RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

15th Meeting, 2018 (Session 5)

Wednesday 16 May 2018

The Committee will meet at 10.30 am in the Mary Fairfax Somerville Room (CR2).

1. **Transport update:** The Committee will take evidence from—

   Humza Yousaf, Minister for Transport and the Islands, Bill Reeve, Director of Rail, Margaret Horn, Head of Ferries Policy and Contract Management, and Joanne Horn, Head of Sustainable and Active Transport Team, Scottish Government.

2. **Parking (Code of Practice) Bill (UK Parliament legislation):** The Committee will consider the legislative consent memorandum lodged by Cabinet Secretary for Rural Economy and Connectivity (LCM(S5)13) and will take evidence from—

   Humza Yousaf, Minister for Transport and the Islands, George Henry, Head of Road Policy, Anne Cairns, Solicitor for Transport Scotland, and Sharon Wood, Senior Road Policy Officer, Scottish Government.

Steve Farrell
Clerk to the Rural Economy and Connectivity Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5211
Email: steve.farrell@parliament.scot
The papers for this meeting are as follows—

**Agenda Item 1**

Cover note  
PRIVATE PAPER

**Agenda Item 2**

Cover note
Background

The Committee will take evidence from the Minister for Transport and Islands on transport issues within his portfolio, such as rail services, ferries and active travel. This forms part of a series of regular updates the Committee receives to allow it to monitor transport developments and funding.

The Committee last received a general transport update from the Minister on 22 November 2017. The Committee questioned the Minister on a number of issues including: the Edinburgh to Glasgow Improvement Programme (rail), rail punctuality figures, rail funding, the ferry services procurement policy review and delays in delivery of new hybrid ferries, service quality incentive regime (rail), Scotrail voluntary severance scheme and active travel funding.

The Committee also had a specific evidence session with the Minister for Transport and Islands on winter resilience on 28 March 2018, as well as a separate discussion on major transport infrastructure projects with the Cabinet Secretary for Economy, Jobs and Fair Work on 24 January 2018.

The Committee will discuss key policy, improvements and developments in the transport sector with the Minister.

Rural Economy and Connectivity Committee Clerks
May 2018
Background

1. The Legislative Consent Memorandum (LCM) process is the mechanism for the Scottish Parliament to give its consent to the UK Government to legislate in the UK Parliament on matters which are within the legislative competence of the Scottish Parliament.

2. Legislative Consent Memorandums are usually lodged in the Scottish Parliament by the Scottish Government. They relate to Bills under consideration in the United Kingdom Parliament which contain what are known as “relevant provisions”. These provisions could:
   - change the law on a “devolved matter” (an area of policy which the UK Parliament devolved to the Scottish Parliament in the Scotland Act 1998); or
   - alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).

3. Under an agreement known as the ‘Sewel Convention’, the UK Parliament will not normally pass Bills that contain relevant provisions without first obtaining the consent of the Scottish Parliament. Committees will undertake scrutiny of the Memorandum after which the Government will lodge a Legislative Consent Motion which is taken in the Chamber.

4. The procedure for scrutiny of Legislative Consent Memorandums and Motions is set out in Chapter 9B of the Parliament’s standing orders.

Parking (Code of Practice) Bill

5. A LCM has been lodged regarding the Parking (Code of Practice) Bill. The memorandum and the Bill can be found on the Scottish Parliament website. [http://www.scottish.parliament.uk/parliamentarybusiness/Bills/107938.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/107938.aspx). It has also been made available at Annexe B.

6. This is a Private Members’ Bill sponsored by Sir Greg Knight and is supported by the UK Government. The Bill has had its second reading in the House of Commons and will next proceed to the Committee Stage.

7. The purpose of the Bill is to regulate the private parking industry practice through a single code of practice in the UK. A voluntary code of practice exists at the moment, but there is evidence of inconsistent practice. The code of practice will provide guidance on the operation and management of private parking and
guidance on appeals against parking charges. Failure to comply with the Code will inform the Secretary of State’s decisions about whether an organisation can become or remain as an Accredited Parking Association and whether or not to disclose vehicle keeper information for enforcement purposes. More information about the content of the Bill can be found in Annexe A.

8. All of the Bill extends to Scotland and the Bill makes provision on devolved matters, with only a few clauses relating to reserved matters. The main areas requiring consent include:

- Provisions on the code of practice of private parking (the code itself, consultation, review and revision, publication and effect). (clauses 1, 2, 3, 4, and 5)
- The ability for Scottish Ministers, with agreement by the Secretary of State, to alter the code to address Scottish specific issues (clause 6).
- A levy to cover the administration and investigation cost of breaches of the code. This will be an annual levy payable by Accredited Trade Associations (clause 7)

9. The Scottish Parliament’s legislative competence and the executive competence of Scottish Ministers will not be altered by this Bill.

10. The Cabinet Secretary for Rural Economy and Connectivity has drafted a motion recommending that the Parliament gives its consent to the relevant provisions within the Bill:

“That the Parliament agrees that the relevant provisions of the Parking (Code of Practice) Bill, introduced in the House of Commons on 19 July 2017, relating to private parking, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Committee consideration

11. The Rural Economy and Connectivity Committee has been designated as lead Committee. The Delegated Powers and Law Reform Committee’s remit has not been engaged so it will not report on this LCM.

12. The Committee is required to reflect upon the Memorandum and then agree whether it is content with its terms and report its findings to the Parliament. The Committee may also, in its report, recommend to the Parliament whether or not to agree to the draft motion.

