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Dear Mr Farrell,

Transport (Scotland) Bill at Stage 1

Thank you for the note of 20 September on behalf of the Rural Economy and Connectivity (REC) Committee in relation to the Transport (Scotland) Bill, setting out additional questions which the Committee seeks answers to. For ease of reference I have set out our responses to the questions posed by the REC Committee in turn below.

Low Emission Zones

- 1. The Committee requested justification of grace periods for non-compliant vehicles which could last for up to six years, when the air in some parts of urban Scotland currently breaches European pollution limits.**

The grace periods were designed on the basis of feedback from the consultation, Building Scotland's Low Emission Zones¹, which was carried out in late 2017. The feedback came from a range of interests, from environmental considerations to those of businesses and individuals, and there was a strong call for grace periods that covered both non-residents and residents.

The timeframes mimic the approach adopted in other European low emission zones. The grace periods offer a period of time for vehicle owners affected by low emission zone access restrictions to prepare in advance of the commencement of enforcement of penalties. It is reasonable to assume that a shift from non-compliant vehicles to compliant vehicles across a proportion of fleets may occur during the grace period rather than expecting a sharp shift toward compliant vehicles only at the end of the grace period and this would bring environmental benefits before the end of the period.

- 2. The Committee requested whether the Scottish Government anticipated funds coming from local authorities or the Scottish Government and at what level, with regard to the financial memorandum which provided three scenarios, where the public sector provides low, medium and high levels of grant for retrofitting emissions reduction technology to existing vehicles or for vehicle scrappage.**

¹ <https://www.transport.gov.scot/news/responses-to-low-emission-zone-lez-consultation-now-analysed/>

The Scottish Government has committed £10.8 million of funding to low emission zones in the 2018/19 budget. The then Cabinet Secretary for Environment, Climate Change and Land Reform stated in November 2017 that approximately 70% of that funding (£7.8 million) in 2018/19 would be allocated to support the bus industry in Scotland to prepare for low emission zones. This funding is being delivered by the Scottish Government via the Bus Emission Abatement Retrofit Programme. The Programme for Government 2018 has also committed to helping those who will have the most difficulty in making the transition of their vehicles prior to the introduction of low emission zones in our four biggest cities by 2020. The Scottish Government is to create a Low Emission Zone Support Fund that will target specific cohorts of both commercial and private vehicle owners affected by the introduction of low emission zones in Scottish cities.

Pavement and Double Parking

3. The Committee requested an indication of what might be in the enforcement of the prohibitions on pavement and double parking regulations and also requested if possible, for a draft to be provided before the end of our stage 1 consideration of the Bill.

Section 49 of the Bill provides that Ministers may make provision for the enforcement of the parking prohibitions in regulations. These regulations may make provision about the approval of devices for recording evidence of contraventions, the service of penalty charge notices, the content of such notices, the methods of notification, how and when charges should be paid, how local authorities can enforce penalty charges which remain outstanding at the end of the specified period for payment, what steps a local authority may take after a penalty charge has been cancelled and the rights of registered keepers to seek a review of the charge or appeal a decision of the local authority following such a review.

Decriminalised parking enforcement is a regime which enables a local authority to enforce its own parking policies using parking attendants. More widely, the Scottish Government will consider whether other measures may be necessary or appropriate for detecting contraventions, such as automatic number plate recognition cameras, which are currently approved for use in connection with the enforcement of bus lane contraventions under the Transport (Scotland) Act 2001. For further details see Bus Lanes (Approved Devices) (Scotland) Order 2001 (SSI 2001/444).

The regulations are likely to set out the method for notifying the penalty charge notice to the registered keeper. The detail of that remains to be developed and considered with stakeholders, but options for consideration may include posting to the registered keeper or affixing to the parked vehicle. The regulations could also provide for a number of offences in connection with trying to evade or hinder enforcement such as interfering with the enforcement officer in the execution of their duties or providing false information. The regulations will provide a specified period within which the penalty charge should be paid, possibly with an incentive of a reduced charge if payment is made early and surcharges if the payment remains unpaid (and unchallenged) after a specified period. It is intended that the registered keeper will be able to seek the review of the imposition of the penalty. Such a right of review will be to the local authority. Where the review is unsuccessful it is intended that right of appeal will be available to the First-tier Tribunal (as is currently being consulted on in relation to parking and bus lane adjudicators).

