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Dear Edward,

Thank you for the Rural Economy and Connectivity Committee's Stage 1 Report on the Transport (Scotland) Bill. I would like to offer my thanks to you and Committee members for the diligent way Stage 1 proceedings have been undertaken and the range of views you have heard during evidence sessions across the topics within the Bill.

I welcome that the Committee supports the general principles of the Bill. The report raises a number of points and reflections in regard to specific matters. Attached is the Scottish Government's response to these, taken in the order they appear in the report.

MICHAEL MATHESON

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Rural Economy and Connectivity Committee - Stage 1 Report on the Transport (Scotland) Bill

Low Emission Zones

Objectives

10. The Committee agrees that it would be beneficial to include in the Bill a clear definition of what a Low Emission Zone is and what its objectives should be, drawing on those that are set out in the Policy Memorandum. It therefore recommends that the Scottish Government brings forward an appropriate amendment at Stage 2 to insert such a definition.

Low Emission Zones (LEZs) are simply areas identified by LEZ schemes within which vehicles may not be driven unless they meet the requirements of that scheme as to emission standards. The term “low emission zone” has, in legal terms, no particular meaning or importance beyond that, so is not considered that creating a statutory definition of the term is necessary.

As far as scheme objectives are concerned, section 9(4) of the Bill already states every scheme’s objectives must include an objective of contributing towards meeting the air quality objectives under section 87(1) of the Environment Act 1995. Existing obligations relating to Air Quality Management Areas will therefore be relevant. Otherwise, the objectives of individual schemes is to be a matter for the local authority or authorities making them. Direction and advice on setting those further objectives, as well as the alignment between objectives and the use of penalty charge revenue will, however, be outlined in subsequent LEZ guidance.

Monitoring of the achievement of objectives is of course important, and section 23 of the Bill obliges a local authority to prepare an annual report on the operation and effectiveness of any LEZ operated by it. A copy of this is required to be submitted to the Scottish Ministers. Section 24 of the Bill then allows the Scottish Ministers, if appropriate, to give a direction to the local authority requiring it to carry out a review of the operation and effectiveness of its LEZ scheme.

As such, the Scottish Government’s view is that the Bill and associated guidance will allow for and provide direction on a range of objectives.

11. The Committee is also of the view that effective introduction of LEZs will require steps to be taken in advance to provide improvements in public transport provision and to put in place measures such as park and ride facilities and improved active travel opportunities.

The Scottish Government agrees with the Committee that in order for the most effective introduction of LEZs to happen, local authorities should look broadly and strategically at transport measures, such as improvements in public transport provision and improved active travel opportunities.

Successful transport planning and provision requires a series of interconnected measures and approaches. The Bill addresses specific areas which have been identified as requiring primary legislation but, outwith these statutory measures, the Scottish Government is taking action on a number of fronts, not least the current review of the National Transport Strategy.

This wide-ranging strategy has seen extensive and sustained engagement with stakeholders and citizens across Scotland. It is forward looking, planning our next set of shared priorities with a draft strategy due for consultation in 2019.

Additionally, the Bill's measures regarding options for local transport authorities on the provision of bus services is an area which can align with LEZs and have mutually-beneficial outcomes.

LEZs clearly have the potential to interact with a host of other transport policies across congestion, place-making and the uptake of ultra-low emission vehicles, ultimately supporting modal shift to greener transport and active travel by foot or cycle. Further direction and advice on such considerations will be outlined in future LEZ guidance.

Further direction and advice on additional transport measures and actions that may be appropriate for local authorities to consider when implementing or considering whether to introduce LEZs will be outlined in LEZ guidance.

Enforcement and compliance

19. The Committee acknowledges that challenges could arise should a LEZ contain, for example, healthcare facilities such as hospitals which may need to be accessed by a large number of people but on an infrequent basis. It calls on the Scottish Government to be aware of this potential scenario and seek to address it in the proposed guidance for local authorities.

The Scottish Government is mindful that there are potential scenarios where individuals may require ad-hoc or infrequent access to a LEZ. The Scottish Government will consider such scenarios when developing regulations on exemptions, as well as in any guidance that may be given to local authorities.

20. The Committee recommends that Local Authorities considering the introduction of LEZs should take on board the learning from the experience of the London LEZ and create a strong consumer focus to help increase compliance and public acceptance of the zones. This should include education on why the zone is important and the benefits it will deliver, together with a strong appeals process to address queries on penalties, circumstances when drivers require to access the zone in emergency situations, etc.

The Scottish Government agrees with the Committee's reflections here. This point has been echoed by a number of stakeholders including Glasgow Chamber of Commerce and the Federation of Small Businesses Scotland, in terms of

communicating the benefits of the LEZs and explaining the reasons why the zone is important.

In relation to communications and consumer focus, a number of tasks are underway. Market research is being conducted by the Scottish Government which will aim to determine a baseline level of understanding around LEZs across Scotland and to further explore the city-level stakeholder understanding on LEZs. The market research will help inform the actions for a future plan, with the aim to increase compliance and public acceptance of LEZs in Scotland.

21. The Committee considers that there is merit in several of the points raised in the Law Society's submission calling for more detail to be provided on the face of the Bill on emissions standards, penalty charges, offences and appeals which relate to LEZs. It recommends that the Scottish Government reflects on these points and considers bringing forward amendments where appropriate to address these points at Stage 2.

The Law Society helpfully offered views in this area and the Scottish Government will reflect carefully on those, some of which were considered in correspondence with, and evidence before, the Delegated Powers and Law Reform Committee during Stage 1. Of the issues not previously raised in those considerations, the Scottish Government has taken particular note of the suggestion that there should be a restriction that only one contravention per day can be committed even if a person with a non-compliant vehicle causes an infringement in more than one LEZ.

However, clearly schemes will be designed for penalties to be returned to the relevant local authority. Should only one Penalty Charge Notice be payable despite infringements across multiple LEZs, there are obviously practical considerations as to which local authority the single charge would be payable.

The Scottish Government is closely listening to views which have been raised as part of the Stage 1 evidence, yet is not currently proposing any Stage 2 amendments based on the Law Society's comments in this area.

22. The Committee calls on the Scottish Government to provide a clear indication in advance of Stage 2 of how it intends to take into account the evidence received during the course of the Stage 1 scrutiny when it is creating the guidance on LEZs. It notes that this guidance will need to be published promptly in order to be of full use to local authorities.

The Scottish Government will take evidence received during Stage 1 into consideration as it continues to work closely with local authorities and wider stakeholders to develop the associated LEZ guidance. The LEZ guidance is being developed in tandem with the Bill, and will be published alongside regulations brought forward subsequent to the Bill receiving Royal Assent. The Scottish Government will run stakeholder workshops to test views on various options and statements to be included in the LEZ guidance, with the workshops being one element in a round of stakeholder engagement on this topic.

The need for national standards

29. The Committee believes that to avoid confusion and to encourage compliance there must be consistency across the country as to which vehicles can enter a LEZ and which are exempt. It calls on the Scottish Government to set a national minimum technical emissions standard for vehicles which can enter a LEZ. It notes the Scottish Government's willingness to address this matter in the regulations which will be brought following the implementation of the Bill's provisions.

There will be nationally consistent emission standards and exemptions, which will be set out in regulations. Also, there will be scope for local exemptions where appropriate according to a local authority's specific needs. The REC Committee and DPLR Committee have both recently heard evidence that the emission standards are likely to be Euro 6 for diesel and Euro 4 for petrol.

30. The Committee also recommends that standardised signage should be developed for LEZs to encourage familiarisation and reduce confusion amongst road users who might visit several different zones across Scotland.

The Scottish Government agrees that nationally consistent signage should be used for all Scottish LEZs. Such signs will be needed at zone entry points, at locations that provide advance / early warning prior to the start of the zone and at locations that help to communicate diversions around the zone.

