendment 17 clearly indicate that public transport will be central to the concerns to which regional transport partnerships must respond.

Fergus Ewing mentioned prioritisation. The matter is covered by amendment 17, which will require strategies to include provision about “what can be done, taking account of cost, funding and practicability”.

Moreover, proposed new section 5(2)(e) will require strategies to include provision on “the order of priority in which different elements of the provision, development and improvement of transport should be undertaken”.

**Fergus Ewing:** Proposed new section 5(2)(e) does not refer to schemes; it refers only to “elements”. Without prioritisation of schemes, there is nothing.

**The Deputy Presiding Officer:** Please sum up, Mr Muldoon.

**Bristow Muldoon:** We seem to be debating semantics, although there is broad agreement about what we are trying to achieve.

The Local Government and Transport Committee did much to improve the bill at stage 2 and I commend the minister for the co-operative way in which he worked with the committee to achieve that end. I encourage members to support the amendments in the minister’s name and I ask Fergus Ewing not to move his amendments, not because they are wrong but because they are unnecessary, given that amendment 17 will achieve all the objectives that he wants his amendments to achieve.

**Euan Robson (Roxburgh and Berwickshire) (LD):** I welcome the Executive amendments, particularly the provision on close links between transport and NHS facilities. However, the minister will expect me to have noticed that proposed new section 5(2)(d) omits to mention education facilities, which are an important component. I ask him to ponder the matter. Perhaps educational establishments are covered by the more general requirement

"to enhance social and economic well-being”,

or the requirement

"to promote social inclusion”.

Alternatively, the matter might be dealt with in guidance. However, if we are serious about pursuing such initiatives as out-of-hours education, the linking of transport arrangements and educational establishments has obvious merit.

**Michael McMahon (Hamilton North and Bellshill) (Lab):** I support the amendments in the minister’s name, but I am not content with the amendments that David Davidson and Fergus Ewing have lodged. However, I agree with Fergus Ewing that the scope of the amendments that the minister has lodged demonstrates how much was missing from the bill when it was drafted. That is a lesson for the Enterprise, Transport and Lifelong Learning Department, which should not have introduced a bill that was so weak that Sylvia Jackson, Paul Martin and I had to lodge amendments to it.

Given the scale and universality of amendment 17, the problem that Fergus Ewing has is that his amendments become examples of tautology—the issues are already covered in the bill. All the issues that we wanted to have addressed are covered. Anything that Fergus Ewing wants to add is unnecessary and his amendments just complicate the bill. I do not think that it is necessary to go down that road. I welcome the minister’s amendments, but a lesson has to be learned: if this stuff was in the bill, we would not have to have amendments of such size at stage 3.

**The Deputy Presiding Officer:** I call the minister to wind up, but ask him to be brief.

**Nicol Stephen:** I will be brief. Amendment 17 is a big amendment and covers a lot of ground. On the amendments from David Davidson and Fergus Ewing, how much should be in the bill is a matter of judgment. My answer to David Davidson is yes, we will include the intention of his and Fergus Ewing’s amendments in guidance and so will take on the positive aspects of them. I do not think that anybody is trying to undermine the good intentions of the amendments. The same applies to what Euan Robson said: to ensure that there is absolute clarity, we will make reference to education and educational establishments in the guidance.

**Amendment 16 agreed to.**

**Section 5—Formulation and content of regional transport strategies**

**Amendment 17 moved—[Nicol Stephen].**

**Amendment 17A moved—[Fergus Ewing].**

**The Deputy Presiding Officer:** The question is, that amendment 17A be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.
The Deputy Presiding Officer: The result of the division is: For 29, Against 80, Abstentions 0.

Amendment 17A disagreed to.

Amendment 17B moved—[Fergus Ewing].

The Deputy Presiding Officer: The question is, that amendment 17B, in the name of Fergus Ewing, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR
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)
Curran, Frances (West of Scotland) (SSP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, 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)
Mather, Jim (Highlands and Islands) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Russell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glascow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glascow) (SNP)

AGAINST
Aitken, Bill (Glascow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glascow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glascow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glascow Baillieston) (Lab)
Davidson, Mr David (Edinburgh Central) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glascow Maryhill) (Lab)
Ferguson, Alex (Galloway and Upper Nithsdale) (Con)
Finnie, Ross (West of Scotland) (LD)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glascow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glascow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glascow 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 (Glascow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahan, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glascow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Ms Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Mr Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunningham South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatlie, Cathy (Tweeddale, Ettrick and Lauderdale) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Tosh, Murray (West of Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glascow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunningham North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 29, Against 80, Abstentions 0.

Amendment 17A disagreed to.

Amendment 17B moved—[Fergus Ewing].

The Deputy Presiding Officer: The question is, that amendment 17B, in the name of Fergus Ewing, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR
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)
Curran, Frances (West of Scotland) (SSP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
The Deputy Presiding Officer: The result of the division is: For 30, Against 79, Abstentions 0.

Amendment 17B disagreed to.

Amendment 17C moved—[Fergus Ewing].

The Deputy Presiding Officer: The question is, that amendment 17C, in the name of Fergus Ewing, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Graham, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Glasgow) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
McIvor, Robin (Lothians) (Green)
Meehan, Mr John (Glasgow Rutherglen) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
The Deputy Presiding Officer: The result of the division is: For 32, Against 80, Abstentions 0.

Amendment 17C disagreed to.

Amendments 17D to 17G not moved.

Amendment 17 agreed to.

Amendment 18 moved—[Nicol Stephen]—and agreed to.

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

Amendment 19 moved—[Nicol Stephen]—and agreed to.

The Deputy Presiding Officer: Group 5 is on procedure before and after the drawing up of transport strategies. Amendment 20, in the name of the minister, is grouped with amendment 21.

Tavish Scott: We have received representations from councils, Strathclyde Passenger Transport and the existing voluntary partnerships that the new regional transport partnerships will be hard pushed to get all their internal processes, standing orders, staff and so on in place and, at the same time, to start working on a tight timetable for the development of regional strategies. Therefore, we intend to create RTPs as quickly as the parliamentary timetable will allow us to, starting by laying the order that will establish the RTPs in time for the start of the autumn session. That will allow the RTPs to have work on in place and, at the same time, to start working on the regional strategies and we hope that the extra few months that that provides should enable the RTPs to complete their strategies and submit them to ministers for approval by the April 2007 deadline.

Amendment 21 is a technical amendment that is consequential on amendment 20.

I move amendment 20.
Amendment 20 agreed to.
Amendment 21 moved—[Tavish Scott] and agreed to.

Section 8—Duty of constituent councils and other public bodies as respects transport strategies
Amendments 22 to 24 moved—[Tavish Scott]—and agreed to.

Section 9—Joint transport strategies
The Deputy Presiding Officer: Group 6 is on joint transport strategies. Amendment 25, in the name of the minister, is in a group on its own.

Tavish Scott: At stage 2, the committee agreed to an amendment from Michael McMahon on improving transport links to cities and major population centres. That provision now appears in section 5(2)(c), as a result of amendment 17. Section 5(2)(c) introduces a specific duty on the RTPs to provide for efficient transport links between heavily populated places. I hope that that formulation is acceptable to Michael McMahon and that he will therefore accept the deletion of section 1A, which is proposed by amendment 25. Subsection 5(2)(c), in common with the rest of section 5, applies to joint transport strategies as much as it applies to a strategy that has been drawn up by one RTP.

I move amendment 25.

Fergus Ewing: Could the minister define a heavily populated place?

Tavish Scott: I am tempted to make a facetious remark but I will not do so. A definition will be provided in the guidance and we will ensure that Mr Ewing has access to that.

Amendment 25 agreed to.

Section 9A—RTP/Health Board transport strategies
Amendment 26 moved—[Tavish Scott]—and agreed to.

Section 10—Other transport functions of RTPs
The Deputy Presiding Officer: Group 7 is on transfer of transport functions to the RTPs. Amendment 27, in the name of the minister, is grouped with amendments 28 and 56.

15:45

Nicol Stephen: The committee made it clear at stage 1 and stage 2 that it welcomes the creation of regional transport partnerships. It is determined that they should be strong bodies that are able to make a real difference to the pace of delivery of much-needed improvements in Scotland’s transport infrastructure and services. I fully support the committee’s ambitions for the RTPs.

The bill already makes provisions for transport functions to be carried out by regional transport partnerships. Section 10 allows statutory transport functions to be transferred from councils or from the Scottish ministers to the RTPs. It is important to emphasise that, under the bill, powers may be transferred from the Executive to the RTPs or from councils—where they are agreed on the issue—to the RTPs. Statutory functions may also be conferred so that the RTP carries them out concurrently with councils or with ministers. Section 12A enables the RTPs, councils and ministers to enter into agency arrangements so that they can exercise one another’s transport functions. In other words, we are trying to achieve maximum flexibility to allow the best delivery mechanisms for each case to be chosen at local and regional level.

At stage 2, the committee agreed to an amendment from Michael McMahon that included an indicative list of functions that could be transferred to the RTPs. I was asked to come back with redrafting at stage 3 if I thought that it was necessary to do so and, in essence, that is what amendment 27 is about. The amendment draws heavily on the wording that was approved by the committee and takes some elements from another amendment that was lodged by Fergus Ewing.

Amendment 27 clarifies that a wide range of significant and substantial transport powers may be exercised by regional transport partnerships, including quality bus contracts, quality partnerships, integrated ticketing, bus information, installation of cross-boundary bus corridors, road user charging schemes, and subsidised bus services.

At stage 2, the committee agreed to a series of Executive amendments that will allow ministers to confer certain transport functions on regional transport partnerships before the completion of their regional transport strategies. The amendments ensured that the partnerships would have the necessary powers to do their job and, in particular, to spend the £35 million per year of new money that will be allocated to them from April 2006. The new provisions supersede sections 10(7) and 10(8) and render them unnecessary, so I propose their deletion. Amendments 28 and 56 seek to achieve that.

I move amendment 27.

Michael McMahon (Hamilton North and Bellshill) (Lab): I thank the minister for lodging amendment 27, which does what it says on the tin. The amendment seeks to improve the bill by introducing indications of the powers that the
RTPs will have. However, I ask the minister to confirm, for the record, that the list in the amendment is not exhaustive and that, as transport develops in Scotland and things change, the RTPs will be able to develop strategies that go beyond the list.

Mr Davidson: Amendment 27 somehow manages to make a bad section of the bill even worse. My fear is that the clear intention of section 10, reinforced by amendment 27, is to utilise the regional transport partnerships as Trojan horses for introducing failed Executive policies from the Transport (Scotland) Act 2001.

Most obviously, section 10 grants the RTPs powers to introduce road user charging schemes. I have some sympathy with the Chancellor of the Exchequer’s idea that he will abolish high taxation on fuel, but I have a great deal less sympathy with the idea of disastrous local schemes—such as the one that was recently turned down by the people of Edinburgh—popping up throughout Scotland. There is no doubt that the City of Edinburgh Council’s shambolic handling of its scheme has set back the Executive’s plans by many years. Before ministers press ahead with the powers in the bill, I urge them to consider again the overwhelming public rejection of the Edinburgh scheme.

Section 10 gives the RTPs powers over another great failure of the 2001 act, namely quality contracts and quality partnerships. The fact that those bureaucratic schemes have been totally rejected by local authorities and bus operators alike is obviously embarrassing for ministers, yet they seek to impose them on the new regional transport partnerships. Instead, ministers should consider why that policy has failed. Quality contracts and quality partnerships would be expensive, bureaucratic and complicated. During the Local Government and Transport Committee’s inquiry into the Transport (Scotland) Act 2001, Neil Renilson of Lothian Buses said:

“The fundamental problem of quality contracts is that they would take control of the bus network away from the people who are closest to the passengers.”—[Official Report, Local Government and Transport Committee, 5 October 2004; c 1183.]

In contrast, voluntary bus partnerships—which are popular with councils and operators alike—work well and deliver results. The obvious lesson is that, in general, a voluntary rather than a statutory approach to transport delivery works best. That makes it all the more surprising that the Executive seems determined to press ahead with the statutory partnerships.

Bristow Muldoon: David Davidson was not a member of the Local Government and Transport Committee at the time, and it is obvious that he lost out by not coming to the sessions that we had with bus users in places such as Stranraer and Glasgow, in which key failures were identified in the arrangements that serve many communities.

It is far from the case that local authorities have rejected the aspects of the 2001 act to which Mr Davidson referred. Some councils have made proposals on implementation to ministers but have experienced difficulties because, as individual authorities, they have found that they do not have sufficient expertise to develop such schemes thoroughly. That is why the RTPs, which will have greater economies of scale, might well be able to bring the schemes to fruition.

In contrast with what Mr Davidson said, amendment 27 makes a good committee amendment even better. I commend the minister for his approach, although I echo the comments that Michael McMahon made on amendment 17. The bill would have been far better if it had included many of the provisions in question in the first place. In general, my recommendation to the Executive would be that the Parliament would prefer bills to include more definition and to give full descriptions of how they will improve the relevant areas of policy. In that regard, section 10, as amended by amendment 27, will provide a clear definition of the powers that RTPs will have to improve transport. That represents a considerable improvement.

Fergus Ewing: At stage 2, I lodged amendment 70, much of which—happily—is reproduced in amendment 27. I welcome amendment 27 and will support it, but I ask the minister to clarify two points. What does “entering into public service contracts” mean? Is he concerned that there may be an imbalance between the RTP in the west of Scotland, which will have maximal powers to carry out public projects, and the RTPs elsewhere in Scotland, which will not have such powers?

Nicol Stephen: I begin by responding to Michael McMahon. I can confirm that the list is indicative rather than prescriptive; it highlights the sorts of change that we would encourage, but the decisions on such matters will rest with the RTPs. Before any changes are triggered, it is important that the relevant RTP’s view is clear.

On what Fergus Ewing said, public service contracts are used by the Executive and local authorities in relation to ferry and plane services. They are contracts through which we ask a service to be provided to particular communities for social or economic reasons. Such services are often provided to improve transport links to remote rural or island communities.
**Fergus Ewing:** Will the RTP in the Highlands have the power to stipulate a public service obligation for flights within that area?

**Nicol Stephen:** I would need to check the technical detail of that, because the legislative framework for flights is somewhat complex—it includes reserved and devolved issues. There is no reason why, in future, we should not be able to allow what the member suggests, provided that the UK Government provides the right support.

There is a European dimension to such matters. The whole notion of public service contracts and public service obligations is governed by strict European rules. In some areas, there is also a reserved dimension.