The enabling powers are similar in nature to those that have been provided in connection with the establishment of the civil penalties for bus lane contraventions under the Transport (Scotland) Act 2001 and for the civil enforcement of parking under the Traffic Management Act 2004. The

regulations made under those enactments provide a useful reference of the type of provision which could be included in the regulations under the Bill. In particular we would draw the committee's attention to the Bus Lane (Charges, Adjudications and Enforcement) (Scotland) Regulations 2001 (SSI 2001/442) and Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (SI 2007/3483) and Civil Enforcement of Parking Contraventions (England) (Representations and Appeals) 2007 (SI 2007/3482). The Traffic Act 1991 and the designation orders made under schedule 3, paragraphs (1)–(3) of that Act set out the enforcement regime applicable to the enforcement of decriminalised parking offences and again provide a useful reference tool of the type of provisions which could be made under the new powers in the Bill. We would however emphasise that these existing provisions are referenced as examples only and the actual content of the regulations to be made under the Bill provisions has not yet been determined.

It is intended that the content of the enforcement regulations will be developed in conjunction with stakeholders, in particular local authorities, and will be subject to a comprehensive public consultation. We note the Committee's interest in monitoring how those considerations evolve. We will endeavour to share as much information as is practical and useful as matters develop. But given the processes of engagement and consultation required in developing the technical detail of the regulations, it is not considered likely that draft regulations will be provided to the Committee during the passage of the Bill. We are continuing to also engage with stakeholders as we produce the Parking Standards document that will contain detailed information on the following topics

- Legislation (Existing legislation/ regulation, new legislation)
- Local Authority Powers
- Road Standards/ Requirements
- Exemption Process
- Signage
- Complaints and Appeals
- Reporting Arrangements

Bus Services

4. The Committee requested whether any local authorities, or Regional Transport Partnerships, have indicated they wish to operate their own bus services.

As noted in the policy memorandum, a number of local authorities in Scotland already run their own bus services under a variety of existing provisions. The Bill seeks to expand the circumstances where a local authority can pursue this option.

In autumn 2017, the Scottish Government consulted on the bus service proposals and 22 local authorities and Regional Transport Partnerships (RTPs) responded supporting the option for local transport authorities (LTAs) to run their own bus services. In particular, they highlighted the value of being able to run their own buses when considering socially necessary services which LTAs currently support by tendering with commercial companies.

Since the Transport Bill was introduced, a number of local authorities have publically stated their desire to run their own bus services. Transport Scotland has also spoken to transport operators from councils across Scotland who have expressed an interest in the detail of the Bill proposals. In general, however, these discussions have been caveated on the outcomes of any assessment of the cost effectiveness for the local authority as well as the final shape of the legislation following

the parliamentary process. Transport Scotland will continue to engage with interested LTAs as the Bill progresses.

5. The Committee requested an explanation of how the Bill tackles the decline in bus passenger numbers, which research indicates the main reasons are the growth in car ownership and use, increasing bus journey times and fares.

The Transport Bill provides LTAs with options to influence and improve bus services in their area, ensuring that there are sustainable bus networks across Scotland. Issues associated with congestion are a key factor raised by the industry in terms of patronage decline as increased congestion is reflected in increased journey times and operating costs. The partnership and franchising provisions in particular offer tools for local authorities to help address patronage decline.

On partnerships, the Bill supports LTAs and operators in working together to improve the quality and efficiency of local services. This includes developing a plan for services within an area and implementing it through supporting schemes. These schemes must either benefit passengers by improving the quality or effectiveness of services or reduce or limit congestion and pollution. As part of the scheme an LTA must bring forward measures and/or invest in facilities such as bus priority in congestion hotspots. At the same time operators will be required to meet certain service standards which could include service frequencies or maximum fares. This would allow the partnership to support the network by making services more reliable and attractive to passengers.