Development of LEZ signage is already underway. The Scottish Government has already met with local authority representatives to develop early ideas on LEZ signage design. The Traffic Signs Regulations and General Directions 2016 is the legislation setting out the design and conditions of use of traffic signs that can be lawfully placed on or near roads in Great Britain (including Scotland). The Scottish Government is considering what changes to that legislation may be appropriate to incorporate LEZ signage.

31. The Committee calls on the Scottish Government to carefully consider how local authorities will effectively communicate the purpose and impact of LEZs to people who live and work in their areas. It believes that a comprehensive package of information should be provided by local authorities at planning, development and implementation stages to allow people to contribute views on proposals and to have sufficient time to prepare for the changes.

The Scottish Government agrees that strong communications are critical to advise the general public and businesses of the implications of LEZs for them. Communications will be required at both national and local level, and a number of measures are being taken forward:

- A national LEZ website (available at www.lowemissionzones.scot) is now live and the Scottish Government encourages businesses and individuals to visit the website. The website hosts information around the introduction of LEZs

and aims to provide clear, succinct information on the reasons for, and benefits of, LEZs.

- A national LEZ communications plan is being developed to run over an 18 month period and would be expected to work in conjunction with communications by local authorities on their city specific LEZs.
- The LEZ Communications Group has been set up with the four cities connected with the Programme for Government commitment, to share what the Scottish Government is doing at a national level and the work going on at a local level.
- With local authorities at varied stages of LEZ development, we are aware that LEZ Delivery Forums have been established by Glasgow City Council and targeted engagement workshops have been set up for the freight and taxi industries. Such events will help local authorities to seek stakeholder views on the proposals in tandem with allowing sufficient time to take account of stakeholder feedback in order to prepare any required changes to their schemes.

33. The Committee recommends that further work should be done to quantify the financial cost of a life lost to air pollution in a similar way to the calculation that is already available for a life lost in a road traffic accident. It welcomes the Scottish Government's indication that it is willing to consider carrying out this work.

The Scottish Government welcomes the Committee's endeavours around this issue. While attributable deaths from air pollution are not directly comparable to lives lost in road traffic accidents when looking at methodologies for financial calculations, the Scottish Government points to the written response by the Cabinet Secretary for Transport, Infrastructure and Connectivity in relation to his evidence session at the Rural Economy and Connectivity Committee on the 21 November 2018 on this matter.

That written response covered issues such as the 'measurable health impacts of low emission zones' and the methodology of estimating costs (including human costs) of low emission zones. In addition, NHS Health Scotland and Health Protection Scotland are in the early stages of leading an 'evaluability assessment' for the Glasgow LEZ.

The displacement effect and the need for a holistic approach

42. It is clear to the Committee that LEZs could potentially have a range of knock-on impacts and unintended consequences for individuals, communities and businesses. They could also impact on traffic management, planning and the environment in other localities around the periphery of zones. The Committee is clear that implementation of LEZs should be planned carefully in order to avoid unintended consequences such as significant displacement of traffic or pollution.

Local authorities are best placed to design their own schemes and to take account of local issues such as displacement. Should a decision be taken to introduce a LEZ, a local authority should take into account various impacts, such as on any Air Quality Management Areas, outside the zone as well as other areas, for example through displacement of vehicles. Good practice in this area will be provided within the LEZ guidance document.

43. The Committee calls on the Scottish Government to ensure that the regulations and guidance on LEZs are structured in a way which will encourage a wider, holistic approach to public health, place making, traffic management, public transport provision and modal shift.

44. As mentioned earlier in this report, the Committee is also of the view that LEZs should not be introduced unless appropriate steps are taken in advance to provide improvements in public transport provision and to put in place measures such as park and ride facilities and improved active travel opportunities to incentivise people to make a choice not to take vehicles into the zone.

Taking the above two points together, the Scottish Government refers to its response to the recommendation in point 11 above.

LEZs are one approach within a suite of actions to address air pollution in cities. LEZs should interact with a host of other transport policies across congestion, place making and uptake of ultra-low emission vehicles, ultimately supporting modal shift to active travel by foot or cycle. However, there will also be scenarios where there is a pressing need due to air quality which takes precedence in such considerations. Such considerations will be explored within LEZ guidance.

45. It believes that Regional Transport Partnerships (RTPs) could have an important role in helping deliver this. Support for planning transport networks and providing appropriate infrastructure, such as bus lanes, must also be available to help ease the transition, reduce congestion, encourage modal shift and help increase public acceptance of LEZs.

The Scottish Government regularly works with RTPs across a range of issues regarding transport delivery.

Timescales, technology and financial implications

49. The Committee recognises that there is an urgent need to address the environmental issues around poor air quality given their impact on public health. However, in order for LEZs to be a success they must have public support, understanding and buy in, especially in times of fiscal constraint.

The Scottish Government refers to its response to the recommendation in point 20 above. The Scottish Government agrees that the success of LEZs will – in part – rely on public support and that is being factored in to the approach to communications.

60. The Committee acknowledges the financial burden that might be faced by businesses and individual motorists should they need to upgrade or replace vehicles to meet the necessary emissions standards. It notes that this is likely to present a particular challenge for those on lower incomes.

61. It calls on the Scottish Government to consider how those operating in the voluntary and community transport sectors might be supported to either retrofit or upgrade their vehicles so that they are not disproportionately impacted by the introduction of LEZs.

62. It is also of the view that if any meaningful step change is to occur in the improving the emission efficiency of commercial vehicles, this needs to be managed in a way which is both realistic and ambitious.

63. The Committee acknowledges that the Scottish Government is considering how the Low Emission Support Fund might help support users of light good vehicles and that bus retrofit funding is already available. It therefore calls on the Scottish Government to consider how it can develop existing schemes and create additional incentives and support which will encourage commercial vehicle upgrades. The Committee notes that if successful this could, in turn, result in a consequential trickle down effect of environmentally compliant vehicles which will help feed the second hand market.

Taking the four points above collectively, the Scottish Government is cognisant that a balance needs to be struck between the pressing requirement to address air pollution whilst allowing sufficient time for those affected by LEZs to prepare and transition. Grace periods are essential in ensuring that individuals and businesses which would be affected by an LEZ have the opportunity to plan ahead and adapt. The Bill allows local authorities to determine the grace period of between 1 and 4 years for non-residents with an additional 1 to 2 years for residents (these measures are guided by feedback from the Building Scotland's Low Emission Zones consultation).

It is also worth noting that the grace period will work in tandem with how the vehicle fleet using the roads evolves over that time period, with the general trend towards lower emitting vehicles also having an effect.

The Programme for Government 2018 states that the Scottish Government will create a Low Emission Zone Support Fund that will target specific cohorts of both commercial and private vehicle owners affected by the introduction of LEZs. This is to help those who will have the most difficulty in making the transition to LEZ compliant vehicles. Financial support is also available to help with the transition to low carbon methods of transportation via the Energy Saving Trust.

The Scottish Government will consider the community transport sector when creating a Low Emission Zone Support Fund and when developing its views on whether particular exemptions are appropriate at national or local level in this area. The Scottish Government has allocated significant funding to support the bus sector to prepare for LEZs (via the BEAR Programme).

66. The Committee notes that the Scottish Government anticipates that approved devices in the form of Automatic Number Plate Recognition cameras will be used to enforce LEZs in the same manner as they do in relation to other existing moving traffic offences. It is reassured that this will deal with concerns about the use of private and foreign number plates raised by the road haulage industry. However, it recommends that clarity on such matters should be provided to the road haulage industry and, in due course, in the relevant regulations and associated guidance.

Although specific detail on approved devices will be provided within regulations and guidance, the Scottish Government has regular dialogue with a range of stakeholders on this issue to share its thinking. The communications and public awareness approach outlined above will also have a role to play.

Finance – low emission zones

73. The Committee acknowledges the scrutiny of the Bill's Financial Memorandum by the Finance and Constitution Committee.

