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Graham Simpson, MSP
Delegated Powers and Law Reform Committee
Room T1.01
Scottish Parliament

30 September 2019

Dear Convener,

TRANSPORT (SCOTLAND) BILL – NEW POWERS TO MAKE SUBORDINATE LEGISLATION AT STAGE 3

I am writing to inform you of my intention to lodge amendments to the Transport (Scotland) Bill at Stage 3 which would provide Scottish Ministers with regulation making powers in four topic areas, namely low emission zones, parking, workplace parking levies and community transport services.

Parking

An amendment has been lodged to insert a new section 54A into the Bill, to provide for information sharing between local authorities, their enforcement agents and the the Driver and Vehicle Licensing Agency (DVLA). If the amendment is agreed, the relevant regulation-making power will appear at section 54A(1)(b).

The power to share information will enable local authorities to share with the DVLA the details of vehicles that have parked in breach of any of the three national parking prohibitions contained in the Bill. This is in order for local authorities to obtain the details of the registered keeper of the vehicle for enforcement purposes. As the DVLA are an executive agency of the UK Government, the amendment enables the disclosure of 'relevant information' to the Secretary of State.

The policy intention behind the amendment is to enable the sharing of the relevant information with such other body as may for the time being hold the particulars of registered keepers. The reason for taking this power is to ensure that the legislation can be flexible and responsive to any future changes to the DVLA or to the registration of vehicles in Scotland.

The Scottish Government considers that as the regulation making power will be used in consequence of a change to the vehicle registration system in Scotland, it will only make a

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technical change to the process of information sharing, rather than any substantive changes to the content of that information, or what can be done with it. As a result, the Government considers that the negative procedure gives a suitable means for Parliament to scrutinise such a change.

Low Emission Zones (LEZs)

For LEZs, the proposed amendment is in relation to inquiries and hearings.

The new enabling power will allow the Scottish Ministers to make regulations as to the detailed procedure for examinations into a proposal to make, amend or revoke a low emission zone scheme. The Scottish Government amendment substituting section 7 at Stage 3 will provide that the reporter appointed to conduct these examinations will have the discretion to choose the general procedure used for the examination. Generally, the choice of procedure will be by way of written representations only, a hearing, or an inquiry. This will widen the scope of section 7, which currently provides no procedural flexibility, meaning that the only appropriate procedure is to have a full public local inquiry.

The reason for this procedural flexibility is that, depending on the nature and extent of the proposal, it may not be appropriate in all cases for an inquiry to be held. The enabling power is required to ensure that details of the procedural requirements, and matters such as expenses, can be appropriately set out in secondary legislation.

The new enabling power in the proposed section 7(6) will be subject to negative procedure, as this is a matter of procedural detail and as such negative procedure is considered to provide an appropriate level of parliamentary scrutiny.

Workplace Parking Levies (WPL)

The proposed amendment to WPL is also in relation to inquiries and hearings and makes similar provision to the new section 7 for LEZ schemes.

Section 58F of the Bill, as inserted at stage 2, gave the local authority proposing to make, amend or revoke a workplace parking licencing scheme; and the Scottish Ministers, the power to cause an inquiry into the proposal to be held and appoint a person by whom it is to be held. A local authority could not proceed with a scheme until the inquiry is completed.

The principle underpinning section 58F is fundamentally sound. But on reflection, I have reached the view that the provisions, as drafted, are too narrow and may in fact restrict Scottish Ministers' and local authorities' flexibility in ensuring the most appropriate local inquiry is carried out. Section 58F, in causing an inquiry to be held, gives little scope to tailor the examination of a scheme to be both proportionate and sensitive to the nature and extent of the proposal being examined. As a result I am proposing an amendment that will maintain the fundamental aim of the provisions in section 58F, but widening the ways in which the aim can be discharged.

This amendment will allow the Scottish Ministers or a local authority to appoint a reporter who would have scope to determine how representations would be made and considered. This could be by holding an inquiry as section 58F outlined, but could be through written representations or hearings. As with LEZ schemes this is more flexible than the formal inquiry approach and so may make such examinations more likely.

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The amendment will introduce a new power for Scottish Ministers to make regulations in relation to a range of procedural details connected to how examinations should be carried out. These may make provision about who may be appointed to carry out such an examination. They may also make provision about the procedure for examinations, including representations which may (or may not) be considered, who may appear at a hearing or inquiry, the procedure for conducting a hearing or inquiry and what must be done before and after an inquiry. The regulations may also cover financial aspects of an examination and how it is reported.

The new enabling power in the proposed section 58F(6) will be subject to negative procedure, as again this is a matter of procedural detail and as such negative procedure is considered to provide an appropriate level of parliamentary scrutiny. This approach is consistent with that proposed for Low Emissions Zones.

Community transport services

A non-Government amendment was passed at Stage 2 of the Bill (now section 68B) which imposes a duty on health boards, in the provision of non-emergency patient transport services, to work with bodies providing community transport services in their area. Section 68B(5) of the Bill defines “community transport services” for these purposes as having the meaning given by section 22(1) of the Transport Act 1985 (which provides a definition of “community bus services”) “with such modifications as the Scottish Ministers may specify for community transport services that are not bus services”. The intention appears to be to allow the Scottish Ministers to designate non-community bus services as “community transport services” so that the duty on health boards in section 68B applies in respect of those services, as well as in respect of community bus services within the meaning of section 22(1) of the 1985 Act. However, it is not clear from that provision what form any modification of the 1985 Act definition to designate such services as “community transport services” would take.

The Scottish Government has therefore lodged an amendment which will require the Scottish Ministers to set out in regulations any additional transport services (apart from community bus services) in respect of which the section 68B duty will apply. This will not only allow Parliament to scrutinise any decision made by the Scottish Ministers as to the designation of non-community bus services as community transport services, but will also provide transparency and certainty to health boards as regards the nature of the duty under section 68B. The Scottish Ministers may use this power only to designate services provided by bodies concerned for the social and welfare needs of one or more communities and without a view to profit, and this ensures that only bodies operating within similar parameters to community bus services may be designated. Given these strict parameters, the negative procedure is considered to provide a proportionate level of Parliamentary scrutiny.



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