As an alternative, franchising provides an LTA with full control of the network including the power to determine what services are required, their frequency, the standards of those services and what facilities are required to support them. As such they can take whatever action they consider appropriate to ensure that bus services in the franchise area are an attractive option for passengers. Where a LTA chooses to establish a franchise they may also take steps to support the network similar to the measures which could be undertaken as part of a partnership.

Many of the Bill provisions beyond bus services also have the potential to address issues associated with patronage decline. For example improved co-ordination of road works could help reduce congestion and its associated impact on bus journey times, while greater availability of smart ticketing arrangements and schemes will make it easier for passengers to make and pay for multi-operator or multi-modal journeys, making bus travel a more attractive option.

6. The Committee requested how realistic is it that a local authority or Regional Transport Partnership will establish a bus operating company, given the substantial start-up costs and the fact that they would be prevented from competing for profitable routes already served by private sector operators.

Under the Transport Act 1985, LTAs have a duty to secure services that they deem to be socially necessary and that would otherwise not be provided commercially. Local authorities may currently secure those services by entering into contracts with commercial operators under which the local authority subsidises the provision of the service. Competition for these contracts can be low and the subsidy costs significant. The Bill provides these authorities with an alternative to subsidising such services by operating them themselves.

The financial memorandum provides example costs for setting up a bus company from scratch. While these may seem substantial it should be noted that several LTAs already own and/or operate bus fleets for other purposes where no operator's licence is required, such as non-commercial bus services for educational purposes and non-profit community bus services. The

bill provisions would allow them to extend the use of these vehicles to operate socially necessary services.

Any decision taken by an LTA to operate a local bus service would be expected to be subject to a financial assessment, in line with standard local government financial practice. This is likely to include consideration of the costs of running a service directly (establishing a fleet, operating vehicles and employing staff) in comparison with subsidising a commercial company which would expect to cover operating costs and profit margins as part of any tender bid.

7. The Committee requested an explanation of what benefits Bus Service Improvement Partnerships would bring for passengers that are not provided by statutory Bus Quality Partnerships.

Currently a Quality Partnership (QP) is made by an LTA where it identifies a geographic area for the QP and specifies the infrastructure facilities that it has provided in the last five years. The LTA then holds a consultation on a proposed list of standards that will apply to an operator's bus services which wish to use these facilities. Rather than being based on a shared understanding of the current and future local needs for bus services, the process is controlled by the LTA which develops proposals ahead of any consultation and then reacts to points raised by operators. The ability to enter into a partnership is predicated on the provision of infrastructure which can be costly for LTAs while also limiting the improvements which can be made to the bus network as a whole. Additionally, the range of standards in a QP is not particularly wide compared with other models.

The new Bus Service Improvement Partnerships (BSIPs) differ from existing QPs in a number of ways. They do not limit the LTA to investing in infrastructure, extending their actions to include measures which could include for example the implementation of policies on parking. They extend the range of standards beyond that allowed in the QP, including being able to agree frequencies on certain routes and/or setting maximum fare levels. They encourage the development of a genuine partnership approach through joint working from the start and then throughout the partnership with operators given a say in whether the plans or schemes developed by the partnership can proceed. Once agreed all operators in the area will be required to meet the service standards laid out in schemes or risk losing the ability to operate in the partnership area. Additionally, the traffic commissioner will be able to refuse an application to register a service in the area if they consider that the applicant will not be able to meet the required service standards. In comparison to QPs, BSIPs also offer increased transparency and accountability for communities, with consultation undertaken as part of the development of a partnership and LTAs required to publish annual reports on the effectiveness of schemes.

As the scope of actions which can be undertaken in a BSIP is wider than for QPs, the potential benefits for passengers are also wider. Among other things, a BSIP can be used to improve the passenger experience by: improving the punctuality and reliability of journeys; setting standards for vehicle quality; providing for standardised frequencies of services on a route; improving fares and ticketing and providing for stability of services.

The Scottish Government will work with interested parties to bring forward guidance on partnerships, but would expect best practice to involve bus passenger representative groups (who would already be statutory consultees for consultations on partnership proposals) in the governance. In addition, the Scottish Government would expect BSIPs to be based on a good understanding of metrics relevant to the particular local issues and circumstances. For example, the partnership may wish to use bus passenger satisfaction surveys to inform the setup of and to monitor the success of the plan and schemes.