74. The Committee is aware of the challenging financial circumstances under which local authorities are currently operating. It is of the view that the implementation of LEZs will not be a success unless they have the appropriate finance and staff resources available to them.

The Scottish Government's commitment to providing significant funding to support the four city authorities introducing LEZs by 2020 is clear, and set out in a 2018-19 Programme for Government commitment. Such funding is allocated to the development of LEZ scheme designs, setting up a back-office enforcement regime and providing enforcement infrastructure to support the implementation of LEZs. Capital and resource funding will again be provided in 2019/20 for such actions, to ensure that appropriate finance and staff resources are available to them.

75. While it appreciates that more work is required in order to establish the details of how LEZs will operate, the Committee notes with concern that there is currently no formula or methodology established for how the split between local and central government funding will work in practice. It calls on the Scottish Government to provide clarity on the funding methodology which will apply, in advance of Stage 2.

The Scottish Government is taking a partnership approach with local government regarding LEZ implementation. As outlined above, funding is currently being administered and it is unclear why a prescriptive methodology would subsequently be required. The Scottish Government notes that the Bill does not create a requirement to introduce LEZs and therefore feels this funding approach strikes the right balance.

Bus Services

General Decline of bus passenger numbers

88. The Committee acknowledges the widespread concern at the decline in bus use across Scotland. It notes that there are a variety of factors which are contributing to this decline, such as the reduction of direct bus support in rural areas, and congestion and a lack of appropriate infrastructure in some urban areas.

89. The Committee notes the concerns expressed by several stakeholders in evidence that the bus services proposals in the Bill are unlikely to make a marked difference in arresting the decline in bus patronage.

90. The Committee calls on the Scottish Government to work with local authorities to help support an improvement in bus lane and other relevant infrastructure. The Committee notes that Bus Service Improvement Partnerships could play a role in the development of this infrastructure and will consider these further later in the report.

The Scottish Government notes the Committee's comments and will address this issue in its response below to point 135 of the Committee's report.

93. The Committee believes that the ability to access transport can play a fundamental role in how a person can contribute to and participate in society. It notes the suggestions made on the Bill from the Equality and Human Rights Commission and asks the Scottish Government to reflect on and respond to these in detail before Stage 2 of the Bill.

The Scottish Government agrees that transport plays a crucial role in how people engage and participate with society and will reflect on the suggestions made by the Equality and Human Rights Commission. The Bill supports the retention of bus networks and their associated socio-economic benefits by providing local authorities with options to support bus services in their area.

Of course the implementation of the provisions will vary according to each authority who will take decisions in accordance with their individual policies and the Bill allows for this.

It is important to note that those local authorities who choose to make use of the Bill provisions will also be subject to public sector equalities duties, in particular the Fairer Scotland Duty introduced in April 2018.

95. The Committee calls on the Scottish Government to consider whether an appropriate quality assurance framework could be developed and applied to the bus industry to help raise standards and drive improvement in the passenger experience

The Scottish Government notes the Committee's comments on the issue of a quality assurance framework.

The options presented in the Bill are designed to improve the quality of bus services in Scotland through joint working between local transport authorities and bus operators, whether under the Bus Service Improvement Partnership (BSIP) model or the franchising model. Quality issues are likely to vary from area to area and require different interventions to raise the overall standard. With that local focus in mind, there are provisions for monitoring performance in BSIPs and any franchising arrangements that local transport authorities decide to put in place.

More broadly, the Scottish Government funds Bus Users Scotland (BUS) to monitor compliance with the regulatory regime and to check bus services are running where and when they should be. BUS also work with bus operators to act on complaints and share best practice.

Further, the Traffic Commissioner has powers to investigate complaints and impose sanctions on operators who fail to run their registered services in accordance with any required standards.

103. The Committee considers that the requirement in the Bill that local authorities will only be able to provide bus services if they are to meet "an unmet public transport need" creates an unnecessary restriction. It therefore recommends that the Scottish Government brings forward an amendment at Stage 2 to remove this restriction and provide greater flexibility to local authorities in their ability to provide local bus services.

The Scottish Government considers that the legislation as it stands addresses the key issue raised by councils in its consultation, namely, the need to be able to run their own services where they are receiving no or few bids for tendered bus services.

However, since the Bill was introduced some local authorities have indicated that they would like to see these powers extended in the way the Committee suggests. This is of course not a straightforward matter with factors such as competition and State aid restrictions and potentially significant set-up and running costs for councils likely to bear on their ability to operate in the market on a competitive basis.

However, the Scottish Government notes the Committee's comments and the views of local authorities and will explore this option further, keeping all matters under consideration.

111. The Committee notes the competition concerns voiced by bus operators that the lack of a requirement for local authorities to tender would lack transparency and could distort the commercial bus market. However, it also notes the CMA's Competition Impact Assessment guidelines, which are specifically designed to avoid this. The Committee calls on the Scottish Government to provide additional information on how it would expect these provisions to operate in practice and to indicate what guidance and support will be available to local authorities to ensure that they do not fall foul of competition law.

The provisions in the Bill relating to the operation of local bus services by local transport authorities is on condition that these address a public transport need which

is not being met by the market. Because the operation of a commercial service which meets the need in question would preclude the running by local authorities of their own services, those local authority services will, by definition, not be able to compete with an existing commercially operated service.

The Scottish Government notes that the Competition and Markets Authority has suggested that guidance should be provided to local authorities on how and when to assess a change in circumstances such that a commercial operator may be willing to serve the previously unmet need, and will consider the development of such guidance following the passage of the Bill.

112. The Committee notes that the Bill as currently drafted could have implications for local authorities who make significant investment in vehicles, depots and staff to meet unmet need, and then subsequently find that commercial operators seek to run services on the same routes. The Committee calls on the Scottish Government to respond to these concerns and provide an indication as to how local authorities might safeguard their investment in such situations.

Generally it is unusual for such a service to be subject to direct competition. However it is not unheard of, and the Scottish Government has some sympathy with the concerns raised by local authorities.

That said, the Scottish Government does not support any form of protection which would grant an exclusive right to operate a service to a local authority, or to any other provider, without the necessary assessments and safeguards offered under a franchise.

As suggested by the Competition and Markets Authority, guidance should be provided to local authorities on how and when to assess a change in circumstances such that a commercial operator may be willing to serve the previously unmet need.

The Scottish Government notes the Committee's comments and will engage further with local transport authorities and other stakeholders on how to address these concerns as matters proceed towards implementation of any options within the Bill.

113. The Committee recommends that the Scottish Government consider how any disputes in relation to the interaction between local authority provided services and those provided by commercial operators would be dealt with. For example, if a local authority service uses part of the route on a commercial corridor. It calls on the Scottish Government to bring forward an amendment to this effect or set out how it might address this issue in regulations.

As the Committee is aware, the provisions in the Bill relating to operation of local bus services by local transport authorities is on condition that the services meet an unmet public transport need.

However, the Scottish Government notes the Committee's recommendation and will consider this issue further and will engage further with stakeholders to consider how best it may be addressed.

114. The Committee notes that some local authorities currently lack the experience or expertise which may be required to run their own bus services. It calls on the Scottish Government to consider how appropriate guidance and financial support, possibly redirected from existing monies, might be provided where needed to help build knowledge and capacity.

The Scottish Government believes that local authorities already have an understanding of the existing market in their area. As such, they have a level of experience in assessing risks in relation to their decision to subsidise services.

That said, the Scottish Government notes the Committee's comments and will continue to work closely with local transport authorities and consider what appropriate guidance and support might be required to help them build knowledge and expertise.

115. The Committee notes that several stakeholders are supportive of the use of arm's length companies to run local authority bus services. It calls on the Scottish Government to consider whether an option to this effect should be included in the Bill at Stage 2.