**The Deputy Presiding Officer:** The question is, that amendment 27 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**
- Adam, Brian (Aberdeen North) (SNP)
- Alexander, Ms Wendy (Paisley North) (Lab)
- Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
- Baillie, Jackie (Dumbarton) (Lab)
- Baird, Shiona (North East Scotland) (Green)
- Baker, Richard (North East Scotland) (Lab)
- Ballance, Chris (South of Scotland) (Green)
- Barld, Mark (Lothians) (Green)
- Barrie, Scott (Dunfermline West) (Lab)
- Boyack, Sarah (Edinburgh Central) (Lab)
- Brankin, Rhona (Midlothian) (Lab)
- Butler, Bill (Glasgow Anniesland) (Lab)
- Canavan, Dennis (Falkirk West) (Ind)
- Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
- Craigie, Cathie (Cumbernauld and Kilsyth) (SNP)
- Crawford, Bruce (Mid Scotland and Fife) (SNP)
- Cuningham, Roseanna (Perth) (SNP)
- Curran, Frances (West of Scotland) (SSP)
- Curran, Ms Margaret (Glasgow Baillieston) (Lab)
- Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
- Eadie, Helen (Dunfermline East) (Lab)
- Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
- Ewing, Mrs Margaret (Moray) (SNP)
- Ferguson, Patricia (Glasgow Maryhill) (Lab)
- Finnie, Ross (West of Scotland) (LD)
- Fox, Colin (Lothians) (SSP)
- Gibson, Rob (Highlands and Islands) (SNP)
- Gillon, Karen (Clydesdale) (Lab)
- Glen, Marilyn (North East Scotland) (Lab)
- Gorrie, Donald (Central Scotland) (LD)
- Grahame, Christine (South of Scotland) (SNP)
- Harper, Robin (Lothians) (Green)
- Harvie, Patrick (Glasgow) (Green)
- Henry, Hugh (Paisley South) (Lab)
- Home Robertson, John (East Lothian) (Lab)
- Hughes, Janis (Glasgow Rutherglen) (Lab)
- Hyslop, Fiona (Lothians) (SNP)
- Jackson, Dr Sylvia (Stirling) (Lab)
- Jackson, Gordon (Glasgow Govan) (Lab)
- Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
- Kane, Rosie (Glasgow) (SSP)
- Kerr, Mr Andy (East Kilbride) (Lab)
- Lamont, Johann (Glasgow Pollok) (Lab)

**Against**
- Allen, Alex (Central Scotland) (SNP)
- Oldfather, Irene (Cunninghame South) (Lab)
- Peattie, Cathy (Falkirk East) (Lab)
- Pringle, Mike (Edinburgh South) (LD)
- Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
- Radcliffe, Nora (Gordon) (LD)
- Robison, Shona (Dundee East) (SNP)
- Robson, Euan (Roxburgh and Berwickshire) (LD)
- Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
- Russell, Mr Mark (Mid Scotland and Fife) (Green)
- Scott, Eleanor (Highlands and Islands) (Green)
- Scott, Tavish (Shetland) (LD)
- Smith, James (Inverness East) (LD)
- Smith, Margaret (Edinburgh West) (LD)
- Stephen, Nicol (Aberdeen South) (SNP)
- Stevenson, Stewart (Banff and Buchan) (SNP)
- Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

**Again**
- Aitken, Bill (Glasgow) (Con)
- Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
- Brownlee, Derek (South of Scotland) (Con)
- Davidson, Mr David (North East Scotland) (Con)
- Douglas-Hamilton, Lord James (Lothians) (Con)
- Fraser, Murdo (Mid Scotland and Fife) (Con)
- Goldie, Miss Annabel (West of Scotland) (Con)
- Johnstone, Alex (North East Scotland) (Con)
- McLetchie, David (Edinburgh Pentlands) (Con)
- Milne, Mrs Nanette (North East Scotland) (Con)
- Mitchell, Margaret (Central Scotland) (Con)
- Scanlon, Mary (Highlands and Islands) (Con)
- Scott, John (Ayr) (Con)
- Tosh, Murray (West of Scotland) (Con)

**The Deputy Presiding Officer:** The result of the division is: For 93, Against 14, Abstentions 0.
Amendment 27 agreed to.
Amendment 28 moved—[Nicol Stephen]—and agreed to.

Section 11—Manner of performance of RTPs’ functions
Amendments 29 and 30 moved—[Nicol Stephen]—and agreed to.

Section 11—Manner of performance of RTPs’ functions
Amendments 29 and 30 moved—[Nicol Stephen]—and agreed to.

After section 11
Amendment 71 not moved.

Section 12—Transport functions of Scottish Ministers
Amendment 72 not moved.

Section 13—Transfer of staff, property, rights and liabilities
Amendments 73 to 75 not moved.

The Deputy Presiding Officer: Group 8 concerns the transfer of staff, property, rights and liabilities. Amendment 31, in the name of the minister, is in a group on its own.

Tavish Scott: We made it clear during stage 2 that staff relations are critical to the success of any organisation and that we should do everything possible to ensure that staff employment rights are protected during a period of change. That is what section 13 is all about; it ensures that the Transfer of Undertakings (Protection of Employment) Regulations will apply.

The most significant transfer of staff that we expect from the bill—in the short term, at least—will be from SPT to the new west of Scotland transport partnership. We welcome the decision that the Strathclyde Passenger Transport Authority took at its most recent meeting to authorise SPT officials to engage formally with the Scottish Executive on transition matters. The Executive is ready to work closely with SPT, the current west of Scotland transport partnership and the local authorities in the west to assist in the creation of the new regional transport partnership and forge stronger co-operation on matters of mutual interest. We welcome the fact that SPT staff will continue to manage and monitor the rail franchise in the west of Scotland on behalf of the Scottish ministers; continue to promote key projects such as the Larkhall to Milngavie railway, the Glasgow airport rail link and the Glasgow crossrail; continue to operate and develop the Glasgow subway; continue to work with operators to provide better services, such as integrated ticketing and information; and continue to serve the people of the west of Scotland with dedication and professionalism.

The Executive and SPT have worked together successfully on many transport projects. The creation of the new RTP and the location of the new national transport agency in Glasgow will bring two major delivery partners closer together. We believe that there will be benefits to both from that proximity—a better understanding of each other’s business, a more regular flow of ideas and information and more opportunities than there would otherwise be for staff to increase their expertise by moving between the organisations—as well as benefits for Glasgow.

Amendment 31 seeks to give further reassurance to SPT staff. It is our intention that, once further rail powers are devolved to Scotland following the commencement of the United Kingdom Railways Act 2005, SPT’s statutory rail powers—in particular, its role as a signatory to the Scottish rail franchise—should transfer to the Scottish Executive. It is equally our intention that SPT and, in time, the west of Scotland transport partnership should, on behalf of the Scottish ministers, continue to monitor and manage the franchise in their area and develop proposals for new rail infrastructure and services.

There is no intention that SPT staff would need to transfer to the Scottish Executive as they continue their work on rail. Amendment 31 seeks to clarify that, under new arrangements entered into under section 12A, which will include those between SPT and the Executive for the management of the franchise, staff can remain as SPT employees, even when the statutory function resides with the Scottish ministers.

I move amendment 31.

16:00

Bristow Muldoon: I thank the minister for his clear statement regarding the position of SPT staff and the Executive’s intention to ensure a smooth transition to the new relationships, as well as his clear statement about the achievements that SPT has delivered in the west of Scotland over many years. I am sure that the minister’s remarks will be welcomed by SPT, its staff and those who represent the west of Scotland.

Amendment 31 agreed to.
Amendment 76 not moved.

Section 17—The Scottish Road Works Register

The Deputy Presiding Officer: Group 9 is on the duty to enter information in the Scottish road works register. Amendment 32, in the name of the minister, is grouped with amendments 33 to 37 and 44.

Nicol Stephen: Our roads form part of our strategic transport infrastructure, along with our
rail network and ferry services. It is vital that we manage that infrastructure in the best possible way. Everyone will know of the frustrations that are caused by road works, particularly when they are poorly planned or poorly executed. The detailed provisions on road works are intended to improve the management and co-ordination of all the relevant activities, to improve the quality of the roads, to reduce the congestion that is caused by poor management and thereby to make a big contribution to Scotland’s environment and economy.

I have been very pleased by the enthusiastic response to our proposals to establish the Scottish road works register on a statutory footing and to introduce detailed and comprehensive proposals on the conduct of work on our roads not only by the public utility companies but by the road works authorities. All parties—the utility companies, councils and road works authorities—recognise that the register will be an invaluable resource for the planning of works on our roads. To maximise the benefits of the register and to make it truly successful, we must ensure that all the information is entered on to it. The bill as introduced contained drafting to ensure that the utility companies and the road works authorities had to place information on the register.

At stage 2, Fergus Ewing sought additional clarification, and lodged—and had accepted—amendments that would state clearly the responsibilities of road works authorities with respect to the provision of information to the register. I fully agree with Fergus Ewing on this point. It is important that we are clear who should enter what on to the register.

My amendments—I hope that Fergus Ewing agrees that they fit in with his and other Local Government and Transport Committee members’ intentions—will ensure that the road works authorities will be required, like the utility companies, to enter information on to the register. In other words, there should be a level playing field. That was of particular importance to the Local Government and Transport Committee and to the utility companies. The duty will therefore apply both to local authorities, which are responsible for local roads, and to the Scottish ministers, who, through their agents—currently BEAR Scotland and Amey—are responsible for the trunk road network.

Our amendments will require the road works authorities to enter information advising of future works, the start of works and the completion of works. The revised drafting, which replaces the wording that was introduced by Fergus Ewing, makes things clearer as well as providing more appropriate references, but it retains Fergus Ewing’s original intentions. As the register is to be the principal tool for recording and monitoring road works, it is vital that the information that is put on to it is accurate. Amendment 44 will extend the duty on roads authorities to ensure that their staff are competent to perform their duties in order to cover the matters to which I referred earlier.

I move amendment 32.

**Fergus Ewing:** I suppose that I could paraphrase Mrs Thatcher by saying that where there was doubt, the minister has brought clarity. [Interruption.] That seemed to be popular in Conservative quarters.

I welcome the minister’s acceptance, albeit at stage 3, of the principle that a level playing field should exist between the private sector and the public sector. Initially, the bill would have imposed fines on private utility companies that dug up the roads and failed to meet their obligations, but if a local authority or the Scottish Executive—through BEAR Scotland, Amey and other companies—had failed to fulfil its obligations, it would not have been fined. That was not a level playing field.

The national joint utilities group and many others have lobbied hard and undertaken much work on the matter, which allowed me to discuss amendments at a meeting with the minister and civil servants. It also allowed me to withdraw about 20 amendments, which has spared Parliament the time of debating them—that was certainly popular—because the minister has come round to the principle of a level playing field. That will be of inestimable benefit. We still have doubts about whether the commissioner will, of necessity, do a better job than the existing bodies have done, but we shall support the amendments.

**The Deputy Presiding Officer (Murray Tosh):** I ask for brief comments, please.

**Mr Davidson:** I compliment the minister on listening to the Local Government and Transport Committee. It is frustrating not only for the private sector, which Fergus Ewing mentioned, but for road users and bus operators not to have clarity about what will happen. Providing the ability to plan is a welcome move, for which I thank the minister.

**Margaret Smith:** I welcome the establishment of the register. Many provisions in the bill will improve the management and co-ordination of road works. The committee wanted if not a level playing field, then a level road surface for utility companies and road works authorities. I thank the minister for listening to the committee’s call. The amendments will provide clarity and equity on this important matter. We also welcome the clear intent to consult on the regulations and the relevant codes of practice.

**Amendment 32 agreed to.**
Amendments 33 to 37 moved—[Nicol Stephen]—and agreed to.

Section 18—Directions as to timing of road works

The Deputy Presiding Officer: Group 10 is on regulations and codes of practice on road works. Amendment 38, in the name of the minister, is grouped with amendments 39 to 41, 43 and 45 to 48.

Tavish Scott: The group contains several amendments and its broad thrust is to place a duty on ministers to consult relevant parties and to require ministers to produce regulations and codes of practice when we have established working groups to inform such measures.

I will explain briefly the intention behind each amendment. Amendments 38 to 40 will build on the stage 2 proposal to establish an appeals process to address disputes about the timing of road works. At stage 2, Bruce Crawford suggested that ministers should be placed under a duty to produce regulations so that the process was clear at the outset. The amendments will give effect to that proposal and will extend the duty to include the production of a code of practice. We hope that the code will provide clarity and good practice. It should circumvent the requirement to pursue appeals. However, should appeals be necessary, we will be ready with a process for them.

Amendment 41 will place a duty on the Scottish ministers to produce a code of practice that gives road works authorities practical guidance on the placement of apparatus. That is consistent with the duty to produce regulations on the matter.

Amendment 43 will enable the Scottish ministers to produce a code of practice to provide guidance on restricting utility works after road works authorities have substantially improved a road. We will return to that with a later group of amendments.

Amendment 45 will place the Scottish ministers under a duty to produce regulations on resurfacing and amendment 47 will place a similar duty on them in respect of the associated code of practice. The resurfacing provisions are detailed and we must give practitioners as much assistance as possible on how they should be implemented.

Amendments 46 and 48 accept and will improve Michael McMahon’s stage 2 amendment by providing a general duty to consult undertakers and road works authorities prior to the making of any regulations or codes of practice. We have established working parties that draw on the expertise of the road authorities and utilities committee (Scotland) to inform all such regulations and codes of practice, so we are keen to draw on the expertise of others. It is appropriate that we record our thanks to the members of the road authorities and utilities committee, both for their assistance in informing the bill’s provisions and for the valuable work that their working groups are undertaking to inform those regulations and codes of practice.

I move amendment 38.

Donald Gorrie (Central Scotland) (LD): For the benefit of members such as me who are not members of the Local Government and Transport Committee, will the minister clarify how amendments 43 and 45 will deal with the problems that are caused when a council, which will remain anonymous, spends all its energies on producing ludicrous road works while failing totally to maintain the surface of the streets? Will such problems be sorted out by the Scottish ministers, by the Scottish road works commissioner or by the guidance for local authorities?

Many of the faults in the road surface stem from the gradual deterioration of defective repairs that have been done by previous undertakers. Who will deal with that issue? The problem is a curse in certain cities that we live in, which will remain anonymous.

Mr Davidson: Briefly, we welcome the improved appeals process and the publication of codes of practice for road works authorities.

The Deputy Presiding Officer: Does the minister want to respond to Donald Gorrie’s point?

Tavish Scott: I will respond briefly.

Better reinstatement of roads is the intention of the amendments in the group. Such reinstatement will be done through the appropriate agencies. Ultimately, of course, the duty for such issues rests with local authorities, which is where the responsibility should lie.

Amendment 38 agreed to.

Amendments 39 and 40 moved—[Tavish Scott]—and agreed to.

Section 19—Directions as to placing of apparatus in roads

Amendment 41 moved—[Tavish Scott]—and agreed to.

Section 20—Restriction on works following substantial road works

The Deputy Presiding Officer: For group 11, amendment 42 is in a group on its own.