8. The Committee requested an explanation of the practical difference the provisions relating to open data would make to most bus passengers.

At the moment much of the information provided to passengers is made available by operators on a voluntary basis, and as such passengers often have to go to multiple different sources to obtain the information required to plan a journey and it can be difficult to make comparisons between services and providers.

The Bill will build on existing voluntary arrangements by requiring operators of local services to provide information on routes, timetables, actual running times (real time and in the past) and fares publically and in a specified format. Ensuring consistency of approach across Scotland will allow the public to access information in a standardised format, free of charge. The information could be used to inform innovative technological developments in using and accessing information such as route planners and bus trackers offering products and services which benefit passengers.

The provisions on information for the public in the Bill will make it easier for passengers to plan a journey, find out about delays and disruptions and know how much their ticket will cost before they board, regardless of where they are making their journey. This will reduce the uncertainty associated with bus travel and increase passengers' confidence in making the decision to take the bus.

Smart ticketing

9. The Committee requested an explanation of why the Scottish Government is not taking a national approach to the proposals in the Bill which rely on local authorities making smart ticketing schemes given that countries such as The Netherlands already have a national integrated travel smartcard (OV-Chipkaart).

In other countries such as the Netherlands, the state has significant control of the transport network with a government owned rail operator and extensive franchised bus services the norm. This has a significant bearing on the ease with which a national commercial scheme of this type can be implemented. State control can ensure a single set of business rules for ticketing, a consistent customer proposition and fares capping, or subsidised fares, as an attractive means of incentivising passengers to use the scheme.

In Scotland, the state has only limited control of the public transport network and there are also a far higher number of commercially owned bus operators. Partnership working, both between the public sector and the operators and between operators themselves has enabled significant progress on smart across Scotland with, for example, multi-operator smart ticketing on bus 'smartzones' already in place across a number of Scottish cities. There is a partnership project underway to open up Scotland's smartcard estate so that all ITSO smart tickets can be loaded on to any operator or government issued ITSO smartcard, no matter if the ticket is for bus, train or subway – with remaining modes anticipated to join as ITSO technology is adopted. ITSO is a DfT supported standard for smart ticketing which is used across Scotland, by government and commercial operators. This project eliminates the need for the passenger to hold multiple smartcards. Research has shown that this simplified approach is welcomed².

Compelling public transport operators to take part in a national scheme is not something which is straightforward to do in legislation. There are over 220 commercial bus operators in Scotland and

² Initial results from TS Smart Travel research over July-August 2018 have indicated that over 70% of respondents would find this smartcard flexibility of use.

the Scottish Government would need to understand the impact this would have on their ability to continue to operate effectively in a commercial market. While the Scottish Government has franchises/contracts covering much of the rail and ferry network, the provision and regulation of railway services is a reserved matter.

It is also likely to be expensive to implement. There is very limited information available publicly that could be utilised as a cost comparator. Accordingly, expenditure forecasts for such a scheme in Transport for the North and Transport Scotland's recent experience of the national 'e-purse' scheme are referred to below as a means of indicating scale of expenditure

Transport for the North, has recently begun procurement for an integrated and smart ticketing system. It will offering capped fare multi-operator ticketing. It is forecast to cost £150 million and be rolled out in 3 phases over four years³.

Transport Scotland explored the introduction of a relatively simple national e-purse scheme across Scotland, working in partnership with the major public transport operators on a voluntary basis, and making use of existing infrastructure – cards, ticket machines and back office. Ultimately the scheme did not proceed largely as a result of the faster than anticipated growth of contactless bankcard/mobile payment. This e-purse scheme was forecast to cost the Scottish Government in excess of £2 million for a six year contract (with the main costs covering a back office system to support customers and apportion revenue back to the operators).

The measures in the Bill seek to build on the existing partnership working approach. It will give the Scottish Ministers the ability to set a technology standard at a national level and ensure that, through the National Smart Ticketing Advisory Board, a strategic direction for smart ticketing and payment is being set. It will continue to support local transport authorities to work with operators to make smart ticketing arrangements on a voluntary, partnership basis but will also provide authorities with greater powers to design effective mandatory ticketing schemes where these are required. In addition, the Bill gives Ministers the power to direct that a local transport authority exercise its powers to make a ticketing scheme, to help address areas of unmet ticketing need.