Since the Bill was introduced some local authorities have indicated that they would like to see the powers to run their own bus operations extended further. As noted in the response to the recommendation in point 103 of the Committee's report, the Scottish Government will consider whether it may be desirable and possible to include further options in the Bill.

Bus Service Improvement Partnerships (BSIPs)

126. The Committee welcomes the further information provided by the Scottish Government which helpfully outlines how BSIPs will work in practice and how they will differ from the previous scheme. However, the Committee notes that this clarity is lacking in the Bill as drafted. It calls on the Scottish Government to ensure that this clarity of structure and purpose is made clear in guidance and any associated regulations.

The Bill's provisions allow a foundation for particular BSIPs, but such levels of detail do not lend themselves to primary legislation and the Scottish Government has deemed them more appropriate for regulations and guidance. Following the passage of the Bill, the Scottish Government will ensure that further information on how BSIPs are designed to work in practice will be made available in guidance and associated regulations to provide clarity to those local transport authorities looking to make use of these powers.

130. The Committee acknowledges that what is determined to be a "sufficient number" of objections to the creation of a BSIP will be determined in regulations. However, it calls on the Scottish Government to carefully consider how this assessment is made. It notes that the market share of any operators that object, the number of services they operate as well as location and frequency may have a significant impact. It calls on the Scottish Government

to be mindful that it is not simply a case of the overall number of objections involved.

The Scottish Government notes the Committee's comments. The question as to what will constitute a sufficient number of operators to prevent a partnership proposal from progressing will be set out in regulations. This reflects that there will be a wide range of possible scenarios that may need to be taken into account.

To this end, the Scottish Government will be engaging with local transport authorities and bus operators on the range of possible circumstances that might arise. These discussions will take into account the issues raised by the Committee.

134. The Committee notes the evidence which suggests that the enforcement of compliance with BSIPs may lack balance as the Traffic Commissioner will have jurisdiction to enforce the operators' commitments but not those of local authorities. The Committee believes that in order for a partnership to be truly effective, a level playing field should apply insofar as is possible. It therefore calls on the Scottish Government to reflect on whether the Bill might be amended to address this issue.

The approach taken in the Bill to enforcement of compliance in a BSIP aligns with similar provisions for quality partnerships under the 2001 Act. The BSIP model is designed to be a stronger form of partnership between operators and local transport authorities, where all parties are required to work together to develop the partnership and take responsibility for its delivery.

Although the Bill contains no specific provisions for enforcement of a local transport authority's commitments, it remains the case that if a local transport authority fails to deliver on their commitments they could be subject to judicial review. However, the Scottish Government is aware that legal action would be a significant step to take and will consider the appropriateness of additional oversight in this regard.

135. The Committee notes concerns expressed in evidence that provisions relating to BSIPs as drafted do not contain the obligation to invest in infrastructure improvements that existed within the Statutory Quality Partnership model. The Committee would again highlight the importance of infrastructure such as bus lanes in facilitating bus service improvement by reducing congestion and encouraging an increase in bus use. It calls on the Scottish Government to bring forward an amendment at Stage 2 to include such an obligation in the provisions which relate to BSIPs.

It should be observed that a BSIP scheme must contain details of the facilities to be provided and measures to be taken by the local transport authority under that scheme. The facilities to be provided may include infrastructure improvements where there is a need, but it is not desirable to tie the hands of local transport authorities and make it a condition of any BSIP that infrastructure must be improved.

The Scottish Government's view is that the quality partnership model under the Transport (Scotland) Act 2001 was too restrictive so it has responded to calls to change that.

Through engagement with local transport authorities and bus operators, BSIPs have been designed to be a more flexible tool than quality partnerships. BSIPs present the opportunity for genuine partnership working between local transport authorities and bus operators. Such partnerships will contain obligations on both parties to the agreement to improve the quality of services available in their area.

Local Bus Service Franchising

153. The Committee notes that, in practice, franchising may only be taken up by a small number of local authorities which have the time and resources to establish a framework.

The Scottish Government notes the Committee's comments. Local authorities are accustomed to operating large undertakings, in relation to certain service delivery, and taking significant procurement and investment decisions. Councils also have their own transport experts who have a strong understanding of the needs and issues relevant to services in their areas, and will be able to assess whether additional expertise is required.

154. The Committee notes that local authorities would require access to commercially held route patronage and revenue information in order to fully evaluate whether it would be appropriate and beneficial for it to enter into a franchise. It calls on the Scottish Government to consider whether the service data provisions contained in the Bill might facilitate the provision of this information or whether the Bill might need to be amended to provide for this.

As the Bill undertakes Parliamentary passage, the Scottish Government is liaising with local authorities and operators to consider whether existing information gathering powers in the transport context, in particular under the Transport (Scotland) Act 2001 are sufficient to support the development of a BSIP or franchise in full. As part of that process, the Scottish Government will reflect on whether any amendments are required in that regard at Stage 2.

155. The Committee notes that if franchising is to succeed in areas where routes operate across local authority boundaries, RTPs are likely to have an important strategic and coordinating role.

The Scottish Government will continue to work to ensure close liaison with the Regional Transport Partnerships and local authorities to ensure that transport policy in Scotland is properly co-ordinated.

156. The Committee notes the concerns of existing commercial operators as to the negative impact franchising may have on their businesses and the people they employ if introduced in areas in which they operate. It calls on the Scottish Government to provide greater clarity in guidance as to how any transition process would be supported and any negative impact mitigated.

Under the proposals in the Bill, local transport operators will be able to bid to be included within a franchising framework should they wish to do so. However, it is

important that the local transport authority have the powers to determine which bid will offer best value to them and to the bus passenger.

The Scottish Government notes the Committee's comments and is committed to further engagement with stakeholders to ensure greater clarity on this issue in guidance and regulations.

157. The Committee notes concerns raised by stakeholders about the potential lack of democratic accountability and transparency of the independent panel which will take the final decision on a franchising proposal. It also notes the suggestion that the use of such an approach in England was deemed to be flawed and was subsequently removed from the relevant legislation. The Committee calls on the Scottish Government to provide a response to these concerns prior to Stage 2.

The introduction of a franchise is a significant intervention in the local bus market with serious implications for the local network and passengers if poorly managed. Due to these risks, independent approval is an appropriate and important part of the process.

The Scottish Government sees a franchising panel as the right approach. The panel's task is firstly to consider whether the local authority has taken all the necessary procedural steps, including the preparation of assessment of the proposed franchising framework, obtaining an auditor's report, and carrying out the necessary consultation, before seeking to make the franchising framework.

This approach differs from that in England as it seeks to introduce an independent panel of experts into the process. That panel will not make a value judgement on franchising, but will apply a more focused test, essentially looking at whether the local transport authority has followed the process and has reached a reasonable conclusion. Additional criteria which the panel must follow may be set out in regulations and guidance and local transport authorities will be consulted as part of the development of these criteria.

The franchise model provides for rigorous scrutiny of the decision making process including the requirement for an independent audit of the financial aspects and approval by an independent panel to ensure the process is followed and decisions are reasonably arrived at. These safeguards will protect passengers and the wider bus network from the potential damage of a poorly developed franchise.

Service Data

165. The Committee acknowledges that the provisions requiring the sharing of certain data by operators are likely to be of benefit to local authorities in allowing them to reduce risks when contemplating the replacement of services that have been withdrawn by operators.

166. The Committee would encourage the Scottish Government to work with all stakeholders when developing the guidance to establish whether some sort of 'fair use' policy may be helpful in relation to data requests.

Taking the above two points together, the Scottish Government recognises the importance of working with stakeholders to ensure that policies are fair and consider the needs of all parties.

In developing the Bill's provisions, the Scottish Government was mindful of concerns that an automatic requirement to provide information for every type of variation or cancellation of registration data could go further than was necessary in order to meet the policy intention and could place a disproportionate burden on affected authorities and operators alike.

The provisions therefore start from the premise that an operator is only required to provide prescribed information when requested to do so by the affected authority. Such requests can only be made for the limited purposes set out in the Bill.