Tavish Scott: At stage 2, members of the Local Government and Transport Committee expressed the view that a three-year blanket ban would be inappropriate, as it would not take into account a range of potential circumstances. Amendment 42
responds to the committee’s concern by removing the reference to “three years”. The amendment will provide us with the flexibility to balance the need to maintain the technical integrity of the road with the need to excavate roads to provide essential services. As with previous amendments, I can assure Parliament that any regulations on the matter will be informed by deliberations on the need to balance the technical requirements of the road with the need for access to underground services. I hope that members will agree that amendment 42 represents a reasonable approach.

I move amendment 42.

Amendment 42 agreed to.

Amendment 43 moved—[Tavish Scott]—and agreed to.

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

Amendment 44 moved—[Tavish Scott]—and agreed to.

Section 29—Resurfacing: regulations and guidance

Amendments 45 to 47 moved—[Tavish Scott]—and agreed to.

After section 36

Amendment 48 moved—[Tavish Scott]—and agreed to.

Before section 37

The Deputy Presiding Officer: Group 12 relates to the duty of the Scottish Executive transport agency to consider sustainable economic growth. Amendment 49, in the name of Fergus Ewing, is in a group on its own.

Fergus Ewing: One lacuna in the bill is that it is far from clear how the RTPs are to relate to the national transport agency and how those bodies will relate to the Scottish Executive.

Last Sunday, the Scottish Chambers of Commerce made a strong argument on the importance of ensuring that the national transport agency that will be set up has a clear focus on the need for economic growth and that sustainable economic development is at the heart of the new agency’s functioning and purpose. As the SNP is supportive of that aim, I felt that it was appropriate to lodge an amendment to allow us at least to debate the issue.

I understand that the Executive has as its primary purpose the promotion of economic growth in Scotland, so I imagine that it will be sympathetic to the amendment. Of course, the phrase “sustainable economic growth” is susceptible to interpretation. In the past, I have opined that it could be regarded as imprecise. However, I note that the Executive adopted a similar phrase in its amendments this morning, so I imagine that it will not wish to split hairs over such a minor matter—although something tells me that that may be in the minister’s script. I hope that the Executive, which says that economic growth is its top priority, will vote in line with those sentiments.

I move amendment 49.

16:15

Tavish Scott: I never split hairs over Mr Ewing’s arguments—I just pick large holes in them.

I thank Mr Ewing for explaining his amendment. We fully support the principle that the transport agency should consider sustainable economic growth while carrying out its functions, but we think that amendment 49 is unnecessary and inappropriate. As Mr Ewing said, the Executive is already committed to economic growth, among other national priorities. When it is up and running at the end of this year as an executive agency, the transport agency will be required to carry out its functions in line with the national priorities that the Executive has set out, including those that relate to sustainable economic growth. In addition, delivery by the agency will be shaped by a national transport strategy, which we will develop over the coming year.

Although we believe that sustainable economic growth is our top priority, it would be wholly inconsistent with the policy of developing a national transport strategy to set a single objective for the transport agency alone in the bill. The amendment would also pre-empt consultation on the national strategy. The wider stakeholder community is supportive of our efforts to develop the national transport strategy in order to give everyone a clear view of the future of Scotland’s transport. I suggest that the process would be undermined by amendment 49. I ask Mr Ewing to reconsider and to seek permission to withdraw the amendment.

The Deputy Presiding Officer: Mr Ewing, do you intend to press amendment 49?

Fergus Ewing: I will press the amendment.

The Deputy Presiding Officer: The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
The Deputy Presiding Officer: The result of the division is: For 21, Against 79, Abstentions 7.

Amendment 49 disagreed to.

After section 37

The Deputy Presiding Officer: Group 13 is on passenger representation. Amendment 50, in the name of Fergus Ewing, is grouped with amendments 51, 3, 4, 78, 52, 52A, 53, 54, 57, 7, 8, 64 and 9. I point out to members that, owing to a technical error, the line numbering for amendment 52 is incorrect. If agreed to, amendment 52A will be inserted at the end of amendment 52 and not at the end of line 33, as shown on the marshalled list. I am sure that that has cleared up a huge amount of confusion around the chamber.

The amendment to amendment 52 will be disposed of before the question on amendment 52 is put.

Fergus Ewing: I hope that the mist remains clear.

The purpose of my amendments is to bring back the Rail Passengers Committee Scotland. All parties in the chamber have recognised that that body has done an excellent job for rail passengers...
in Scotland. It is not a gurning, whining, carping body, but is recognised instead by everybody as having achieved a great expertise on the Scottish railway network over a number of years.

There are 335 stations in Scotland, 2,100 trains a day and 3,000km of route, which represents up to a fifth of the UK network. The Rail Passengers Committee Scotland has been scrapped just as the Scottish Executive has received more powers over the railway. I have it on fairly good authority that one senior Lib Dem figure described that notion as “potty”. It is potty that, on one hand, new powers over the railways are transferred to Scotland and, on the other, the Scottish consumer watchdog is scrapped—apparently defanged at the insistence of Network Rail. That organisation has deployed power over the UK Government, which plainly wanted to remove the teeth from the Scottish committee as an effective customer champion.

At stage 2, I lodged this amendment and Paul Martin proposed that there should be a different type of body, which would be a public transport users committee. On the basis that it is better in life to get something rather than nothing, I supported his proposal with reservations. However, the reason why I bring back my amendment today—with a twist—is that it is apparent that there will be no committee for rail passengers, no customer watchdog and no champion of the consumer interest for a considerable period.

Amendment 50 does not say that Paul Martin’s model of a multimodal committee should be scrapped. If one takes all my amendments together, they say that once Paul Martin’s public transport users committee model begins, the rail passengers committee for Scotland will cease. That means that Executive members can have it both ways. They can have their new public transport users multimodal committee, but they can also ensure that no gap is left where there is no effective voice for rail passengers in Scotland. My amendments would remove the dilemma that would face Labour and Liberal members about whether to vote according to their conscience or according to their voting instructions. I am sure that Lib-Lab members will be truly grateful for the removal of that dilemma. Therefore, I have great pleasure in yet again proposing absolutely constructive, sensible and workable amendments.

I move amendment 50.

Nicol Stephen: I thank Fergus Ewing for being so helpful. I said at stage 2 that we would lodge an amendment to give Scottish ministers the power to create a wide-ranging passenger representative body and that we would do that by order.

I also stated that I agreed with the principles behind Fergus Ewing’s and Paul Martin’s amendments and I listened carefully to the views of all the Local Government and Transport Committee members on that issue. The Executive amendments take those views into consideration and reflect our commitment and intention to establish a multimodal public transport users committee. However, it is important to consult on the details of the new body prior to creating it. The amendments that I lodged will provide enough flexibility for us to respond fully to that consultation. I am sure that many members of the committee and perhaps even Fergus Ewing would agree that we have to take into account the views of representative organisations such as the Bus User Complaints Tribunal and the Mobility and Access Committee for Scotland. Those are statutory bodies that should be asked for their views on what is an important proposal for the future.

In addition, before establishing a public transport users committee, we should seek the views of the Scottish Consumer Council as well as the non-statutory rail, bus and ferry users organisations. I feel strongly that we have to get on with the consultation, take it into account and then, having received the views of those organisations, move forward quickly to get the committee up and running through secondary legislation. Fergus Ewing is suggesting that, for six to eight months, there should be an interim rail body that has the same remit as the old body—which, as he has rightly pointed out, is being abolished. I want a new Scottish rail body that will have significant responsibilities but, for the reasons that I have stated, I believe that we should take a little time to ensure that we get it right.

Bruce Crawford: The minister just mentioned a period of six to eight months during which the new body will be established. As a member of the Local Government and Transport Committee, I can say that that is the first time that I have heard such a statement. Is he guaranteeing that the new body will be in place within the next six to eight months?

Nicol Stephen: I am suggesting that we should move as quickly as possible. I am about to set out a timetable in which, for example, the new public transport users committee will be established early next year. I want a similar rail body to be established as soon as possible, and believe that six to eight months is a credible and reasonable period in that respect. We will move forward on that matter quickly.

Moreover, later this year, a Scottish ferries committee will be established administratively—in other words, it will not be established through a bill. The ferries committee will be consulted by...
ministers on ferry matters and will, in turn, consult the shipping service advisory committees. It will be able to comment to the Executive on research projects; consider unresolved local complaints; and provide a focus for shipping service advisory committees’ views to ministers.

Fergus Ewing also seeks to place a statutory deadline on the creation of the public transport users committee, which brings us back to the timetable that I mentioned. Such an absolute deadline is unnecessary. However, I am committed to getting on with all this and therefore set out the following proposal. Instead of merely giving ministers the power to establish the committee, amendment 52 seeks to place a duty on ministers to establish it. As a result, the committee will be established. We will consult on the detail of the new body in the autumn and will carry out preparatory work that will allow an order to be presented to Parliament early in the new year. I expect that the public transport users committee can be approved by Parliament and constituted by 1 April 2006.

With the multimodal public transport users body working closely with all the groups that represent ferries, the rail industry, bus services and other modes of transport as well as the new representative group for rail that will be established, the passenger’s role in public transport in Scotland will be strengthened. The committee’s core functions will include considering and making recommendations to ministers on public transport services and, if asked to do so by ministers, on other matters. Moreover, the committee will have regard to ministers’ written guidance and will comply with ministers’ written direction on the discharge of its functions.

I aim for the committee to be a very influential body that effectively represents public transport service users; that engages in high-level strategic issues such as integration, accessibility and the development of the national transport strategy; and that builds a reputation as one of the key players in Scottish transport.

Having shown that commitment and made that intention clear, I encourage Fergus Ewing to withdraw amendment 50 and not to move amendments 3, 4, 7, 8, 9, 50, 51, 52A, 57 and 64. I also urge the Parliament to agree to amendments 52, 53 and 54.

Bristow Muldoon: I hope that the minister’s comments will have solved Fergus Ewing’s dilemma and that he will withdraw amendment 50. At stage 2, Fergus proposed the reconstitution of a rail passengers committee for Scotland, but he was upset by Paul Martin’s better idea of having a users committee that would apply to all public transport. Why should we single out rail? Although it is an important element of public transport, rail journeys form a minority of all the passenger journeys that are made in Scotland. If we are to move towards the Executive’s aim of having more integrated transport systems, we should obviously establish a representative body that takes account of the different modes of public transport. Fergus has clearly been caught on the hop and did not expect the minister to proceed as quickly as he has indicated that he will. It would obviously be nonsense to establish a statutory body with a view to winding it up six or eight months from now.

I thank the minister for accepting the idea that was put forward by my colleague Paul Martin, and I call on Fergus Ewing, in a spirit of consensus, to unite with us behind the amendments in the name of the minister.

16:30

Mr Davidson: I am sorry to upset Bristow Muldoon, but the consensus that I seek is one in favour of the magnificent work that has been done by the Rail Passengers Committee Scotland. That work should continue so that there is no gap at a time when the Scottish Executive has only just achieved new rail powers.

I totally support Fergus Ewing’s view although, in the long term, I am satisfied that the minister’s multimodal committee may have some merit. It will involve the different types of transport.

I ask the minister whether we can have a guarantee that there will be adequate sub-committee structures to deal with the different issues facing the different types of transport. There could be a sub-committee to represent rail users; the work of that sub-committee would then feed into the larger committee.

I have great concerns about amendment 54. If the minister is to create a wonderful body that will be all things to all consumers, why does amendment 54 specify that the new committee will have to “comply with any written direction given to it by” ministers? That gives far too much ministerial control over what is supposed to be a representative body for users.

Paul Martin: At stage 2, the Local Government and Transport Committee passed an amendment in my name. The principle behind the amendment was to ensure that all the relevant agencies would retain their identity within the proposed new model. The minister assured the committee that he would consult those agencies to ensure that that principle was adhered to.

The Local Government and Transport Committee was impressed by evidence from the Rail Passengers Committee Scotland, which was
able to represent passengers very effectively. We wanted to ensure that that ability was shared with other modes of transport so that we could have a representative body that could take on the PLCs out there. The PLCs often do not have the capacity to deliver an effective transport service.

Now we can have a new passengers committee that will lobby effectively on behalf of passengers. Such a partnership approach towards lobbying effectively on behalf of passengers should be commended. The minister has listened to the Local Government and Transport Committee’s concerns and has lodged another comprehensive amendment that will ensure that passengers—on whatever mode of transport—are represented effectively throughout Scotland.

Bruce Crawford: Obviously, I welcome Executive amendment 52 and I congratulate Paul Martin on his work in pulling things together in order to consider all the different modes of transport. However, amendment 52A, in the name of Fergus Ewing, does nothing to undermine the minister’s position, and it does nothing to stop the new minister responsible for transport from being involved in consultation with the different transport groups in Scotland.

Without amendment 52A, there will be an indeterminate gap. We do not know how long it will last, but while it does the people who use the rail industry in Scotland will go unrepresented—unless we count the one person who will represent Scotland on the UK body. From Stranraer to Wick it is 442 train miles. It is ridiculous to suggest that only one member should represent Scotland on that body at the very time when the Scottish Executive is taking on new powers over rail. That is an absurd position to be in.

Nothing in amendment 52A undermines the good work that Paul Martin has put in. The Parliament should accept that amendment, which covers the gap and will help passenger representation to continue.

Nicol Stephen: I accept that Fergus Ewing now accepts the wider multimodal body. It is appropriate that that body should be established by statute. I disagree that we should include in the bill an interim arrangement for a rail passengers committee. We will establish a rail passengers committee, but not through statute; rather we will do so through our administrative powers. It would be strange to respond to the gap of six to eight months by creating a body through the bill. In this blockbuster group of amendments, I ask members to support the Executive ones.

Fergus Ewing: The Rail Passengers Committee Scotland is due formally to expire in July. I understand that some members of the committee have said that they wish and are willing to continue. The minister has explained that, by an administrative act, he will introduce a rail passengers committee on a non-statutory basis, but he has not explained when or how that will happen or what the committee will do. Given that the committee will not have statutory powers to require Network Rail or other organisations to provide information, it will be a watchdog whose incisors are missing. For those reasons, I will press amendment 50.

The Deputy Presiding Officer: The question is, that amendment 50 be agreed to. Are we agreed? Members: No.

The Deputy Presiding Officer: There will be a division.

FOR
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Baird, Shiona (North East Scotland) (Green)
Bal ance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Brookebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Graham, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLeitchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteilh, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Rus kell, Mr Mark (Mid Scotland and Fife) (Green)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
The Deputy Presiding Officer: The result of the division is: For 50, Against 64, Abstentions 1.

Amendment 50 disagreed to.

Section 37A—Public Transport Users’ Committee for Scotland

Amendments 51, 3, 4 and 78 not moved.

Amendment 52 moved—[Nicol Stephen].

Amendment 52A not moved.

Amendment 52 agreed to.

After section 37A

Amendments 53 and 54 moved—[Nicol Stephen]—and agreed to.

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

The Deputy Presiding Officer: Group 14 is on bus services. Amendment 80, in the name of David Davidson, is grouped with amendments 81 and 55. If amendment 81 is agreed to, it will pre-empt amendment 55.