This approach will offer the travelling public the benefits of bringing multi-modal, multi-operator smart ticketing to more areas with a longer term goal of supporting full coverage of regional arrangements and schemes across Scotland. It is considered that this solution would place considerably less burden on the public purse and would achieve greater support from public transport operators who would see a nationally imposed scheme is an erosion of their ability to operate effectively in a commercial market.

Road works

10. The Bill would extend requirements around road work site safety, signing, lighting and staff qualifications to include roads authorities as well as utility companies. Do you have any evidence that there is a particular problem with roads authority works that the proposed changes will tackle?

There is evidence to this effect. The lack of an inspection function conferred on the Scottish Road Works Commissioner (SRWC) – which is also being addressed in the Bill – currently leaves the post holder reliant on being made aware of issues directly by the community which he regulates. Therefore the roads authority sector in particular is essentially self-regulated regarding site operations. In 2017 the SRWC engaged a technical consultant in an attempt to gather

³ <https://www.ukauthority.com/articles/transport-for-the-north-plans-for-smart-ticketing>

independently verified information. Given the lack of a statutory power to do so, the work was only made possible by the voluntary agreement of the community, who allowed unannounced site visits as part of an 'information gathering' exercise which included comparing their sites to the current safety code.

This found that roads authorities demonstrated poorer overall compliance with safety standards than the major utility companies: only three authorities achieved the same compliance targets as those expected of utilities. While this information was gathered during a single pan- Scotland exercise, it gives a reasonable indication that while authorities at an organisational level follow the code, at a site based level there is room for improvement.

There have only been two SRWC penalties imposed on roads authorities; the most recent of these identified issues in safety as well as co-ordination. This was a £5000 penalty that arose after the SRWC was made aware of 'significant failures' by the authority, specifically:

"Recent events have revealed significant failures in terms of safety and co-ordination. Road works carried out on behalf of the authority, by contractors, resulted in endangering road workers and the general public. These works were not recorded on the Scottish Road Works Register and appropriate traffic management was not in place." (*A Carmichael, SRWC, Feb 2018*).

11. Do you have any evidence that the threat of a fixed penalty notice acts as a deterrent to poor workmanship by utility companies?

Under the New Roads and Street Works Act 1991 there are 18 sections under which an offence can be committed. Only four of them can currently be addressed by Fixed Penalty Notices (FPNs). Figures published by Jim Barton as part of his review⁴ showed that where a duty became enforceable by FPN, improved compliance was generally achieved. Comparing late utility notices sent to South Lanarkshire Council (by utilities) in February 2007 (before FPNs) and again in February 2016, (post FPN introduction) the trends show that FPNs drive compliance well:

Notices sent to South Lanarkshire Council	Number of late Notices	
Notice type (FPN applies)	Feb '07	Feb '16
24 Hour	67	0
One month	18	1
Seven day	51	3
Two hours	21	5
Works clear	3	1
Works closed	86	6
TOTAL	246	16

Notices sent to South Lanarkshire Council	Number of late Notices	
Notice type (No FPN applies)	Feb '07	Feb '16
Works extension	18	20
Actual start	38	6
Registration	19	62
TOTAL	75	88

⁴ <https://www.transport.gov.scot/media/10269/srwc-review-consultants-report.pdf>

As there are currently no FPNs for reinstatement quality, there is no direct evidence regarding their effect in that context. However, there is evidence on the basis of SRWC penalties more generally. Every two years the road works community in Scotland undertakes a coring exercise, where roads are physically cut into to confirm compliance with the national standard in the areas of the road not normally visible and therefore not open to inspection. The first SRWC, John Gooday, took the decision to impose financial penalties on those organisations which failed to achieve a reasonable benchmark pass rate in that exercise. Following the introduction of penalties in 2012 (£90,000 combined) in this area, the national pass rate has increased from 64% in 2008/9 to 83% in 2012/13. In 2015/6 the figure was 82%, a small decrease resulting from the poor performance of a single individual UK wide undertaker. It would be reasonable to assume that allowing the SRWC to issue FPNs on the basis of reinstatement quality would drive similar compliance at a local level.