The provisions also set out a power for the Scottish Ministers to make regulations excluding or modifying the application of the power to request information in prescribed circumstances, for example in relation to variations of a particular character. This power to make regulations is subject to the express obligation to consult with stakeholders.

167. As discussed earlier in this Report, the Committee also sees advantage in patronage and revenue information being shared with local authorities by bus operators to aid consideration of whether a local bus service franchising arrangement should be introduced. It calls on the Scottish Government to consider this issue and provide its views on whether it might be appropriate in its response to this report.

The Scottish Government considers that the very specific purposes for which revenue and patronage information is required to be disclosed, and can be further shared, under the provisions in new sections 6ZA to 6ZC of the Transport Act 1985 means that it would be inappropriate for any data disclosed under those provisions to be shared in other contexts (such as franchising). However, as noted in the response to the Committee's recommendation in paragraph 154 of its report, the Scottish Government acknowledges the need to ensure the availability of robust service data when considering whether to introduce a franchise and is taking forward further work in that regard.

173. The Committee welcomes the Scottish Government playing a coordinating role in the creation and agreement of the format in which service data will be provided. It believes that consistency is essential in how this data is compiled. However, it notes that creating this consistency across the board may mean time and financial resources to reformat data which doesn't conform to the standard. It calls on the Scottish Government to consider this additional burden when setting the parameters for the data collection.

The Scottish Government recognises the importance of striking a balance so that one particular party is not overburdened in implementing these provisions. Work is already underway to assess how best to support local government and bus operators and consider how technology best be used to assist them.

In doing so, the Scottish Government is closely monitoring the work being undertaken by the UK Government, where similar provisions were introduced through the Bus Services Act 2017. The Department for Transport is currently aiming for service information across all services in England being made available in a consistent format from January 2020.

174. The Committee would encourage the Scottish Government to consider what technological solutions can be made available to help reduce any bureaucracy around the use and provision of data. It believes that the provision of real time information in an easily digestible format will make an important contribution to the increase in bus use.

It is recognised that technology can play a vital role in improving efficiency and accuracy. Consistency is also important to ensure that people are not required to duplicate processes. To this end, Scottish Government officials are monitoring what is being developed to support the data measures in the UK Bus Services Act and, where appropriate, will ensure that a consistent approach is taken.

The Scottish Government fully agrees that real time information can play a significant role in making bus services easier to use and therefore more attractive to new customers. Work is already underway to consider how best to roll this out in a way that provides a consistent service to customers with a range of differing needs.

175. The Committee also notes the importance of the accessibility of the information that is provided to ensure that all sections of society can access transport effectively. This includes people with disabilities and those for whom English is not their first language.

The Scottish Government is committed to ensuring where it can that services are provided in a way that meet the needs of all service users. While certain aspects of this are likely to be reserved to the UK Parliament (for example requirements to provide information for the purpose of facilitating travel by disabled people, which are addressed for Scotland by sections 181A to 181D of the Equality Act 2010), the Scottish Government can play a key role in supporting stakeholders to meet their obligations in that regard.

Finance – Bus Service Provisions

186. The Committee recognises that the various provisions relating to bus services are intended to provide local authorities with a range of options to assist them in ensuring that efficient and reliable bus services can be provided in a way that best suits their respective circumstances.

187. However, the Committee is concerned that whilst many of these provisions are broadly considered to be positive steps, the reality may be that few of them are taken up in practice due to a lack of financial resources to facilitate their set up and operation. The Committee calls on the Scottish Government to provide details of how it intends to monitor take-up and implementation of the various provisions and to indicate whether any

additional financial or advisory support will be made available to assist local authorities to prepare and implement the various provisions.

The Scottish Government provides a range of financial support for bus services which, whilst not directly linked to the new measures in the Bill, may offer support more broadly. The Bus Service Operators Grant (BSOG) is significant in this regard as it aims to benefit passengers, by helping operators to keep their fares down and run services that might not otherwise be commercially viable. The 2018-19 budget for BSOG is £53.5m.

While the Bill provides options for local authorities in regard to bus service provision there is no statutory requirement to implement them and therefore the Bill does not directly mandate any additional costs.

Local authorities spend around £50m a year to support socially necessary bus services in 2016/17, funded through the local government block grant. This is continually reviewed in line with Spending Reviews and Budget settlements, which will in future be set in the context of new powers for bus services created in the future Act.

(Smart) Ticketing Arrangements and Schemes

191. The Committee is concerned that whilst the provisions in the Bill may well deliver some improvements, for example by encouraging a greater degree of inter-operability through the introduction of a national technical standard, these alone will not deliver the aspirations for ticketing arrangements and schemes that are shared by stakeholders.

192. The Committee is concerned that the provisions on ticketing arrangements and schemes in the Bill lack ambition and feels that an opportunity has been missed to deliver a meaningful step change in integrated public transport provision in Scotland. The Committee is of the view that this can only be achieved through the introduction of a single ticketing scheme operating across all modes and operators.

193. The Committee acknowledges that this would require a significant level of commitment by and cooperation between public transport providers, integration of booking and financial systems and other measures. However, the Committee calls on the Scottish Government to show leadership in this area and to bring forward proposals for the development of a single ticket scheme to be inserted into the Bill before it completes its parliamentary passage.

Taking the above points together, the Scottish Government welcomes the Committee recognising the general support for the provisions on ticketing arrangements and schemes. The Scottish Government considers that the Bill's provisions in this area strike the right balance between accelerating progress whilst taking a pragmatic approach to what's achievable in the context of how transport delivery in Scotland is structured.

The Scottish Government's position on smart ticketing is influenced by a number of factors. Firstly, it is the Scottish Government's assessment that a national scheme, even confined to bus provision, would effectively require re-regulation of the whole bus industry – or at least the fares setting element – to be successful. It is notable that Charles Hoskins of Strathclyde Partnership for Transport asserted that view during Stage 1 evidence. There is no wider policy intention to regulate the bus market.

Secondly, evidence from Transport for London is that Oyster costs 14 pence in the pound to run¹ and advice from the Netherlands is that providing a comprehensive national ticketing scheme across modes costs around 10% of the total fares income annually to administer, which, when applied to Scotland, is currently in excess of £1 billion. This suggests an annual running cost of circa £100m for a comprehensive national ticketing scheme with a similar level of take up and functionality to London and the Netherlands.

The Scottish Government's view is that the very significant restructuring of the market and associated burden on the public purse required in order to deliver a national ticketing scheme is not justified.

The Scottish Government notes the Confederation of Passenger Transport's evidence to the Committee in which it suggested that the Bill provisions built on the good work already being done by the bus industry and government working in partnership.

The Bill provisions are therefore aimed at strengthening the existing powers given to local transport authorities in the Transport (Scotland) Act 2001, extending these powers to cover connecting modes of transport and enabling a national technological standard. The combination of these measures will contribute to creating the conditions in which local transport authorities and operators can deliver successful regional ticketing arrangements and schemes, tailored to local ticketing needs.

National Smart Ticketing Advisory Board

200. The Committee fully subscribes to the views expressed in evidence that the membership of the National Smart Ticketing Advisory Board should consist of a broad representation from all key stakeholder groups, with particular attention paid to geographical spread and accessibility.

The Scottish Government welcomes the Committee's reflections here. Following Royal Assent, a consultation on the membership of the National Smart Ticketing Advisory Board (NSTAB) will be undertaken to ensure fair representation of users with differing needs, operators of different scale, location and mode as well as local transport authorities across different regions.

201. The Committee welcomes the commitment from the Scottish Government for the Advisory Board to consider the need for paper and cash methods of payment. The Committee supports the availability of multiple methods of

¹ <https://www.information-age.com/london-assembly-questions-tfls-wave-and-pay-plan-1674393/>

payment. It reiterates the call from the Mobility and Access Committee for Scotland for thorough Equality Impact Assessments to be carried out on ticketing, to ensure that the needs of all potential users, particularly older and disabled people are fully taken into account.