Mr Davidson: Section 43(2) would amend the Transport (Scotland) Act 2001 to give local authorities in the existing Strathclyde Passenger Transport area powers to establish quality contracts and quality partnerships. Amendments 80 and 81, which are similar to amendments that the minister lodged at stage 2, would remove that provision.

In the light of the unique geography of the region and its transport patterns, it would be counterproductive if bus powers were to be held concurrently by both SPT—or its successor body—and the constituent local authorities. SPT has stated:

“Local councils in the west of Scotland have not exercised bus responsibilities since 1975—they have no expertise or experience in this area, and now to give them a discretionary ability to work at the margins of what will remain overwhelmingly a regional responsibility will be a recipe for confusion and potential conflict.”

Furthermore, considering the spectacular failure of the quality contract and quality partnership initiative thus far—in other words, there are no partnerships or initiatives—it is hard to escape the conclusion that those powers have more to do with undermining the position of SPT than with any serious attempt to improve bus services in the region.

I move amendment 80.

Nicol Stephen: It is true that there has been some to-ing and fro-ing since the white paper was originally launched, but I am truly astonished at David Davidson’s amendments, because we have
now clearly agreed the position. When we introduced the bill, we indicated the Executive’s intention to give local authorities in the SPT area concurrent powers with SPT to establish quality partnerships, quality contracts and joint ticketing schemes. The purpose was to encourage the development of high-quality services and infrastructure at local level.

Many of the constituent authorities have received funding from the Executive to improve bus infrastructure and it seems logical to give them powers to include that infrastructure in a quality partnership scheme. We have lodged amendment 55 because further scrutiny has shown that, for technical reasons, the bill as drafted would not have achieved the original intention. That further scrutiny has also persuaded us that concurrent powers would not be appropriate in relation to joint ticketing schemes. The provisions in the Transport (Scotland) Act 2001 provide for each local transport authority to determine what ticketing arrangements should be made available for their area. There can be only one determination, and we have concluded that it would not therefore be practicable to impose duties to determine on two separate bodies—SPT and the local council.

Amendment 55 therefore provides concurrent powers in relation to quality partnerships and quality contracts. The provisions on quality partnerships and quality contracts are permissive, and there is scope for different bodies to introduce schemes in the same geographical area. As members will be aware, the availability of concurrent powers is welcomed by a number of the constituent local authorities. The Strathclyde Passenger Transport Authority, as the body with responsibility for public transport in the area, originally had misgivings on the matter, but has now also accepted that the bus powers should be shared between itself—and therefore its successor regional transport partnership—and the councils in its area.

Pauline McNeill: I too had some concerns about whether it would be right to have concurrent powers for quality contracts between the new partnership authorities and local authorities. Will the minister put on record once again the fact that the provision that we are considering is one on which he would expect there to be proper partnership? Does he have any concerns, in the light of the provisions, that there might be a need to determine who was ultimately responsible for a quality contract if there were a dispute between the regional partnership authority and the local authority, and is he confident that the issue could be resolved satisfactorily?

Nicol Stephen: I am confident of that; but Pauline McNeill is absolutely right to say that there must be the right spirit of co-operation and partnership. I am now confident that there is agreement on the way ahead. Some of the to-ing and fro-ing that I referred to happened because we had not reached that agreement, but I am now confident that, because there is agreement on the way forward, those arrangements will work and will work well.

I ask the Parliament to support amendment 55 and to oppose David Davidson’s amendments; because of the agreement that I referred to, I am at a loss to understand why he lodged them.

Margaret Smith: On the holding of concurrent powers, the minister is right to say that there has been not a little confusion and not a few changes over the past months. However, the position that we have now reached is the right one. I believe that it is the right approach to delivering better services and better integration. I can think only that part of David Davidson’s concern is that there might be conflict between local authorities and RTPs and that concurrent powers would make that insoluble. I do not agree with that. When disagreements occur, there is ultimately recourse to the minister for a decision. However, when it comes to joint working on transport initiatives it is not only possible for both sides to work together, it is common sense for them to do so. That is in the interests of their passengers and it is in keeping with the spirit of the bill. There has been some movement among some of the local councils in the west—and from SPT—on the issue of concurrent powers. Where we have ended up is the best way to take initiatives forward on a shared basis, in a manner that I believe will deliver better services and integration.

16:45

Mr Davidson: I am grateful to Pauline McNeill and Margaret Smith for raising an issue of some concern, because who knows who will be elected to what council in the future. West of Scotland politics are, of course, famed for their stability and non-contentiousness. In my years in local government there I came across nothing that was not argued about.

I have stated my case clearly. The minister is muddled in his thinking if he thinks that he can give powers to two sides and step back. What is the point of having to go back in and arbitrate or settle the matter by ministerial declaration? The minister is confused and I will press my amendments.

The Deputy Presiding Officer: The question is, that amendment 80 be agreed to. Are we agreed?

Members: No.
The Deputy Presiding Officer: There will be a division.

**FOR**

Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (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 Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteiith, Mr Brian (Mid Scotland and Fife) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

**AGAINST**

Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craighie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (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)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (SNP)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neill, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 18, Against 94, Abstentions 0.

Amendment 80 disagreed to.

The Deputy Presiding Officer: I remind members that if amendment 81, in the name of David Davidson, is agreed to, amendment 55 would be pre-empted.

Amendment 81 moved—[Mr David Davidson].

The Deputy Presiding Officer: The question is, that amendment 81 be agreed to. Are we agreed?

**Members:**

No.

The Deputy Presiding Officer: There will be a division.

**FOR**

Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (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)
Scanlon, Mary (Highlands and Islands) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (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)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
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)

Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McIntyre, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatling, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Tavish (Shetland) (LD)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 17, Against 92, Abstentions 0.

Amendment 81 disagreed to.

The Deputy Presiding Officer: Amendment 55 moved—[Nicol Stephen].

The Deputy Presiding Officer: The question is, that amendment 55 be agreed to. Are we agreed?

Members: No.

The Deputy 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)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
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Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley)
(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)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
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)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West)
(LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)

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Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross)
(LD)
Sturgeon, Nicola (Glasgow) (SNP)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (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)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Deputy Presiding Officer: The result of
the division is: For 95, Against 18, Abstentions 0.
Amendment 55 agreed to.
Section 44—Orders and regulations
Amendment 56 moved—[Nicol Stephen].
The Deputy Presiding Officer: The question is,
that amendment 56 be agreed to. Are we agreed?
Members: No.
The Deputy 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)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)

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Wilson, Allan (Cunninghame North) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
White, Ms Sandra (Glasgow) (SNP)

AGAINST
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (Galloway and Upper Nithsdale) (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)
McLeitchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteilth, Mr Brian (Mid Scotland and Fife) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con) (Lab)

ABSTENTIONS
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Deputy Presiding Officer: The result of the division is: For 96, Against 16, Abstentions 1.

Amendment 56 agreed to.

The Deputy Presiding Officer: I call amendment 82, in the name of Davidson.

Mr Davidson: I will not move amendment 82, headmaster.

The Deputy Presiding Officer: See me later.

Amendment 82 not moved.

Section 46—Short title and commencement
Amendments 57 and 7 not moved.
Amendment 8 moved—[Fergus Ewing].

The Deputy Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Aitken, Bill (Glasgow) (Con)
Baird, Shiona (North East Scotland) (Green)
Bain, Chris (South of Scotland) (Green)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Amendment 58 applies to RTPs the same rules that govern the development and disposal of land that is not needed for transport purposes as it was introduced, which in this case concerned the powers that will be given to RTPs to acquire, develop and dispose of land. Amendments 58 and 59 were inspired by amendments that Michael McMahon agreed not to press at stage 2.

The Deputy Presiding Officer: The result of the division is: For 49, Against 63, Abstentions 1.

Amendment 8 disagreed to.

Schedule 1
ADMINISTRATIVE FUNCTIONS ETC OF RTPS

McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeil, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Lunlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatlie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Deputy Presiding Officer: The result of the division is: For 49, Against 63, Abstentions 1.

Amendment 8 disagreed to.

Schedule 1
ADMINISTRATIVE FUNCTIONS ETC OF RTPS

McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeil, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Lunlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatlie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Deputy Presiding Officer: The result of the division is: For 49, Against 63, Abstentions 1.

Amendment 8 disagreed to.

Schedule 1
ADMINISTRATIVE FUNCTIONS ETC OF RTPS

McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeil, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Lunlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatlie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Deputy Presiding Officer: The result of the division is: For 49, Against 63, Abstentions 1.

Amendment 8 disagreed to.
The Deputy Presiding Officer: Group 16 relates to the Freedom of Information (Scotland) Act 2002. Amendment 61, in the name of the minister, is in a group on its own.

Tavish Scott: Amendment 61 is straightforward and will ensure that the Scottish road works commissioner will be under a duty to disclose information, as is the case with other public authorities.

I move amendment 61.

Amendment 61 agreed to.

Schedule 5

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

The Deputy Presiding Officer: Group 17 is on road works: guidance on issuing fixed penalties. Amendment 62, in the name of the minister, is grouped with amendment 63.

Tavish Scott: During stage 2 Fergus Ewing lodged amendments that would have prevented a road works authority from issuing a fixed-penalty notice where the offence appeared to be inadvertent and its effect trivial. Nicol Stephen explained at that time that there should be no defence to the commission of the offence, but that there might be mitigating circumstances. We would expect road works authorities to behave reasonably in deciding whether a fixed-penalty notice should be issued. Fergus Ewing withdrew his amendments on the understanding that we would investigate the matter further. We have therefore decided that to reduce the potential for dispute and to improve clarity for all concerned a code of practice, giving guidance on the operation of the fixed penalty regime, might prove beneficial. That is the basis for our amendment, which has been supported warmly by the roads authorities users committees.

I move amendment 62.

Amendment 62 agreed to.

Schedule 7

Schedule 8B to the Roads (Scotland) Act 1984

Amendment 63 moved—[Tavish Scott]—and agreed to.

After schedule 7

Amendments 64 and 9 not moved.

The Deputy Presiding Officer: That ends the consideration of amendments.
We are also modernising outdated processes that support the funding of our shipping services. We are streamlining the planning and implementation of harbour works. By creating opportunities for investment and supporting development, we grow our economy.

As I said at the outset, I am committed to transforming transport delivery and transport infrastructure. Our ambitions are for transport improvements and long-term national, regional and local transport strategies shaping delivery. Our ambitions are to create the right structures to deliver transport improvements. Our ambitions are to deliver better opportunities for older people and those with disabilities and to provide a prosperous, socially just Scotland.

If members share those ambitions, they are committed to delivering improvements. I ask them to share that commitment to transform transport delivery in Scotland by supporting the bill. I commend the bill to Parliament.

I move,

That the Parliament agrees that the Transport (Scotland) Bill be passed.

17:00

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I pay tribute to the committee clerks and the bill team, who have provided us with invaluable assistance throughout the passage of the bill.

The Scottish National Party will support the bill this evening because we believe that a modern transport policy should have a strong regional voice. Much progress has been made during the passage of the bill to transform a skeleton into something that we can support. However, much will depend on how the bill is implemented and many questions remain to be answered. For example, we do not know what the relationships will be between the Executive and the agency and the agency and the RTPs. Those relationships need to be spelled out; nevertheless, there is potential.

Every modern European Union state that has a better transport system than Scotland has a method of regional transport formulation and has had more investment over a long period than we have seen in Scotland under successive Westminster Governments of either hue. We acknowledge that the transport budget has, of late, risen and has improved, but we have substantial doubts about the way some of that investment has been made.

It is ironic that, at stage 3, no consideration was given to the concessionary travel scheme. No amendments were lodged on that subject and details on it will be brought forward later. We support a concessionary travel scheme, but it seems to me—having had access to documents including a report from consultants MVA Ltd—that the problem with the scheme is not that it is not worthy: it is. Likewise, it is not the case that we do not want senior citizens and disabled people to have the benefit of concessionary travel, because we do. The problem is that the scheme has not been thought through. Every person who is involved with it knows that that is the case.

The smart-card technology that is supposed to be used next April will not be ready in time—at least, it will not be capable of being used with the machines on the buses—which will add extra cost. The financial memorandum states that, over two years, the cost of the concessionary travel scheme will be £196 million, but we know that the ceiling for the first year of the concessionary scheme is £155 million. The cost has risen dramatically, so one is bound to ask whether we are getting value for money from the bus companies. Have the bus companies got an exceptionally good deal? Will local authorities be able to assimilate and collate the necessary data about every senior citizen in their areas, as we anticipate they will be charged to do, and turn that information into smart cards by next April? Given that there are approximately 1.2 million senior citizens in Scotland, I doubt it.

Will the scope for fraud be exacerbated by the fact that the smart-card system will not be introduced on 1 April? It must be. Will the company that is understood to be the only company that can manufacture the smart-card machines have the Executive over a barrel in respect of delivery of tens of thousands of machines? It might. Will it be able to supply the smaller bus companies? It has been put to me that that might not be its preferred commercial practice. That said, we are pleased that the bill has been transformed and that it will provide RTPs with reasonably strong powers.

The SNP would like politics—with a capital P—to be taken out of formulation of transport policy. As I have always said, the way to do that is to use the method that has been adopted in the USA, where there are long-term transport plans that allow people to find out what road projects are due to be carried out in nine or 10 years, for example. With such a long-term plan comes realism and with realism comes an end to the unrealistic expectations that, understandably, people throughout Scotland have that every road in their area and every rail system should be improved.

I believe that long-term plans should be produced by the RTPs. The most important problem with this afternoon’s deliberations, which have otherwise been productive, is that there was no decision that the RTPs will be required to
prioritise their transport schemes or projects. It is one thing to prioritise elements of a transport policy, but it is a completely different matter to say, “Here are the 10 projects that should be delivered and here’s the order in which we think they should be delivered.”

The Deputy Presiding Officer (Trish Godman): You must finish now, Mr Ewing.

Fergus Ewing: That is the role that Government plays. It is unfortunate that the RTPs are not being asked to play that role as well, but an SNP Government will remove that inconsistency, as members would expect. That is something to which members can all look forward.

17:05

Mr David Davidson (North East Scotland) (Con): In my short time on the Local Government and Transport Committee, I felt that the clerks and the committee members worked diligently on the passage of the Transport (Scotland) Bill. I pay tribute to those who forced the Minister for Transport to come back and turn the bill into something that contains far more detail because—as members said—it was quite thin. I also praise the work of my former colleague in Parliament David Mundell, who was a member of the committee.

Despite the fact that there is a great deal to welcome in the bill, I regret that we will oppose it today. We on the Conservative benches remain unconvinced that a network of statutory transport bodies in every region of Scotland will deliver the improvements to the transport infrastructure that we all want. On the contrary, we believe that the excess bureaucracy and additional expense that will be involved might damage delivery of tangible improvements. We agree entirely with the conclusion that the Executive reached prior to the previous Transport (Scotland) Bill in 2000:

“The Scottish Executive believes that imposing a new layer of government between the local authorities and the Scottish Executive and Parliament would generate additional bureaucracy and involve significant disruption to local government.”