12. What practical difference do you expect the requirement to enter the exact dates that road works begin and end in the Scottish Road Works Register to make for road users?

The requirement to enter the actual start date into the Scottish Road Works Register (SRWR) will reduce ambiguity about when the road works are actually going to take place. Although this information is already available to all road users via an open website, it is currently updated as late as one day after works have actually started, which may also be after works have been completed. Such confusion can be a source of frustration for road users such as bus operators, local authority public transport managers and freight operators, who are directly impacted by road works which they unexpectedly encounter on their planned or chosen routes. This can lead to delays, interruptions to scheduled bus services and can contribute to congestion which causes problems for the road using public at large. The requirement aims to improve this situation.

Additionally, in keeping with the UK, Scotland has seen instances of what are termed 'abortive visits' in relation to works inspections. This is where the roads authority inspector attends a site based on the proposed start date of works, only to find that no works have actually begun. The inspector is unaware of when in the window of opportunity the works will actually start, and if works are short-lived, only a day or so in duration, they may not return in time to see the works being carried out. This results in some shorter duration works going uninspected, despite the fact that even an occupation of a few hours can result in large scale congestion if not set up correctly, even after the works have been removed. This is also true where required measures for those with mobility or visibility issues (specifically ramps and tap rails) are absent. Although the site may only exist for a short while, if a wheelchair user is physically unable to follow the pedestrian route through lack of ramps this can have a significant affect regarding their mobility. These changes will result in fewer abortive visits, meaning a better inspection regime; more failures addressed 'at source' and reduced congestion for road users.

13. What sanctions would apply to a roads authority or utility company that did not meet the requirements set out in a reinstatement quality plan?

The purpose of reinstatement quality plans is to demonstrate that an undertaker or roads authority which is required to enter such a plan on the SRWR can safely and effectively carry out reinstatement works, and has in place its own quality control procedures as regards those works. The approach taken by the Bill requires the SRWC to approve a plan prepared by an undertaker or authority. The SRWC may only approve a plan where satisfied that the plan demonstrates that the undertaker or authority can safely undertake the work, and has in place the necessary quality control procedures. Failure to enter a plan which has been approved by the SRWC where required to do so is to be an offence. It is by this approval mechanism, rather than by imposing penalties

in the event that a plan is not followed, that the Bill seeks to ensure that individual undertakers and authorities can safely and competently carry out reinstatements. This is likely to include a community led and agreed advice note or code of practice which will provide both general guidance and specific details regarding the content of a quality plan. As the specific requirements will be fairly technical and related to site based practice and current industry standards, they should retain a degree of flexibility less appropriate for primary legislation.

Canals

14. Given concerns about the impact that the backlog of maintenance is having on the ability to navigate Scotland's canals, has any consideration been given to placing a duty on Scottish Canals to ensure canals remain navigable?

The Transport Act 1968 sets out the duty of the British Waterways Board, now operating as Scottish Canals, regarding maintenance of the waterways.

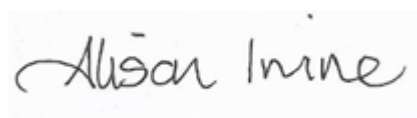
Specifically in section 105 of the act it states that, with a view to securing their general availability for public use, Scottish Canals has a duty to maintain the commercial waterways in a suitable condition for use by commercial freight-carrying vessels and to maintain the cruising waterways in a suitable condition for use by cruising craft, that is to say, vessels constructed or adapted for the carriage of passengers and driven by mechanical power. The Caledonian and Crinan Canals are classified as commercial waterways and the Union and Forth and Clyde Canals as cruising waterways.

Scottish Canals has an Asset Management Strategy setting out their considered approach to maintenance of the canal network which also explains how Scottish Canals will prioritise repairs across the canal network within the available budget.

Once again, I would like to offer thanks to yourself and members of the REC Committee for the diligent and helpful scrutiny being given to this piece of legislation proposed by the Scottish Government.

I hope the information above is helpful in relation to those endeavours.

Yours sincerely,



Alison Irvine
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