The Scottish Government welcomes the call from the Mobility and Access Committee for Scotland (MACS). Throughout the Bill process MACS have played, and will continue to play, an important role in informing the Scottish Government on a range of accessibility issues.

Where a technological standard is introduced, or a ticketing arrangement or scheme put in place, the Scottish Government would expect an Equality Impact Assessment to be carried out in advance of publication to ensure that the changes meet the needs of all users.

202. However, the Committee considers that the remit of the Advisory Board should be widened to include a responsibility to bring forward proposals for a single ticketing scheme to apply across all modes of public transport in Scotland as recommended in this report. It calls on the Scottish Government to bring forward an amendment to this effect before the Bill has completed its parliamentary passage.

Given the above response in relation to points 191-193, it does not seem appropriate for the Bill to mandate a statutory duty or power for the NSTAB to bring forward proposals in the terms suggested by the Committee. However, the Scottish Government agrees that the NSTAB will be well placed to keep the progress made in this area under review and to provide Ministers with advice and recommendations in relation to the ongoing strategic development of smart ticketing in Scotland. The Scottish Government will give consideration to making this aspect of its role clear on the face of the Bill.

Directions and Reporting

207. The Committee notes the evidence received which suggests that whilst the provisions in the bill allow Ministers to instruct local authorities to introduce a smart ticketing scheme, a gap exists in that there is no power to allow local authorities to instruct operators to participate. The Committee therefore questions whether local authorities, or indeed the Scottish Government, would have a mandate to instruct operators to do so. If no such mandate exists, the Committee suggests that this could present a significant barrier to the introduction of such schemes, should an operator choose not to participate. It calls on the Scottish Government to provide it with view on how it envisages such issues might be addressed in practice.

In relation to local bus services, there is an existing statutory requirement for operators to which a ticketing scheme relates to provide the arrangements required by that scheme. If a local service operator fails to comply with that requirement, the Traffic Commissioner has existing powers to impose a condition on their PSV operator's licence and/or to impose a financial penalty on the operator. These provisions remain unchanged by the Bill.

Regarding modes of transport beyond bus services, there is no legislative requirement compelling these to participate in ticketing arrangements or schemes. That said, much of the provision in Scotland is delivered by way of contract/franchise agreements or with local government/central government funding. As such, it may be possible to make provision about participation in ticketing arrangements and schemes by means of those contracts/agreements.

208. The Committee questions the need for additional reporting on smart ticketing at a time when local authority resources are already stretched. It recommends that the Scottish Government should consider whether managing reporting at a regional level or by utilising alternative less resource-intensive technological solutions may be more appropriate to obtain the information it requires.

Close engagement with local transport authorities has been undertaken on the Bill's provisions and, taking on board feedback about the reporting requirement, the Scottish Government has agreed to provide a standard template for reports and to provide guidance and assistance to authorities in relation to their preparation.

The Scottish Government considers that these measures will minimise any administrative burden on authorities in relation to these reports and that the requirement is justified by the crucial role these reports will play in monitoring and evidencing the impact of the legislative changes and in informing future policy decisions.

Finance – ticketing arrangements and schemes

212. The Committee notes the potential financial impact of Part 3 of the Bill on local authorities and regional transport partnerships. Before any power to direct local authorities to set up or vary a scheme is used, the Scottish Government should ensure adequate funding is available. The Committee also recognises that the requirement for local authorities to produce annual reports on smart-ticketing schemes will require staff resources. It therefore calls on the Scottish Government to reconsider the classification of this as negligible within the Financial Memorandum.

On reports, the response above outlines the measures that will be put in place to minimise any administrative or financial burden on authorities in complying with the requirement to provide the annual report. Local transport authorities are responsible for discharging a range of statutory duties which require an administrative function and receive non-ringfenced central government funding via the block grant. However, in the event that a local transport authority can demonstrate a discrete additional cost, this will of course be considered by Ministers as with any resourcing consideration involving local government.

Pavement Parking and Double Parking

226. The Committee acknowledges the vital importance of maintaining clear pavements and walkways. However, it considers that there must also be a recognition that people have a desire to park near their homes, community transport providers require to access their service users and delivery services need to access their customers. The Committee is of the view that the suggestion made by some stakeholders that a limited amount of pavement parking could be permitted in pressured areas provided a minimum of 1.5M pavement space remains for access is worthy of consideration as an additional exemption which might be made available to local authorities. It recommends that the Scottish Government examines this proposal and considers whether such an approach might be incorporated within the pavement parking provisions and reports back to the Committee.

The Scottish Government has had extensive discussions with stakeholders regarding footway widths as part of the development of the Parking Standards guidance document. The Scottish Government is of the opinion that local authorities should have flexibility in their decision making, which is why it continues to engage with stakeholders through the Parking Standards Working Group. That group is actively engaged in the development of the specific criteria that will be rolled out in the finalised Parking Standards.

The Parking Standards will be based on consideration of the widths defined in the 'Roads for All: Good Practice Guide', published in 2013, and consideration is also being given to addressing such issues as streets with narrow roads and pavements that are historic in nature.

Where exemptions are granted, they will have to be in line with the criteria specified within the Parking Standards guidance. The guidance will also recommend that this is supported by markings on the footway to clearly identify the distance that should be left as a clear space for accessibility.

227. The Committee notes the exemptions which are available and welcomes the Scottish Government's willingness to consider whether greater clarity can be provided in the Bill or in regulations as to where and how exemptions can be applied. It notes the suggestion in evidence that a better definition of 'obstruction' on pavements could be helpful in this regard and calls on the Scottish Government to consider making an appropriate amendment at Stage 2.

Local authorities are best placed to determine whether an exemption order is appropriate and the extent of the application of any exemption order.

The form and procedure for the making and amendment of exemption orders will be clearly set out for local authorities in regulations made under section 44 of the Bill. These regulations will ensure that adequate time is built in for publication and local consultation of the effect of any order to enable objections to be addressed. In addition, the Parking Standards guidance will assist local authorities in their consideration of which roads may be suitable for exemption.

'Obstruction' of a road (which includes the pavement) is already an offence by virtue of sections 59(2) and 129(2) of the Roads (Scotland) Act 1984 and regulation 103 of the Road Vehicles (Construction and Use) Regulations 1986. The Scottish Government does not consider it necessary to further define this offence in primary legislation, but considers that the Parking Standards guidance to be best suited to outlining what types of parking may and may not constitute an obstruction of a pavement.

228. The provisions in this Part of the Bill apply only to pavements. The Committee heard some concerns in evidence that dedicated cycleways may also be blocked by vehicles. Given that such cycleways are increasingly becoming an integral feature of the urban environment, the Committee calls on the Scottish Government to consider whether it would be appropriate to extend the provisions to cover cycleways.

The Scottish Government considers that the provisions within the Bill will have a positive impact on active travel, yet considers it unnecessary to extend the provisions to cover cycle tracks as parking on a cycle track is already prohibited by section 129(6) of the Roads (Scotland) Act 1984 (Miscellaneous summary offences) which provides that "A person who parks a motor vehicle wholly or partly on a cycle track commits an offence". This would therefore include a driver who has 'bumped up' partly on the cycle track. As there is legislation in place there is no legal requirement to include cycle tracks within the provisions of this Bill.

229. The Committee also notes that there is no provision in the Bill for additional or alternative parking if pavement parking is made an offence. It heard that this may create a problem in circumstances where a significant number of vehicles are displaced and they have nowhere else to park. It calls on the Scottish Government to provide details of how it anticipates local authorities might address such issues, particularly where availability of suitable land and financial resources might be limited.

Through the Parking Standards Working Group, the Scottish Government has been undertaking careful consideration and working closely with local authorities to capture their views on the potential impacts of the legislation.