In the north-east, the local voluntary partnership—the north-east Scotland transport partnership—is involved in many projects including the Aberdeen crossrail project, delivery of the Aberdeen western peripheral route in co-operation with the Executive, and major traffic change systems. It does all that without additional bureaucracy.

I reiterate my concern about Strathclyde Passenger Transport. A year ago, the minister made the following promise to Parliament:

“I still expect SPT to have a direct role in the management and development of rail services in the west of Scotland.”—[Official Report, 16 June 2004; c 9099.]

It is now clear that even though the SPT model works and delivers, SPT is, in effect, being abolished.

Fergus Ewing mentioned concessionary fares. I state, so that the minister knows, that we support a national concessionary fares scheme, but we believe that provision of comprehensive service coverage throughout Scotland should take priority over provision of a scheme that is totally free. There are still too many parts of Scotland in which the public transport system is woefully inadequate, which means that a free travel scheme will be of little use to many pensioners, particularly in rural areas. In addition, small bus operators have complained to me about the cost of the equipment that they will have to install in their vehicles.

It is Parliament’s job to make laws that are in tune with the concerns of our constituents. To be frank, I do not believe that the time, effort and costs that are involved in setting up regional transport partnerships can be justified. There are so many glaring transport priorities that we should surely tackle before we grant ourselves the luxury of tinkering with structures.

In conclusion, I can do no better than to remind members of the remark that SPT made in its submission to the Local Government and Transport Committee’s inquiry:

“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”.

17:09

Bristow Muldoon (Livingston) (Lab): I thank the committee clerks for all their support for committee members. In particular, I send my good wishes to Eugene Windsor, who will move to another committee after the summer recess. He served the former Local Government Committee for four years and the Local Government and Transport Committee for the past two years.

In welcoming the Transport (Scotland) Bill, I refer to Labour’s manifesto for the 2003 Scottish Parliament elections. Among many other commitments, that manifesto made three specific commitments on transport. First, it said that Labour would seek to ensure that

"local authority boundaries do not hinder major projects and stifle growth."

and went on to state:

“We will set up a single strategic transport authority for Scotland, and strong regional transport delivery partnerships throughout the country.”

Secondly, it said:
“We will introduce national bus and rail concessionary travel for young people”.

and thirdly, it said that

“We will extend free ... bus travel for the elderly and disabled to cover journeys across all of Scotland”.

The passage of the Transport (Scotland) Bill will result in delivery of three key Labour transport policies. I thank the new Deputy First Minister for the strong role that he has played in ensuring that we deliver on those Labour manifesto commitments.

The bill contains a new framework to govern the relationship between roads authorities and utilities to ensure that there is greater co-ordination and higher quality road works, which will reduce the impact that such works can have on road congestion.

I will now discuss each of the three aspects of the bill in more detail. It is fair to say that the regional transport partnerships part of the bill has attracted some criticism, including from the Local Government and Transport Committee. The criticism of Labour and Liberal colleagues was never about the bill’s policy intentions; rather, it was about the fact that the bill said too little about the powers of the RTPs and how, in practice, they would improve co-operation between and co-ordination of transport services in their areas. I am pleased to say that considerable progress has been made in improving the bill at stages 2 and 3. In my view, it is now fully worthy of support from the whole Parliament.

If we had taken the combined advice of the Tories, who voted against the bill at stage 1, and the nationalists, who abstained at stage 1, we would have no bill to support today. I welcome the SNP’s conversion to support for the bill at this stage, but I regret that the Tories will continue to vote against a bill that, among other things, will introduce concessionary travel for young people and extend the existing scheme for older people. I find David Davidson’s approach to be particularly difficult to understand. Although he has repeatedly praised Strathclyde Passenger Transport and the benefits that that strong regional partnership has been able to deliver for the west of Scotland, he wishes to deny the people whom he purports to represent the opportunity to have those same benefits.

Mr Davidson: The first amendment in my name that was debated this afternoon—amendment 65—illustrates the Conservatives’ position. The point is that we want a permissive system rather than a compulsory system. Does Bristow Muldoon not understand that?

The Deputy Presiding Officer: The member is going into his final minute.

Bristow Muldoon: I understand perfectly what is in the bill, and that Mr Davidson will vote against a set-up that he believes has produced benefits for the west of Scotland for the past few decades. That position is extremely difficult to understand.

During its passage, a number of amendments have been made to the bill, for which my committee colleagues deserve a great deal of credit. One of those amendments introduced the requirement that each RTP must give full consideration to, for example, equal opportunities and social exclusion issues, sustainable economic growth and sustainable transport policies. Although some of the amendments were refined by the Executive, they remain integral to the bill that we will pass.

A good balance has been struck between ensuring that road works are well-enough planned to minimise congestion and do not impose an economic handicap on Scotland. The concessionary travel scheme will be socially progressive and I hope that cheaper travel for young and old people that the bill will provide will result in increased use of public transport, which in turn will contribute to achievement of the Executive’s policy targets on congestion and road use.

I encourage members to give the bill their unanimous backing.

17:14

Mr Kenny MacAskill (Lothians) (SNP): At this juncture, it is important that we recall why we have a debate after dealing with the amendments. We do not just want to record our thanks to the clerks and all the people who have been involved in a bill’s consideration, appropriate though that is. The debate gives us an opportunity not to focus on the minutiae, but to consider the overarching question of why we want the legislation.

It is important that we recall the reason for the introduction of the Transport (Scotland) Bill. Transport is fundamental to our society; not only does it provide access for people who would otherwise be excluded but, as every member of every party is aware, it is vital to the economy. Union and business representatives tell us that transport is fundamental to Scotland’s having a sustainable and progressive economy in the 21st century. There are difficulties and, to be fair, we are addressing them. Members might disagree with the pace at which the Executive is moving and with some of its priorities, but there is general consensus in Parliament that we must move forward. In many instances, there is less to be again and to compete over than many members might think.
There was some chortling from Labour members when my colleague Fergus Ewing correctly said that he wishes that politics with a capital P could be taken out of transport, but the Scottish National Party considers that to be important. If members who laughed had listened to Mr Scott, they would have heard him mention how he aspired to replicating in Scotland what took place in Austria and Sweden. The point that Mr Ewing made was that the basis of success in those countries was consensus, rather than a partisan position on transport; national consensus about transport’s importance is what took matters forward.

Bristow Muldoon: I was among the many members who were amused by Fergus Ewing’s speech, not because I think that it is wrong to have national consensus about how we will make progress on transport, but because Mr Ewing is one of the most nakedly politically partisan members of Parliament. I would welcome consensus on transport policy.

Mr MacAskill: That is where we are coming from. In Scandinavia, transport matters are dealt with by consensus, so regional transport partnerships will allow us to concentrate on where we want to get to. Perhaps we are in difficulty here in Scotland because of the blight that we suffered under Westminster not simply because we were unable to legislate because we did not have the Scottish Parliament, but because for 25 or 40 years rail was in and then out, then buses were in and then out, depending on whether we had a Labour or Tory Government. Transport was booted around as a political football. That was the fundamental cause of considerable problems, so we must move away from that approach. I agree with the minister and with my colleague Fergus Ewing that we have to depoliticise transport policy and achieve national agreement because less divides us than many people think.

It is important that we acknowledge that our communities have changed, which is why we need the regional transport partnerships. Communities in the east of Scotland have undergone social and economic change such as—to some extent—happened in the west of Scotland 100 years ago. Edinburgh’s growth—it now has a travel-to-work area that covers south Fife, the other areas of the Lothians and the Borders—cannot be dealt with by a single authority. That is the same as what happened 100 years ago when Glasgow expanded into Renfrewshire, Dunbartonshire and Lanarkshire, which needed a structure to cope. Those areas have had the benefit of SPT, which has served them well, so we need to replicate the best aspects of SPT elsewhere in Scotland.

Our communities, economic needs and society have changed and our current local authorities are far too small to be able to address that. That is why we believe that, if we wish social and economic progress, as all members do, we need the correct structure. We have a fundamental need for a vision of what we want to do, a strategy for how to do it and, most important, structures that will allow us to deliver the vision and implement the strategy. That is what the bill is about and why we support it.

Dr Sylvia Jackson (Stirling) (Lab): The importance of transport has been mentioned; it is immense. Often, we do not see how systems can be improved until we go to other countries. In certain cases, we also realise that things are perhaps not as bad as we imagine them to be.

Transport, whether freight infrastructure or the public transport system, is critical to the economy of Scotland. Recent issues in my constituency have included consideration of making the freight infrastructure more sustainable, and improvement of the rail links between Stirling and the major centres.

The bill is a step forward in that it is an attempt to address some of the problems that were brought about by disaggregation of the local government regions into the 32 unitary authorities. Although the four voluntary regional transport partnerships, which cover 30 of the 32 authorities, have rectified the position to a certain extent, the bill provides a more strategic approach to planning and delivery of transport at all levels through the setting up of the regional transport partnerships. They represent an important part of the jigsaw of a more coherent transport strategy. The RTPs will need to take account of cross-boundary issues, as well as more local ones. Theirs will not be an easy role, but it will be crucial.

As the world gets smaller, all parts of Scotland must work towards having one voice for the economic good of the nation. There is increasing need for a coherent national strategy with strong regional input, but that strong regional input will be possible only if the RTPs have sufficient clout with their roles and responsibilities, and the necessary finance. That is why so much time was spent in committee discussing the RTPs. I am pleased that at stage 2 amendments were agreed that will put the necessary flesh on the bones of the RTPs. The committee discussed other issues around RTPs, including their boundaries, particularly in relation to Dumfries and Galloway. We also covered membership and voting arrangements.

Amendments were passed at stage 2 to ensure that environmental issues were taken into account under the wider umbrella of sustainable development. Chris Ballance came to the Local Government and Transport Committee to lodge an
amendment on that. I know that the Greens see transport as being an important issue, so I hope that they will come more regularly to the relevant committee meetings.

Service tracks is a big issue in my constituency. I welcome the parts of the bill that deal with that under the heading of road works. The bill includes provisions for the Scottish road works register, which will be a single national register for planning and co-ordinating road works. There will be a new public appointee—the Scottish road works commissioner—and there will be tighter requirements for directing the timing of works, reinstatements and so on. I welcome all those things, as well as the amendments that have taken on board the genuine concerns of the utility companies.

I welcome the way in which the Scottish Executive has worked with the Subordinate Legislation Committee—we had many constructive discussions about certain sections of the bill because it contains many delegated powers. Our dialogue worked well and we reached agreement on all the relevant points to ensure that the necessary consultation and parliamentary scrutiny were carried out.

I welcome the extension of extra powers to the Bus User Complaints Tribunal. Those powers are well earned and the tribunal has sought them for some considerable time. I also welcome the establishment of the public transport users committee for Scotland, with its different arms for rail and so on.

I welcome the extension of the present concessionary travel scheme to its becoming a national scheme, as well as its extension to young people. I was disappointed that the SNP and Conservatives declined to support that extension at stage 1. If their opposition had succeeded, the schemes would not be implemented next year.

I thank my committee colleagues. I have not been on the Local Government and Transport Committee for long, but I thank them for their support during that time. I thank the clerks, particularly Eugene Windsor, as I move on to pastures new. There cannot be many things that are worse to consider than Caledonian MacBrayne ferry tendering, but becoming whip for the Liberal Democrats possibly runs it close.

The Transport (Scotland) Bill will make important legislation because transport is important to people throughout Scotland and there is much to welcome in it. Most of us—with the exception of the Conservatives, unfortunately—are happy that the arrangements that exist in our areas, such as the south-east Scotland transport partnership, or SESTRANS in my area, will move from being voluntary to statutory set-ups. That will bring powers and extra clout, as Sylvia Jackson mentioned. I hope that they will be used to deliver what we want, which is better transport services.

Many provisions are welcome, but one major reason why I support the bill is the national concessionary travel scheme. The scheme is being extended because the Executive has listened to what people have said about the scheme. They liked it, but they knew that it could be made better by being national, by operating not just in off-peak hours and by being extended to young people, which I hope will happen in the near future.

It is clear that the bill responds to the need for a more regional approach to transport. As I represent an Edinburgh constituency, I can speak about the need to consider future land use and planning. Kenny MacAskill was right to mention Edinburgh’s travel-to-work area. Most people on either side of the argument about congestion charging in Edinburgh would agree that that proposal would have benefited from a much more regional approach, whereas it turned out that the City of Edinburgh Council and the Labour party in Edinburgh decided to go it alone. For such proposals to succeed, I stress that they must be developed through a regional partnership approach. Such an approach is one welcome aspect of today’s amendments.

I also welcome the establishment of the public transport users committee for Scotland. It is right that it will cover all transport modes; it would be wrong to focus only on rail, bus or any other form of travel. It is right that we will focus on all the transport modes and that we will do what we can to integrate them.
The bill is also important because it focuses on road works. On the face of it, we might think that that is a trivial matter, but when we are stuck in congestion on, for example, the A8000—not for much longer, thanks to the outgoing Minister for Transport—because of road works that do not seem to have been executed in a co-ordinated fashion or been planned, it matters. Road works affect journeys that must be made in a certain time, so the bill contains important provisions to improve the situation.

In relation to amendment 17 I mentioned a fundamental reason why I support the bill, which is the legislative link that it makes between transport needs and health needs. If for no other reason, the bill should be supported for that.

Chris Ballance (South of Scotland) (Green): I echo Margaret Smith’s congratulations to the outgoing Minister for Transport on his new role and I congratulate Tavish Scott on taking on the transport portfolio. I also congratulate Malcolm Reed on becoming the chief executive designate of the new national transport agency.

The important measure in the bill is the concessionary fares scheme. The Greens will support the bill at stage 3 because it is important to establish a national concessionary fares regime in Scotland. We are delighted with that and we congratulate the Executive on it.

The key to making the regional transport partnerships work and deliver the Executive’s sustainable development objectives, which Sylvia Jackson called for, is to ensure that the partnerships contain representatives of sustainable transport organisations or public transport user groups and social inclusion groups. I was disappointed that Sylvia Jackson voted against my stage 2 amendment to make the inclusion of public transport user group members on RTPs a statutory requirement, as that measure is crucial to the RTPs’ success.

Bristow Muldoon: Will Chris Ballance give way?

Chris Ballance: Very briefly.

The Deputy Presiding Officer: Be quick, Mr Muldoon.

Bristow Muldoon: Does Chris Ballance accept Sylvia Jackson’s point that the Greens’ position on transport issues would have been more credible had they engaged more with the Local Government and Transport Committee’s consideration of the bill? Just turning up and moving an amendment that has not been worked through in evidence taking is not the way to do business in the Parliament.

Chris Ballance: We discussed that thoroughly and I am extremely flattered that Bristow Muldoon expects me to be in two places at once by attending at the same time meetings of the Enterprise and Culture Committee and the Local Government and Transport Committee. I thank him for that.

In fact, as I was about to say, the Enterprise and Culture Committee heard evidence to the effect that the bill’s measures on road works will make little substantial difference to the speed of traffic and to transport flow in Scotland, as few transport delays are due to road works. The key for getting our transport system moving is road traffic reduction. We need to institute road traffic reduction targets and the Executive must be answerable for any failure to achieve those targets. I am pleased that, unlike the Local Government and Transport Committee, the Environment and Rural Development Committee has called on the Executive to deliver such road traffic reduction commitments.

I am equally pleased that Fergus Ewing moved towards supporting road traffic reduction by lodging an amendment to promote a reduction in the use of private motor vehicles. I was surprised that his amendment 17B concentrated solely on private sector motor vehicles; my stage 2 amendment would also have covered public sector motor vehicles. However, Fergus Ewing has taken a step in the right direction.

Bruce Crawford: Will the member take an intervention?

The Deputy Presiding Officer: No. The member is in his last minute.

Chris Ballance: I am sorry that the Local Government and Transport Committee did not support road traffic reduction measures, which will be the key to getting Scotland’s transport moving. What counts is not what the Executive promises to do in 2021 but what it will do this year and next year. I would welcome a commitment from the new Minister for Transport and Telecommunications that, within his first month of tenure, he will introduce such targets for the immediate future.

Pauline McNeill (Glasgow Kelvin) (Lab): The bill will be of huge significance to transport policy, so I must confess that I am somewhat amazed at how much progress has been made on it. I know that that is due to the hard work of the Local Government and Transport Committee and its convener, Bristow Muldoon. I, too, take the opportunity formally to congratulate Nicol Stephen and Tavish Scott on their new appointments and to thank Nicol Stephen for his efforts on the bill.
At stage 1, I raised my serious concerns about the abolition of SPT in favour of a new model of regional transport partnerships that will be consistent across Scotland. I must say that I am now broadly satisfied with the bill as it stands at the conclusion of stage 3. I commend the Local Government and Transport Committee for the work that it did at stage 2. That such progress has been achieved is a strong testament to our committee system.

It goes without saying that, although we concern ourselves with structures, the key issue is the delivery of transport services. From the legislative change that the bill represents, there must come improved bus, rail and ferry services. The bill must be seen in the context of providing better incentives to use public transport and of delivering higher standards to the general public.

As others have said, transport policy is about improving the quality of life for the people whom we represent and about improving economic output, in which transport can play an important role. We must be bolder still in improving our transport network. In my constituency, the Partick interchange will be an important rail project, which will now proceed thanks to Nicol Stephen's intervention. I hope that projects such as that one, which are essential if we are to move people from road to rail, will continue to happen in that bold way.

I am pleased that the bill will place a duty on RTPs to secure public transport provision around hospital services. That is due to Paul Martin's amendment at stage 2. We should be pleased that the bill contains such a long-overdue measure. In just about every transport debate in the Parliament, I have spoken about the need to improve bus services to and from hospitals. More action is still needed, but the provision that was inserted into the bill is very important.

I commend the Executive for its bus route development fund, which is a brilliant initiative, because resources must be in place if we are to ensure better bus services. I want the quality partnerships and quality contracts to work. I would give them some time, but we should not exclude the possibility of returning to the matter if the provisions have not quite been tweaked in a way that ensures that we have got the issue right. Too many communities are ill served by bus companies that make huge profits. We need constantly to review where the balance between the regulation of bus services and the free market should be struck. We must return to the issue.

Yesterday, I learned that the document presented to ministers on the transitional arrangements for the move from SPT to the new RTP was rejected. I know that the minister is mindful of my view on the matter, but I want to ensure that there are good working arrangements and that the transition is smooth, because generally SPT was a good body. I ask the minister merely not to close down the dialogue that is aimed at ensuring that arrangements in the west of Scotland, in particular, which have been good, are bettered. The transitional arrangements must protect staff—Tavish Scott made that point in the debate—and must ensure that the public do not notice the difference when we make the transition. I ask for that assurance.

17:36

Donald Gorrie (Central Scotland) (LD): The bill shows the Parliament working effectively. There has been interplay between the lead committee, which made constructive suggestions and filled obvious gaps in the bill, and the minister, who played ball with the committee and was cooperative. The two sides worked together in a creditable way.

The procedures of the Parliament have improved a little since we last considered a bill at stage 3. The Presiding Officer's team has kept to a slightly longer timetable. That was at the cost of certain parts of the debate being squeezed down and of some members not being called, but we are moving in the right direction. I hope that we can do better in the autumn.

I will concentrate on two points that are not entirely new. Rightly, there is much emphasis on transport problems in rural areas; I take nothing away from that issue. However, as a member representing Lanarkshire, I know that travel arrangements in west and central Scotland are Glasgow-centric. If someone wants to get to Glasgow, there is a good system of trains and buses. However, if they want to go from one substantial town in Lanarkshire to another, often the system is not good. The bill contains measures that may help to improve the situation. Often services from the suburbs of a substantial town to the centre, where activity is located, are very poor. I hope that by working together—rather than by providing unlimited subsidy and throwing money at bus companies—we can provide a reasonable structure and service.

Working together is particularly relevant to issues that have been raised with me repeatedly in recent weeks by youth organisations and groups of young people. They have two problems when seeking to take part in good social, sporting, artistic and community activities. First, in some cases, there is no public transport. Secondly, if there is, it costs quite a lot. Often young people also have to pay for their recreational activities. I hope that ministers will ensure that the system achieves the result of helping young people who are taking part in worthwhile recreational activities.
through a national or local concessionary scheme. Such a scheme would not have to be unlimited—people might get a cheaper fare if they could show that they had booked in for a sporting or artistic activity.

I am sure that, when visiting schools, members will have encountered the ill feeling that exists about the fact that school students aged 16 plus do not get concessions, whereas college students of the same age do. I hope that the bill provides opportunities for developing policies that will assist our other policies, which are for young people to do things that enable them to get healthy, such as playing sport. Travel to good recreational activities should be treated in the same way as travel to hospitals and should be a high transport priority.

I hope that the points that I have made can be taken on board and that the minister will develop them on the basis of this excellent bill.

17:40

Paul Martin (Glasgow Springburn) (Lab): At stage 3, we may reflect that exchanges between members and the minister have been constructive and robust. I hope that those exchanges did not result in the minister seeking from the First Minister a transfer to his new portfolio, but I am sure that he will give his successor, Tavish Scott, much advice before he meets the Local Government and Transport Committee as the new Minister for Transport and Telecommunications.

As I said, exchanges have been robust, but I commend the minister for taking on board a number of issues that members raised forcefully in the committee. The committee wanted a multimodal system of passenger representation to be in place, so that there would be a powerful lobby to take on the Richard Bransons, FirstGroups and Stagecoaches of this world. I believe that the new, powerful lobby that the bill will create will do that.

For the first time, legislation will be passed making the consideration of health facilities throughout Scotland a legal requirement in relation to transport issues. That requirement does not apply in other parts of the United Kingdom. The measure has been delivered by the Scottish Parliament, which does not receive much credit out there for such things. The people of Scotland have recommended such a measure to us on a number of occasions—certainly, there have been representations on the issue at a number of public meetings that I have attended.

David Davidson has been disingenuous. We must recognise what is good in the Parliament and what we can build on. As Pauline McNeill said, the bill’s provisions on quality contracts for bus services may require further development at some stage in the future—I say to the minister that that is one issue that he should consider. However, we can build on the bill.

In conclusion, I ask the minister to deal with two issues as his final act. First, I ask him to confirm that he will consider the proposals that SPT has made to him about moving forward to the new regional transport partnership much more speedily and economically than it previously believed would be the case. Secondly, I ask him to confirm that the Dumfries and Galloway model, which is based on the particular circumstances of that area, will be unique and will not be replicated in other parts of Scotland.

17:42

Michael McMahon (Hamilton North and Bellshill) (Lab): I, too, thank the clerks for their hard work on a sometimes difficult bill. In particular, I thank Eugene Windsor, who is about to move off to pastures new.

I was a member of the Local Government and Transport Committee throughout the passage of the bill and I feel that I have been on something of a voyage of discovery. The journey has not always been particularly smooth and the mode of transport has more often been a kicking mule than a Rolls-Royce, but we have arrived at the point of destination and it has been worth the trip.

I thank Nicol Stephen for his efforts in piloting the bill through and I look forward to working with Tavish Scott in his new role as Minister for Transport and Telecommunications after the bill has been brought into dock. The new minister will have his work cut out, not so much because of the Local Government and Transport Committee, but because he will have to deal with the civil servants in the transport division.

Never before has a team of civil servants managed to call a spade a gardening implement with such alacrity. They even managed to tell us under which regulation under which section in the bill the gardening implement was to be considered; they simply did not want to tell us on the face of the bill. It has been said that we started out with a bill with very little meat on its bones. However, by the time the civil servants had lodged the amendments that the committee and outside bodies had dragged kicking and screaming out of them, I was convinced that at least one of them might be in the Edinburgh royal infirmary to have their head surgically removed from a certain orifice.

My first discovery was that the civil servants in the transport division need to take lessons before they draft any more bills and that they need to drop the obfuscation, prevarication and legislative gobbledygook so that members of the Local
Government and Transport Committee can have the trust in them that we need in order to work well together.

The main thing that I discovered, however, is that the bill's provisions are good and will, with the committee's amendments, promote better transport throughout Scotland. Who would not agree that new regional transport partnerships, as outlined by Kenny MacAskill and other members, should be established and that we should build on SPT's strengths and expand the system throughout Scotland? However, we discovered that the Conservatives are not happy with that proposal. They want a disjointed, weak and unresponsive batch of toothless RTPs. What we need are strong RTPs, but David Davidson has made it quite clear that he is after his own type of RTP: redundant Tory policies.

Part 2 also had to be amended to strengthen the road works provisions. That has largely been achieved and we are now closer to the level playing field that was sought at the outset. Most important, part 3, which gives powers to establish national concessionary travel schemes for pensioners and young people, was what, if nothing else, made introducing the bill really worth while.

Notwithstanding Fergus Ewing's comments and Kenny MacAskill's defence of the fact that the SNP has only latterly supported the bill, I was unprepared when, initially, the SNP said that it would not support the bill's general principles. It would not support the general principle of expanding SPT's strengths into the RTPs; of establishing a road works commissioner to allow better management of the roads network and the positive development of transport for all users; and of extending the concessionary travel scheme. At the next election, I will take great delight in going round my constituency and telling people that.

Part 2 also had to be amended to strengthen the road works provisions. That has largely been achieved and we are now closer to the level playing field that was sought at the outset. Most important, part 3, which gives powers to establish national concessionary travel schemes for pensioners and young people, was what, if nothing else, made introducing the bill really worth while.

Despite the fact that the nationalists have only latterly come round to the bill, I am glad that they have decided to support it. Every member in the chamber should do so, because it is a good bill that is worthy of our endorsement.

Mr Davidson: First, I congratulate the two Liberal Democrat front benchers on their elevation and sincerely wish them well in their jobs. They will now be a little more accountable to the Parliament. I invite Tavish Scott to come to the north-east at an early stage to allow me to show him some of the problems that we have there. Even though his colleague comes from the area, he did not make many good decisions about it. That said, in the short time that I have spent on the committee, I have found Nicol Stephen to be very helpful.

Although we all agree that everyone needs economic opportunities, education and access to health and recreation, not enough is being done to ensure that Scotland's rural areas are getting their share. I agree with Sylvia Jackson that we need to ensure that there is cross-boundary working, but I point out that that already exists in some parts of Scotland.

Our philosophy is that we should reduce bureaucracy, cut costs and decentralise. We do not like the prescriptive, centralising ideology that is characteristic of the socialist tendency that all the parties in the chamber, except our own, share. [Interruption.] I must excuse some of my colleagues.

I very much welcome the move towards a public transport users committee and look forward to hearing more details about it from the minister as the matter evolves.

SPT already works; Dumfries and Galloway is being allowed to go it alone; and the Highlands and Islands strategic transport partnership, the north-east Scotland transport partnership and other such partnerships work extremely well. Why do we need legislation that gives ministers too much opportunity to interfere? I do not agree with the earlier comment that it is the civil servants' fault—after all, they work for the minister. In any case, I do not think that this is the place for committee members to raise their problems with civil servants; the minister should resolve the issue himself.

The bill has one or two good elements and we look forward to finding out what happens to it. However, I am sad to say that, for the reasons that I specified in committee and have set out again today, we will not support it.

17:47

Bruce Crawford (Mid Scotland and Fife) (SNP): One of the most important issues that the SNP raised at stage 1 centred on the powers that were to be given to the RTPs. The new Minister for Transport and Telecommunications will be more than aware by now that, from the beginning, we have argued that RTPs should be given the maximum possible powers. We have done so because we firmly believe that that is the only way in which we can help to transform Scotland's failing transport infrastructure. The Local Government and Transport Committee argued something similar when it said that the ability of RTPs to deliver transport improvements would
depend largely on those RTPs having strong powers and the required level of funding.

Bristow Muldoon: Will the member give way?

Bruce Crawford: No, I will not give way to Bristow on this occasion. Throughout the debate he has misrepresented the position of the SNP, as have members right across the Labour benches.

The SNP took its position and the committee pointed out firmly to the Executive that the powers of the RTPs were not strong enough. The SNP's perspective was strategic. If we had not hammered home our line, we would not have ended up with the strong powers that we have today.

The future success of RTPs will drive the Scottish economy—Kenny MacAskill was right about that. That is why we welcomed the movement from the Executive on RTP powers. However, the Executive still has some way to go.

In the west of Scotland, the new RTP will have powers comparable to those of the Strathclyde Passenger Transport Authority. It will not have more or greater powers than those that already exist. It certainly will not have the powers that exist in many authorities across the European Union—that is clear from research that was carried out by the Executive's own civil servants and consultants and included in a piece of work entitled “Transferability of Best Practice in Transport Policy Delivery”. Small, independent countries such as Finland, Sweden and Switzerland are all able to make a significant difference to their transport systems because of the powers provided to their RTPs. The Executive's own research showed that that is the way forward.

Someone said of Fergus Ewing that he had shown naked partisanship. Now, he is a good friend of mine, but I never want to see him naked.

Fergus Ewing: No way.

Bruce Crawford: The Tories' position is completely unjustifiable. They argue that RTPs should not exist in the form described in the bill. I think that the RTPs should have more powers. The Tories have argued for a hotch-potch approach across Scotland with no joined-up working at all and no integration.

Mr Davidson: We are decentralisers, not centralisers. We do not want a Soviet-style economy; we want to set Scotland free to make local decisions that pull together partners who are prepared to work together.

Bruce Crawford: Today the Tories have admitted that they are happy for Scotland to lumber along for decades with a failing transport system. That cannot be constructive.