Local authorities have also been invited to identify roads within their respective areas that they would consider problematic. For example, roads with narrow carriageway and footway widths. In relation to these areas the Scottish Government is undertaking a case study of a number of affected streets, to better understand any unintended consequences such as displacement. This study will also consider what options may be available to roads authorities to address such issues.

These options would include the consideration of an exemption order for some or all of the area, the introduction of controlled parking zones, measures to encourage the use of public transport, active travel and support the local parking policy and local transport strategy. More broadly, successful transport planning is contingent on a series of interconnected measures which interact with other community considerations and service delivery and, as with the implementation of any wide-

scale new measures, local authorities should consider such matters in a holistic manner.

Delivery/Loading Exemption

236. The Committee believes that the exemption in the bill to allow 20 minutes for loading and unloading of deliveries may have the unintended consequence of creating a national exemption for pavement parking by commercial vehicles. However, more fundamentally, it is concerned that the 20 minute time limit is an arbitrary one and, on that basis, it questions the appropriateness of including this provision in legislation. The Committee also has significant concerns about how workable and enforceable this provision would be in practice.

237. The Committee therefore calls on the Scottish Government to bring forward an amendment at Stage 2 to remove the 20 minute exemption for deliveries and loading from the Bill. It considers that a more appropriate and workable mechanism for managing commercial delivery and loading arrangements should be developed and included in guidance.

Taking the two points above collectively, the Scottish Government acknowledges that a careful balance has to be struck between making pavements accessible for all and helping businesses to operate efficiently, with the associated benefits for the Scottish economy. In order to strike that balance, the Bill exempts a vehicle from the parking prohibitions where, in the course of business, it is being used for delivering, collecting, loading or unloading from or to a premises.

Two further safeguards have been added to this exemption; firstly, the breach of the prohibition must be necessary (i.e. the delivery or collection couldn't reasonably be carried out without being vehicle being parked in that manner) and secondly, it cannot be parked for any longer than is necessary, up to a maximum of 20 minutes.

In terms of the maximum 20 minute time period, the Scottish Government liaised with stakeholders on an appropriate timescale and it was felt that this maximum timescale was appropriate. This also mirrors a similar provision within the Traffic Management Act 2004 that covers England and Wales. It is therefore felt to strike an appropriate balance.

The Scottish Government notes the Committee's call to remove the 20 minute exemption for deliveries. However, the Government considers that the consequences of removing the maximum length of time that business deliveries can take might tip the balance in favour of commercial deliveries as opposed to pedestrians. This is because no maximum limit would enable loading and unloading for an unspecified/unlimited length of time. The provision as currently drafted means that, if the loading or unloading is likely to take more than 20 minutes, the driver is required to move their vehicle to find a parking space or loading bay.

Dropped Kerbs

242. The Committee considers the issue of parking across dropped kerbs at

pedestrian and other recognised crossing places to be as significant a barrier to the accessibility of urban streets, facilities and services as pavement and double parking, both of which are being prohibited by the Bill. It considers that supplementing these provisions with a prohibition of parking across such formally recognised crossing points (as distinct from residential driveways) would provide a package of measures which would more comprehensively enhance accessibility in urban areas.

243. The Committee therefore calls on the Scottish Government to bring forward an amendment at Stage 2 to prohibit parking over pedestrian crossing points and other public access points.

The Scottish Government notes the Committee's concerns regarding the parking of vehicles at dropped kerbs and at known crossing points. The Scottish Government received powers via the Scotland Act 2016 that enable it to legislate on parking at dropped kerbs and is currently examining the most appropriate legislative route for addressing these concerns, keeping an amendment to the Bill under consideration.

Enforcement Finance

258. The Committee acknowledges the concerns expressed by local authorities about the cost of implementation, managing the process of exemptions and enforcement in relation to the parking prohibition provisions in the Bill. The Committee believes that without robust and appropriately funded enforcement many of the provisions will be ineffective in practice.

The Scottish Government remains in active dialogue with local authorities, SCOTS and CoSLA to assist in gaining a better understanding of the assessment and implementation costs that will result from the legislation coming into force. Through the Parking Standards Working Group, local authorities have been invited to provide financial estimates in relation to both the assessment process and the implementation of exemptions. Once more detailed financial information becomes available this will enable further discussions to take place with CoSLA to inform any future budget considerations

The Parking Standards guidance will also assist local authorities in managing the enforcement process. The Bill enables local authorities to enter into arrangements with any person (including other local authorities) for the exercise of any of the enforcement functions relating to these parking prohibitions (section 54). The sharing of services is likely to significantly reduce the costs of enforcement.

The Scottish Government will continue to monitor progress, as well as the cost for enforcing these new powers, through regular liaison with local authorities via the Parking Standards Working Group.

259. The Committee acknowledges the challenging situation local authorities face in terms of finance and resources. It welcomes the Scottish Government commitment to work with local authorities and COSLA, through a parking standards working group, to develop more robust costs for each of the respective areas. It calls on the Scottish Government to

respond to the findings of this working group and to provide additional support to councils should it determine that this is required.

The Scottish Government remains in active dialogue with local authorities, SCOTS and CoSLA to gain a full understanding of the assessment and implementation costs that would result from the legislation coming into force. Through the Parking Standards Working Group, local authorities have been invited to provide financial estimates in relation to both the assessment process and implementation. Once more detailed financial information becomes available this will enable detailed discussions to take place with CoSLA and inform any future budget considerations.

260. The Committee is concerned that the provisions in the Bill may also lead to an unintentional two-tier system for parking enforcement in areas where there is no decriminalised parking enforcement. It calls on the Scottish Government to consider whether the Bill could be used as a mechanism to speed up and simplify the bureaucracy around the current decriminalisation process which allows the transition of responsibility to local authorities from Police Scotland control.

Local authorities already have powers to apply for decriminalised parking enforcement (DPE) powers under section 43(1) of the Road Traffic Act 1991. It is ultimately a matter for local authorities to consider such powers and apply for them where appropriate. The Scottish Government is actively engaging with those remaining local authorities without DPE powers to alleviate any concerns about the application process. It also keeps under consideration whether the application process could be streamlined through improving the guidance to local authorities.

It should be noted that the majority of the 'bureaucracy' noted by stakeholders connected to the DPE application process results from the requirement that local authorities review and, where necessary, amend their relevant Traffic Regulation Orders. The Scottish Government recognises that this process will always be necessary in order to ensure that any designation order setting out the decriminalised parking area is correct and enforceable

261. The Committee seeks clarity from the Scottish Government on whether it intends the parking regulations in the Bill to be a 'power' for use by local authorities, or a 'duty' which they will be required to apply. It considers the provision of such clarity to be necessary as it may have implications for those local authorities that have not as yet opted to decriminalise parking enforcement.

The pavement parking and double parking provisions in the Bill make it clear that certain types of parking are to be prohibited. Local authorities are given the responsibility of enforcing these prohibitions and cannot disregard the Bill provisions in the exercise of their traffic regulation functions. It is therefore a duty that local authorities are to comply with, albeit with clear discretionary powers. The discretionary powers of local authorities relate to the making of exemption orders, the extent of the application of the exemption orders and the imposition by the local authority of penalty charges.

262. The Committee welcomes the Scottish Government's intention to undertake a nationwide campaign before any parking changes are implemented. It calls on the Scottish Government to ensure that the campaign is as widespread and inclusive as possible and include vulnerable groups and those for which English may not be their first language.

It is the Scottish Government's intention that the nationwide publicity campaign will be launched in good time before the parking prohibitions come into force, ensuring it is fully inclusive, taking cognisance of particular vulnerable groups, and made available in various formats and languages as necessary.

Road Works

276. The Committee welcomes the proposals in the bill regarding road works and is of the view that they will provide a positive framework to help to continue to improve the quality, safety and performance of road works in Scotland.

277. However, the Committee is concerned, but although there is effective guidance available about how road works should operate there is a problem with inspection and enforcement of that guidance at and local level. As mentioned earlier in this report, the Committee acknowledges the challenging situations local authorities face in terms of finance and resources. However, it would encourage them to consider how inspection and enforcement practices can be improved where possible in their local areas.

Although the Committee's reflections here are principally aimed at local authorities, it may help Parliament's considerations for the Scottish Government to outline how national measures and the regulatory framework aim to assist them in this regard. During Stage 1 evidence the Committee heard of the established guidance known as the "red book", which promotes demonstrable good practice amongst those responsible for road works. To ensure accessibility needs are accounted for appropriately, better inspection and enforcement of these is required.

To deliver this improvement, whilst also recognising accessibility needs such as those raised with the Committee by the Mobility and Access Committee for Scotland (MACS), the measures contained within the Bill will make the current "red book" code of practice applicable to both roads authority and utility roadwork sites. Also by giving the Scottish Road Works Commissioner (SRWC) an inspection function and the ability to appoint authorised persons to assist him/her with this function, compliance with the safety standard can be appropriately monitored to ensure a consistent approach. Similarly, the new requirement for a reinstatement quality plan would need to include how that standard will be achieved as part of a quality system to be approved. This two-pronged approach will help ensure that accessibility considerations form an integral part of the planning process prior to the execution of road works, and that there will be an improved inspection regime in place to ensure that standards are maintained once roadwork sites are live.

The SRWC monitors the performance of roads authorities and utility companies in their compliance with the various obligations in relation to the planning and execution

of road works. This includes producing regular statistics on performance. The additional powers provided to the SRWC under the Bill will mean the Commissioner is better able to deal with poor performance and provide a means to ensure that steps are taken to improve performance and help promote a culture where best practice is universally adopted across Scotland's roads authorities.

278. The Committee asks the Scottish Government to reflect on the points raised in the evidence submission by the Law Society in relation to road works and consider bringing forward amendments where appropriate at stage 2.

The Law Society helpfully offered views in this area, particularly in relation to proposed changes in relation to inspection powers. While the Scottish Government undertakes to reflect carefully on whether any improvements might be made to the Bill in light of the Law Society's comments, it may be useful to set out in further detail on the policy justification for some of the provisions on which the Society has expressed a view.

In drafting the provisions in Bill, the Scottish Government has been acutely mindful of ensuring that any information obtained which subsequently requires to be relied upon as evidence in any legal proceedings, has been fairly and lawfully obtained. The Scottish Government is of the view that the Bill as drafted strikes a proportionate balance in this regard, and observes that the approach taken is broadly mirrored in a number of recent Acts of the Scottish Parliament (e.g. the Forestry and Land Management (Scotland) Act 2018, the Wild Animals in Travelling Circuses (Scotland) Act 2018 and the Tobacco and Primary Medical Services (Scotland) Act 2010).

In practical terms, the monitoring of business regulatory compliance is normally undertaken using an enforcement model which requires the consent and cooperation of the businesses whose activities are subject to monitoring. In relation to activity at premises this is normally where appointments have been made for a mutually convenient time. The Scottish Government agrees that warrants should only be sought where that normal process of cooperation has broken down and in relation to serious issues of non-compliance.

The discretion to grant warrants in cases where entry to premises is reasonably expected to be refused is considered particularly appropriate in a context where significant prior engagement is likely to have taken place, and avoids the circumstance of an inspector being required to physically attempt to gain entry where there have been prior indications that it will be refused. This will always be subject to the sheriff's discretion to grant or not grant the warrant in any given case and on the reasonableness of any assertion that entry is likely to be refused. Likewise, the expiry period of a warrant is a matter for the sheriff in the particular circumstances for which it is sought. This is considered preferable to imposing arbitrary time limits (which may indeed exceed what is necessary in individual cases).

It will be for the SRWC to publish a code of conduct setting out how inspections and any enforcement will be carried out. This should provide further reassurance that the inspection powers will be responsibly and be proportionately applied. A code of conduct will also provide the clarity sought by the Law Society on the circumstances

under which fixed penalties and other fines will be applied, and in which a reference will be made to the Procurator Fiscal.

On the issue of immunity, new section 18E of the Transport (Scotland) Act 2005 does not protect from liability in civil or criminal proceedings inspectors who act recklessly or beyond their inspection powers. The Scottish Government agrees that there should be consequences for those who act inappropriately. The provisions will, however, instil a degree of confidence in authorised officers that there is a degree of protection in place where they have acted in good faith, with reasonable care and within the scope of their powers. Nothing in the Bill displaces the liability of the SRWC for the conduct of inspectors (as employees).

The Law Society asks whether the new code of practice required under section 60A of the Roads (Scotland) Act 1984 should be subject to Parliamentary procedure. This question was raised by the Delegated Powers and Law Reform Committee in its letter of 12 September 2018. The Scottish Government refers to its response to that letter of 25 September 2018 which explains why it is not considered appropriate to subject this code to Parliamentary scrutiny.

Canals

288. The Committee recognises that the Bill does not contain any proposals to amend the legislation which covers the upkeep and maintenance of canals. It notes that the Scottish Government does not currently have any plans to update the relevant legislation. However, the Committee calls on the Scottish Government to set out in writing how, if no legislative change is required, the current challenges in maintaining Scotland's canal infrastructure might be addressed.

As the Cabinet Secretary for Transport, Infrastructure and Connectivity pointed out in his evidence to the Committee, the key issue for improving canal infrastructure is not revisiting existing statutory definitions, instead it is one of management approaches, monitoring and resourcing. As a consequence, Scottish Canals have developed their Asset Management Strategy which sets out their plans for managing investment between 2018 and 2030, directing available resources in a targeted fashion to assets on the basis of safety and greatest public value.

Indeed the measures in the Bill allowing for the extension of the Scottish Canals Board will help expand the collective experience and knowledge of its members, in turn helping to steer and monitor the Asset Management Strategy.

The Scottish Government has had, and continues to have, discussions with Scottish Canals on the levels of funding required to maintain and upgrade the assets in future years. The Scottish Government provided an additional £1.625m in capital grant-in-aid funding in 2018/19 to repair and upgrade bridges at Twechar and Bonnybridge to ensure that the lowland canals will re-open to boating traffic in April 2019. The Scottish Government also provided an additional £5.35m in capital grant in aid funding in 2018/19. This additional funding will be used for a number of projects including the replacement and upgrading of lock gates at Fort Augustus and Culloch on the Caledonian Canal.

The Scottish Government has announced in the budget for 2019/20 that Scottish Canals will receive £6.5m in capital grant-in-aid funding, which is an 87.5% increase from 2018/19, and £8.5m in resource grant-in-aid, which is an increase of 5%. This will support asset maintenance and further improvements on the Scottish canals network and is a positive outcome in the current climate for public finances.

The Scottish Government is of the view that this is the right course of action to address the current and future challenges in maintaining and developing Scotland's canals infrastructure.

Workplace Parking Levy

290. The Committee is aware that the Scottish Government has announced that it is to support an agreed Scottish Green Party amendment at Stage 2 of the Bill on the granting of powers to local authorities to introduce a workplace parking levy. It is understood that Scottish Government support for this amendment is contingent on the exclusion of NHS premises.

291. The Committee is concerned that this amendment, which will seek to make a significant addition to the Bill, is to be brought forward at Stage 2. It therefore considers it to be essential that it has the opportunity to scrutinise the terms of any such amendment. The Committee therefore requires a timetable for Stage 2 consideration which will allow it to take oral evidence on the proposed amendment from key stakeholders, before making a formal decision on the amendment.

The Scottish Government is thankful to the Committee for the accommodating nature in which it is approaching this issue. The Scottish Government recognises that the Committee will wish to take evidence from stakeholders before formally considering and voting on a workplace parking levy amendment, and will work with the Committee to agree a Stage 2 timetable on that basis