I hope that the new Minister for Transport and Telecommunications does not find in due course that he has been handed a poisoned chalice. I am thinking of the problems to do with concessionary fares. As Fergus Ewing pointed out, there are real problems there. If a person lives in rural Scotland and cannot get to a bus stop, or if a person is immobile and cannot get to a bus stop, there is no bus and so no benefit. There must be a further examination of concessionary fares to find out how they can be improved.

There have been arguments about whether there should be a road works commissioner rather than the roads authorities and utilities committee. The road works commissioner has won that particular battle. However, I implore the minister to ensure that when the road works commissioner is doing his job—at a cost to the public purse—he brings new value to the work and does not simply replicate what the roads authorities and utilities committee is already doing. That is important, because a considerable amount of new public money is going in.

We support the bill today. We are glad of the new powers that are in it—powers that were not there at the beginning. We might never have got to where we are now if the SNP had not stood up to the minister at the beginning. We make absolutely no apology for abstaining at that stage. The SNP has helped to deliver a better bill.

17:54

The Deputy First Minister and Minister for Transport (Nicol Stephen): In steering the bill right through to today's final stage, I have tried at all times to take a partnership approach, as have the members of the Local Government and Transport Committee. We have worked hard to reach consensus on some of the big issues with which the bill deals. In this era of the Scottish Parliament, it is important that devolution really means devolution, not the sort of devolution that David Davidson dreams or talks about. In this era of new politics, it is important that we find new ways to engage people, new ways of working and new ways to identify and pursue common aims. Somebody said that the bill has been transformed—in my view, that is good, because it is important that the Parliament can take initial proposals and transform them into something that has pretty broad and strong support among members.

Pauline McNeill made a point about the transitional arrangements and Paul Martin mentioned the possible impact on staff and services. I assure them that it is crucial that as a result of our deliberations we deliver something that is better for passengers. I will work hard to ensure that the bill does not have a negative
impact on passengers. I want the new arrangements to be put in place as soon as possible. If interim arrangements can be introduced to help smooth the transition, I am sure that Tavish Scott will introduce them.

In making legislation, we must consult widely, test proposals with those who know about the issues and fully engage to discover what impact the legislation will have. We have done that with the bill. It is important to recognise the contribution of the many people and organisations that have helped to shape the bill. The Convention of Scottish Local Authorities, especially Pat Watters and Alison Magee; individual local authorities; SPT, especially Alistair Watson; and the chairs of the regional transport partnerships—the Highlands and Islands strategic transport partnership, the west of Scotland transport partnership, the south-east Scotland transport partnership and the north-east Scotland transport partnership—have all played an important role. I strongly defend the efforts of the Executive officials, who have worked closely with back benchers to develop the bill. As today is my final day in my post, I thank the members of my private office for their hard work. I also thank the legal team and the draftsmen who worked on the bill.

Many people have done a lot of hard work, but none more so than Bristow Muldoon, to whom I pay special tribute for his excellent work. I also pay tribute to each and every one of his colleagues on the Local Government and Transport Committee, including the lead spokespersons from all the parties. We have expressed different opinions at various stages, but I am convinced that the bill is all the better for the robustness of the committee’s work. A minister can get a bit lonely if their support is non-existent, or if only one Conservative is prepared to back their amendments. However, at the end of the day, we reached a consensus—we have incorporated the committee’s well-reasoned amendments and made changes where they were warranted. We should never lose sight of the fact that we are making legislation. It is right that legislation should be challenged and that, if improvements can be made as a result of that scrutiny, they are made.

The bill reference group, which involved the voluntary transport partnerships, SPT and COSLA, worked on the proposals and provided invaluable guidance. That work further encourages me that, through a group approach, the future regional transport partnerships will be strong and successful.

The bill should be set in the context of all that is happening in transport, including the important, new national transport agency and national transport strategy. At the beginning of the 21st century, Scotland will for the first time have a national transport strategy, which is long overdue. We are injecting more funding into transport. We are making £3 billion of capital investment over 10 years and investing £35 million extra per year to support the regional transport partnerships and regional transport strategies.

In relation to the road works provisions, I pay tribute to the roads authorities and utilities committee (Scotland)—RAUCS, as it is called. I mentioned it several times when we were discussing amendments, and its experts deserve much credit for the work that they have done. They are the experts who actually do and are responsible for the work on Scotland’s roads. Their contribution has been significant.

Most important, I thank the many organisations and individuals who responded to the consultations and took time to contribute to the shaping of our proposals. We are making legislation for and on behalf of the people of Scotland. They put their trust in us and they have the right to be consulted and to be heard. Our duty is to listen, to consider seriously and to respond. I agree that, on transport, we should try hard to work together, and the bill gives us an opportunity to show that we can take a different approach to politics in Scotland. By supporting the motion, we are supporting an opportunity to make a genuine difference on transport.

As I leave my transport responsibilities, I take this final opportunity to thank members of the Local Government and Transport Committee and all members of the Parliament who have approached me, sometimes regularly, on transport issues and have pressed their case hard. I wish my successor, Tavish Scott, all the very best and I look forward to a stronger future for transport for everyone in Scotland.
The Presiding Officer: The third question is, that motion S2M-3039, in the name of Nicol Stephen, that the Transport (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eade, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
The Presiding Officer: The result of the division is: For 98, Against 17, Abstentions 0.

Motion agreed to.

That the Parliament agrees that the Transport (Scotland) Bill be passed.

AGAINST

Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (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)
Montielth, Mr Brian (Mid Scotland and Fife) (Con)
Scott, John (Ayr) (Con)
Tosh, Murray (West of Scotland) (Con)

The Presiding Officer: The result of the division is: For 98, Against 17, Abstentions 0.

Motion agreed to.

That the Parliament agrees that the Transport (Scotland) Bill be passed.
Transport (Scotland) Bill
[AS PASSED]

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Transport (Scotland) Bill

[AS PASSED]

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 and membership 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 one or more (but not more than five) councillors appointed by and from—

(i) each council the area or any part of the area of which falls within the Transport Partnership’s region; or

(ii) if that region is coterminous with a council’s area, that council,
(each such member of the Transport Partnership being a “councillor member” and each such council or, as the case may be, that council being, in relation to the Transport Partnership, a or the “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 councillor members may vote on all matters and other members only on such matters as the Transport Partnership determines are appropriate (but not on a question arising under section 3(2)(a) below or on whether to make a request for the making of an order under 10(1) below);

(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;

(fa) may provide for the delegation by the Transport Partnership of any of its functions to any committee established by the 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;

(h) may provide for the payment by a Transport Partnership of—

(i) remuneration to its members or some of them;

(ii) reimbursement of its members’ expenses.
(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.

5 Dissolution of RTPs

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

(2A) On dissolving a Transport Partnership, the Scottish Ministers may, by order, provide for any function of the Partnership to be carried out by the person who carried it out immediately before the coming into effect of—

(a) the order under section 10 below which transferred it to the Partnership; or

(b) if there have been two or more orders under that section transferring that function, the first of those orders.

(2B) Before making an order under this section, the Scottish Ministers shall consult—

(a) the Transport Partnership or Partnerships to be dissolved;

(b) its or their constituent councils or council; and

(c) such other persons as the Scottish Ministers think fit.

(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—

(a) its constituent councils; or

(b) where there is only one, that council.

(2) The share of the expenses to be paid by a constituent council under subsection (1)(a) 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.
(4A) A Transport Partnership may give grants or loans to any person for any purposes that, in its opinion, contribute to the implementation of the Partnership’s transport strategy.

(4B) Such grants or loans may be given subject to such conditions (including conditions requiring repayment in specified circumstances) as the Transport Partnership decides.

(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 etc. of RTPs

Schedule 1 provides further as to Transport Partnerships and their members.

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) Its transport strategy shall include provision about each of the following matters—

(a) the respects in which transport in the region needs to be provided, developed or improved having regard to, among other things—

(i) future needs including those occasioned by demographic and land use changes; and

(ii) what can be done, taking account of cost, funding and practicability;

(b) meeting the needs of all inhabited places, in particular, those which the Partnership considers different from the remainder of the region by reason of their remoteness or the sparsity of their populations;

(c) meeting the need for efficient transport links between heavily populated places;

(d) how transport in the region will be provided, developed, improved and operated so as—

(i) to enhance social and economic well-being;

(ii) to promote public safety, including road safety and the safety of users of public transport;

(iii) to be consistent with the principle of sustainable development and to conserve and enhance the environment;

(iv) to promote social inclusion;

(v) to encourage equal opportunities and, in particular, the observance of the equal opportunities requirements;

(vi) to facilitate access to hospitals, clinics, surgeries and other places where a health service is provided;

(vii) to integrate with transport elsewhere;

(e) the order of priority in which different elements of the provision, development and improvement of transport should be undertaken;
(f) how the Transport Partnership’s functions will be exercised so as to fulfil its transport strategy and, if the Partnership considers that the conferring of further functions is necessary for that purpose, what those functions are;

(g) how the Transport Partnership, so as to enable it to fulfil its transport strategy, will seek to influence its constituent councils or council in the performance of their functions relating to transport;

(h) the measuring and monitoring of the achievement of the strategy.

(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 and to any current national transport strategy established by the Scottish Ministers.

(4) In subsection (2)(d)(v) above, “equal opportunities” and “equal opportunities requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46).

6 Procedure before and after the drawing up of transport strategies

(1) A Transport Partnership shall—

(a) before arriving at its transport strategy, consult—

(i) its constituent councils or council;

(ii) each Health Board the area or part of the area of which falls within the Transport Partnership’s region (or, if that region is coterminous with a Health Board’s area, that Health Board); and

(iii) such other persons as it thinks fit;

(b) subject to subsection (1A) below—

(i) in the case of a Partnership created under section 1 above on or before 31 March 2006, by 31 March 2007;

(ii) in any other case, within 12 months of its creation, submit its transport strategy to the Scottish Ministers for approval.

(1A) The Scottish Ministers may—

(a) at the request of a Transport Partnership made to them within 8 months of the creation of the Partnership; and

(b) if satisfied that there are good reasons for doing so, authorise the Partnership to submit its transport strategy to them later than the time limit specified in subsection (1)(b) above in relation to the Partnership but not later than such date as is specified in the authorisation.

(1B) A Transport Partnership making a request for the purposes of subsection (1A) above shall, if so required by the Scottish Ministers, provide them with reports or information of such kind and in such form as they, for the purposes of that subsection, specify in the requirement.

(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 or council that its transport strategy has effect, specifying the date when it took effect;
   (b) send each of them or, as the case may be, it 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 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—
   (a) Health Board; and
   (b) 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.

(2A) The Scottish Ministers shall, as respects each Health Board, specify by order which Transport Partnership’s transport strategy is, or which Transport Partnerships’ transport strategies are, for the purposes of subsection (2) above, the strategy or strategies consistently with which the Board is to perform its functions.
(3) In subsection (2) above, “specified” in relation to a public body mentioned in paragraph (b) of that subsection 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.

Regional transport functions

10 Other transport functions of RTPs

(1) The Scottish Ministers may, as respects a Transport Partnership, and by order, provide for any statutory function relating to transport they 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.

(1A) In making an order under subsection (1) above after the coming into effect of the Transport Partnership’s transport strategy, the Scottish Ministers shall have regard to that strategy.

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

(2A) The functions which may be the subject of an order under subsection (1) above may, without prejudice to the generality of that subsection, include any of the following—

(a) those conferred on local transport authorities by or under Part 2 of the Transport (Scotland) Act 2001 (asp 2) (bus services) and Part 3 of that Act (road user charging);

(b) those conferred by or under any enactment and which relate to the management and maintenance of a bridge constructed in pursuance of functions conferred by, or by an order made under or confirmed by, any enactment;

(c) those conferred on traffic authorities by sections 1 to 4 of the Road Traffic Regulation Act 1984 (c.27) (traffic regulation orders) and on local traffic authorities by section 19 of that Act (regulation of use of roads by public service vehicles);

(d) those conferred on councils by sections 63 and 64 of the Transport Act 1985 (c.67) (securing the provision of passenger transport and related consultation and publicity).

(2B) The following are examples of the functions which may be the subject of an order under this section—

(a) entering into quality partnership schemes;
(b) entering into quality contract schemes;
(c) entering into ticketing arrangements and ticketing schemes;
(d) providing information about bus services;
(e) installing bus lanes;
(f) providing subsidised bus services;
(g) making and implementing road user charging schemes;
(h) operating ferry services;
(i) managing tolled bridges;
(j) operating airports and air services;
(k) entering into public service contracts.

(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 or council 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 or council; and
   (c) such other persons as the Scottish Ministers think fit.

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

10A Alteration of RTP’s functions

(1) The Scottish Ministers may, by order, provide for any function of a Transport Partnership to be carried out by the person who originally carried it out—
   (a) instead of the Transport Partnership; or
   (b) concurrently with the Transport Partnership.

(2) In so providing, the Scottish Ministers shall have regard to the Transport Partnership’s transport strategy.

(3) Subsections (3) to (6) of section 10 above apply to an order under this section as they apply to one made under that section.

(4) In subsection (1) above, the reference to the person who originally carried out a function is a reference to the person who carried out the function immediately before the coming into effect of—
   (a) the order under section 10 above which transferred it to the Transport Partnership; or
   (b) if there have been two or more orders under that section transferring that function, the first of those orders.
11  **Manner of performance of RTPs’ functions**

(1) 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 the achievement of the strategy.

(2) Where a function of a Transport Partnership falls to be carried out before its transport strategy comes into effect, the Transport Partnership shall carry out the function in accordance with such directions as the Scottish Ministers may give it.

**CHAPTER 2**

**SCOTTISH MINISTERS’ TRANSPORT FUNCTIONS**

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 statutory function—

(a) which relates to the provision or regulation of rail services; and

(b) which was immediately before the provision referred to in subsection (1) above carried out by—

(i) the Strathclyde Passenger Transport Authority; or

(ii) the Strathclyde Passenger Transport Executive.

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

12A  **Arrangements for performance by RTP of certain transport functions etc.**

A Transport Partnership may enter into arrangements with the Scottish Ministers, a council or any other person having statutory functions relating to transport being arrangements under which the Partnership—

(a) does, on behalf of the Scottish Ministers, the council or that other person, such things relating to transport as are specified in the arrangements;

(b) provides such services for the purposes of, or in connection with, transport as are so specified.
CHAPTER 3
SUPPLEMENTARY AND CONSEQUENTIAL PROVISION

13 Transfer of staff, property, rights 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.

(3A) For the purposes of subsection (2) above, a function is to be regarded as transferred irrespective of whether arrangements relating to it are made under section 12A above.

(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, rights and liabilities as are specified in or otherwise identified by the order.

(5) Subsection (4) above has effect in relation to property, rights 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.

PART 2
ROAD WORKS

The Scottish Road Works Commissioner

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

(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.

(1A) In subsection (1) above, “works in roads” includes road works within the meaning given by section 107(3) of the 1991 Act, works for roads purposes within the meaning given by subsection (2) of section 145 of that Act and major works for roads purposes within the meaning given by subsection (3) of that section.

(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.

16 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—

\(\text{(a) a road works authority or an undertaker; and}\)

\(\text{(b) the Commissioner,}\)

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 The Scottish Road Works Register

(1) 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.

(3A) The Scottish Ministers may by regulations—

\(\text{(a) provide that the payment to the Commissioner of the prescribed fee is a condition of access to the SRWR as mentioned in subsection (3) (and different fees may be prescribed for access for different purposes), and}\)

\(\text{(b) make other provision as to the payment to the Commissioner by such persons as are prescribed of such amounts as are prescribed.}\)

(3B) Amounts received by the Commissioner under subsection (3A) are to be applied by the Commissioner to the keeping of the SRWR.

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

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

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

(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.

(1A) A road works authority proposing to execute works in any such road shall, not later than such time before the date proposed for the start of the works as may be prescribed, enter in the SRWR such information relating to that matter (including such information about the start of the works) 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.

(2A) A local roads authority proposing to execute works in roads in pursuance of section 1 of the Roads (Scotland) Act 1984 (c.54) (management and maintenance of certain public roads) shall enter in the SRWR such information relating to that matter as may be prescribed.

(2B) If the Scottish Ministers (as roads authority) propose to execute works in roads under section 2 of that Act (management and maintenance of trunk, special and certain other public roads) they shall enter in the SRWR such information relating to that matter as may be prescribed.

(2C) On the completion of works of the kind referred to in subsection (2A) or (2B) the roads authority which executed them shall enter in the SRWR such information about their completion as may be prescribed.

(3) A roads authority which has——

(za) under subsection (2) of section 56 of the Roads (Scotland) Act 1984 (c.54), given an applicant for consent for road works or excavations notice of affected statutory undertakers,

(zb) under subsection (8) of that section, given notification of unlawful works removed or unlawful excavations filled in,

(zc) under section 58(1) of that Act, given permission for the occupation of part of a road for the deposit of materials or for the erection of staging or scaffolding projecting over part of a road,

(zd) under section 61(1) of that Act, given permission for the placing, leaving, retention, maintenance, repair or reinstatement of apparatus in or under a road or the breaking open of or having access to the road,

(a) under section 85 of that Act, 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.”.

(1A) In section 108(2) of the 1991 Act (roads authority to be regarded in certain circumstances as road works authority for purposes including those of section 112 of the Act) for “112” there is substituted “112B (duty to enter certain information in Scottish Road Works Register)’’.

(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 (5) 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.”.

(3A) After subsection (2) there is inserted—
“(2A) The Scottish Ministers shall by regulations make provision for appeals against directions under this section, including provision as to the procedure to be followed on an appeal.”.

(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.”.

(5) In subsection (4), for “may” there is substituted “shall”.

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 shall 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 shall 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)—

(i) for “twelve months” there is substituted “such period”; and

(ii) at the end there is inserted “as may be prescribed.” and;

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

“(9) The Scottish Ministers may issue or approve for the purposes of this section a code of practice giving practical guidance as to the performance by road works authorities of their functions under this section; and in carrying out those functions a road works authority shall have regard to the code of practice.”.

(c) at end there is inserted—

(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 2005 (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 2005 (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 sections 118 and 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 sections 118 and 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 road works authorities and undertakers who fail to comply with duties imposed on them by sections 118 and 119 respectively,
(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.”.

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 2005 (asp 00) (duty to provide Scottish Road Works Commissioner with certain information).

A roads authority Section 112B(2A) to (3) of this Act.

An undertaker Sections 113(1), 114(1) and 116(2) of this Act; section 16 of the Transport (Scotland) Act 2005 (asp 00) (duty to provide Scottish Road Works Commissioner with certain information).”.

Duty of undertaking to notify completion of road works: form and procedure

In section 129 of the 1991 Act (duty of undertaking 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) 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 shall 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 shall, 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)”.

**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).

**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 made by statutory instrument 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 the statutory instrument containing 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.
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.

(7) Regulations shall not be made unless a draft of them has been laid before and approved by resolution of the Scottish Parliament.”.

Resolution of disputes under 1991 Act

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) Any offence under this Act which is listed in the first column of Schedule 8A to this Act (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Act.

(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.
(2A) The Scottish Ministers may, by order, modify that Schedule so as to provide that an offence is to cease to be a fixed penalty offence.

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

(4) An order under subsection (2A) above may make transitional provision.”.

(1A) In section 143 of that Act (which includes provision as to orders under the Act), in subsection (2)(b)(ii), after “section” there is inserted “130A or”.

(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

(1) 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 the offences which, under section 130A of this Act, are fixed penalty offences;

(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.”.

(2) In section 143 of that Act (which includes provision as to regulations under the Act), in subsection (2)(b)(i) after “17” there is inserted “or 130B”.

36A Consultation on regulations and codes of practice

After section 163 of the 1991 Act there is inserted the following section—

“163A Consultation of regulations and codes of practice

(1) Before—

(a) making, amending or revoking regulations under or for the purposes of any provision of this Part; or

(b) issuing, amending or revoking a code of practice under or for the purposes of any such provision or approving any such code of practice or its amendment or revocation,

the Scottish Ministers shall consult the persons and authorities set out in subsection (2).

(2) Those persons and authorities are such—

(a) persons considered by the Scottish Ministers to be representative of the interests of undertakers;

(b) road works authorities;

(c) other persons,

as the Scottish Ministers think appropriate.”

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.

37A Public Transport Users’ Committee for Scotland

(1) The Scottish Ministers shall, by order, establish a body corporate to be known as the Public Transport Users’ Committee for Scotland (in this section, the “Committee”).

(2) An order under this section may include provision—

(a) about the constitution and membership of the Committee (including how members and office-holders are to be appointed);
(b) about the proceedings of the Committee;
(c) about its staff;
(d) about the discharge of its functions (including provision for the discharge of functions by sub-committees with members who are not all members of the Committee);
(e) about the making of reports by the Committee to the Scottish Ministers;
(f) about the making of payments by way of—

(i) allowances to office-holders, other members of the Committee and members of sub-committees who are not members of the Committee;
(ii) remuneration to its staff;
(iii) the meeting of the expenses of the persons mentioned in sub-paragraphs (i) and (ii) above;

(iv) pensions and other payments to or in respect of former staff of the Committee;

(g) about the keeping of accounts by the Committee and their audit and submission to the Scottish Ministers.

(3) The Scottish Ministers may—

(a) make payments to the Committee of such amounts, at such times and on such conditions (if any);

(b) make available to the Committee such staff, accommodation, furniture and equipment,
as they consider appropriate.

(4) 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 75 there is inserted the following entry—

“75A The Public Transport Users’ Committee for Scotland.”.

37B Functions of the Committee

(1) The Committee may consider and make recommendations to the Scottish Ministers about any matter relating to public transport services in, from or to Scotland.

(2) The Committee shall consider and make recommendations about any other matter if asked to do so by the Scottish Ministers.

(3) The Scottish Ministers may, by order—

(a) confer further functions on the Committee;

(b) remove functions from the Committee;

(c) make changes to any function of the Committee;

(d) transfer any function of the Committee to another person (including the Scottish Ministers).

(4) An order under subsection (3)(a) or (c) above may confer a function or change a function only if the new function or, as the case may be, the function as changed relates to public transport services in, from or to Scotland or facilities for those services.

(5) The Committee may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions.

(6) In this section, “public transport services” means all those services (including ferry services used also for carrying freight) on which members of the public rely for getting from place to place when not relying on facilities of their own but does not include—

(a) services provided under permits under section 19 of the Transport Act 1985 (c.67) (permits in relation to use of buses by educational and other bodies) other than services provided wholly or mainly to meet the needs of members of the public who are elderly or disabled;

(b) excursions or tours.
**37C Guidance and direction to Committee**

The Committee shall—
(a) have regard to any written guidance issued to it by the Scottish Ministers;
(b) comply with any written direction given to it by them,
as to how it is to discharge its functions.

**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.

42 **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.
42A Badges for vehicles used for disabled people: change of terminology

In section 21(4) of the Chronically Sick and Disabled Persons Act 1970 (c.44) (badges for display on motor vehicles used by institutions concerned with the care of disabled people) for “institution”, in both places where it occurs, there is substituted “organisation”.

42B Extension of remit of Bus User Complaints Tribunal

In section 41 of the Transport (Scotland) Act 2001 (asp 2) (Bus User Complaints Tribunal)—

(a) in subsection (7), for “local” in both places where it occurs, there is substituted “bus”;

(b) after that subsection there is inserted—

“(8) In subsection (7) above, “bus service” means—

(a) a local bus service; or

(b) a service which—

(i) uses one or more public service vehicles for the carriage of passengers by road at separate fares;

(ii) operates between places at least one of which is in Scotland; and

(iii) is not a local service.”.

43 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” in paragraph (a)—

(a) after second “authority” there is inserted “(i)”; and

(b) at the end there is inserted “; or

(ii) any policies formulated by them from time to time in accordance with that strategy which, were the area to which those policies relate not in a passenger transport area, could have been formulated by them under that provision and which relate to matters which may be the subject matter of a quality partnership scheme or a quality contract scheme;”.

(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.

(1C) Provision made by virtue of subsection (1A) above may—

(a) include provision conferring the functions referred to in paragraphs (a) and (b) of that subsection on persons appointed to carry out functions similar to those functions; and

(b) where it does so, may, so as to give the provision full effect, apply and modify any enactment.”.

(4A) In section 66(4) (application of Act to motor vehicles and persons in public service of the Crown), for “subsection (2)” there is substituted “subsection (3)”.

(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)”.

(5A) In section 81(4)(b) (which specifies the regulations that are to be made by way of affirmative resolution procedure), after “Act” there is inserted “or which consist of or include provision made by virtue of section 64(1C) of this Act.”.

(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) or (2A), 10(1), 10A(1), 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 2005.

(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
(introduced by section 4)
ADMINISTRATIVE FUNCTIONS ETC. OF RTPs

Staff

5 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—

10 (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—

15 (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;

25 (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.

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

(4A) A Transport Partnership may develop its land for the purposes of its functions in such manner as it thinks fit.

6A(1) A Transport Partnership may—

(a) develop, for use by other persons, any of its land no longer required for the purposes of its functions; or

(b) develop for use wholly or partly by other persons any of its land the use of which for the purposes of its functions (not including those conferred by this paragraph) can be combined with that other use, with a view to selling or otherwise disposing of the land (or any right or interest in or over it) after the development is carried out.

(2) A Transport Partnership may acquire land adjacent to its own for the purposes of developing it under paragraph (1) above together with its own.

6B In paragraphs 6 and 6A above, references to the functions of a Transport Partnership do not include those conferred by paragraph 6A above.

6C(5) A Transport Partnership may dispose of land; and section 74(2) to (2H) of the Local Government (Scotland) Act 1973 (c.65) (disposal for best consideration) applies in relation to a Transport Partnership as it applies in relation to a local authority.

(6) The power to dispose of land under sub-paragraph (5) above includes power to dispose of a servitude or other right in or over the land by the creation of a new right.

Private legislation

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

(2) The power conferred by sub-paragraph (1) above on a Transport Partnership includes power to continue the promotion or opposition of private legislation in the circumstances set out in sub-paragraph (3) below.

(3) Those circumstances are—
(a) where the function in pursuance of which the legislation was first promoted or opposed was transferred to the Transport Partnership under section 10 above after the introduction of the Bill for the legislation;

(b) in a case where that function was transferred to the Scottish Ministers under section 12 above after the introduction of that Bill, where the Scottish Ministers have directed that the Transport Partnership specified in the direction is to continue the promotion or opposition of that legislation; or

(c) a combination of the circumstances set out in sub-sub-paragraphs (a) and (b) above.

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 2005 (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)”.

Forming companies

8A A Transport Partnership may (whether alone or with others, who need not be Transport Partnerships) form or promote companies within the meaning of the Companies Act 1985 (c.6).

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 2005 (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 2005 (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 2005 (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 2005 (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 2005 (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 2005 (asp 00);”.

(6) In the Local Government Act 1988 (c.9) (application of Part 2 of the Act), after sub-section (1) of section 28 there is inserted—

“(aa) a Transport Partnership created under the Transport (Scotland) Act 2005 (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 2005 (asp 00)”.

Expenses of non-councillor members and observers

13A A Transport Partnership may pay to persons appointed, as respects the Partnership, as observers under section 1(2)(g) above such expenses as the Partnership determines.

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 2005 (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 2005 (asp 00)”.

SCHEDULE 2
(introduced by section 15)

SCOTTISH ROAD WORKS COMMISSIONER: FURTHER PROVISION

25 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.

Freedom of information

4 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 97 there is inserted the following entry—

   “97A The Scottish Road Works Commissioner.”.
### SCHEDULE 3

*Increase in maximum fines for certain summary offences under the 1991 Act*

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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 may be prescribed.

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 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.

5  (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.

5  (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.

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

6  (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.

6  (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.

6  (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.

7  (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.

7  (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.

7  (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.

**Effect of prosecution on notice**

8A Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

**Recovery of unpaid fixed penalties**

9 Subject to paragraphs 8 and 8A, 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 (1) The road works authority shall, subject to sub-paragraph (2), remit the money received by them by way of fixed penalties under this Schedule to the Scottish Ministers.

(2) The Scottish Ministers may, by regulations, provide that the road works authority may retain as much of that money as is sufficient to meet such of their expenditure as is described in the regulations.

(3) The Scottish Ministers may make regulations about the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this Schedule.

12 (1) Fixed penalty notices may not be given in such circumstances as may be prescribed.

(2) The method or methods by which fixed penalties may be paid may be prescribed.

(3) The Scottish Ministers may by regulations modify paragraph 4(2) or 5(1) so as to substitute a different period for the period for the time being specified there.”

13 The Scottish Ministers may issue or approve for the purposes of this Schedule a code of practice giving guidance to road works authorities and their authorised officers as to the performance of their functions under this Schedule; and in performing those functions those authorities and officers shall have regard to that code of practice.

**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>
Failure of owner of skip or other person to ensure conditions of permission complied with.”

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.

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.

(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.

Effect of prosecution on notice

8A Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

Recovery of unpaid fixed penalties

9 Subject to paragraphs 8 and 8A, 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 (1) The roads authority shall, subject to sub-paragraph (2), remit the money received by them by way of fixed penalties under this Schedule to the Scottish Ministers.

(2) The Scottish Ministers may, by regulations, provide that the roads authority may retain as much of that money as is sufficient to meet such of their expenditure as is described in the regulations.

(3) The Scottish Ministers may make regulations about 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.”

13 The Scottish Ministers may issue or approve for the purposes of this Schedule a code of practice giving guidance to roads authorities and their authorised officers as to the performance of their functions under this Schedule; and in performing those functions those authorities and officers shall have regard to that code of practice.
Transport (Scotland) Bill

[AS PASSED]

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