Annexe A – Overview of the Bill
Annexe B – Legislative Consent Memorandum

Rural Economy and Connectivity Committee Clerks
May 2018
Annexe A – Overview taken from the Explanatory Notes to the Bill

Overview of the Bill

1 The Bill requires the Secretary of State to prepare a code of practice containing guidance about the operation and management of private car parks. The code must contain guidance which promotes good practice in the operation and management of private car parks and guidance about appeals against parking charges imposed in relation to the use of private car parks. The Bill also provides for a levy on the parking industry to cover the costs of issuing, administering and investigating whether persons have failed to act in accordance with the code. Details of the levy requirements will be set out in regulations.

2 The Bill is made up of 11 clauses. It requires that the Secretary of State consult with private car parking operators, users and any other groups the Secretary of State considers appropriate before preparing a code. A proposed code must be laid before parliament for 40 days for approval. If no objections are raised, it can be issued and come into force 21 days later. The Secretary of State must keep the code under review and can make alterations. Any alterations to the code must be consulted upon. The Secretary of State may delegate their functions to a public authority.

Policy background

3 The Protection of Freedoms Act 2012 made the keeper or the hirer of a vehicle liable for any unpaid parking charges associated with their vehicle. Private parking operators seek keeper details from the Driver and Vehicle Licensing Agency (DVLA) to contact keepers over parking charges that have not been paid. The DVLA require parking companies requesting keeper details for parking enforcement purposes to be members of an accredited trade association (ATA). The British Parking Association and the International Parking Community are presently the only two parking ATAs.

4 Both parking ATAs require their members to comply with a code of practice setting out standards for operation, management and appeals associated with management of private car parks. At present the associations each publish a code of practice for their members, with different requirements for management and operation of private car parks and appeals against parking tickets. This has created some inconsistency across the sector, as different operators are held to different standards.

5 This Bill seeks to create a single code of practice that is applicable to every private parking operator. By providing a single code of practice, it aims to create clarity and consistency across the industry for both parking operators and motorists. It also aims to raise the standards of the industry by incorporating best practice as standard across the industry.

6 Operators or ATAs who fail to meet the standards of the code of practice may lose access to DVLA data, which would prevent them from enforcing unpaid parking charges.
Legal background

7 The private parking sector is largely governed by contract law. When parking in a privately owned car park, the driver contracts with the landowner to park there for a set amount of time in exchange for payment. The terms and conditions of these contracts are usually set out in signs and posters on the private land.

8 Section 56 and Schedule 4 (Recovery of Unpaid Parking Charges) of the Protection of Freedoms Act 2012 (PoFA) allow landholders to pursue "keeper liability" in relation to the recovery of unpaid parking charges on private land providing certain conditions are met. It applies only to parking on relevant land; that is land other than a highway maintainable at the public expense, a parking place which is provided or controlled by a traffic authority and any land on which the parking is subject to statutory control.

9 If the conditions in paragraph 5, 6, 11 and 12 of Schedule 4 are met and the vehicle was not stolen, the creditor has the right to recover any unpaid parking charges from the keeper of the vehicle.

10 Made under the Vehicle Excise and Registration Act 1994, the Road Vehicles (Registration and Licensing) Regulations 2002 (S.I. 2002/2742) provide the legal mechanism by which the DVLA, as an executive agency of the Department for Transport, is able to provide vehicle keeper data to parking companies.

11 Regulation 27(e) provides that particulars may be made available to "any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting the particulars to be made available to him". The Government’s policy is that reasonable cause should relate to a vehicle or its use, following incidents where there may be liability on the part of the driver. It is considered reasonable cause to provide keeper information of private car parking companies as landowners would find it difficult to enforce their rights under contract law without it.
LEGISLATIVE CONSENT MEMORANDUM

PARKING (CODE OF PRACTICE) BILL

Background

1. This memorandum has been lodged by Fergus Ewing MSP, Cabinet Secretary for Rural Economy and Connectivity under Rule 9.B.3.1(b) of the Parliament’s standing orders. The Parking (Code of Practice) Bill was introduced in the House of Commons on 19 July 2017 and had its second reading on 2 February 2018. The Bill can be found at:


Content of the UK Parking (Code of Practice) Bill

2. The Bill seeks to regulate the practices of the private parking industry via a single Code of Practice. Although it is a Private Member’s Bill, it has the support of the UK Government as it aims to ensure fairer, more transparent and consistent industry regulation. The code will replace the system of industry self-regulation with more effective regulation that balances fairness to the motoring public with the rights of landowners to manage their land.

Provisions Which Relate to Scotland

3. As presently drafted all of the provisions within this Bill will extend to Scotland. Further detail and the reasons for seeking the legislative consent of the Scottish Parliament are set out below as regards the provisions falling within the legislative competence of the Scottish Parliament.

Clauses 1, 2, 3, 4 and 5(1) and (5) – Parking Code

4. The Bill includes a number of provisions that focus on the consultation, preparation, review, publication and effect of a single Code of Practice that aims to regulate the operation and management of private parking facilities.

5. The policy intention is to improve the operation and management of private parking companies by regulating how they enforce parking. The clauses define who should be consulted in the preparation of, and the review of, the Code. They also seek to provide “good practice and guidance” on appeals against parking charges imposed by, or on behalf of, private parking companies.

6. Currently a private company can be a private car park operator and can charge for parking, but only those operators who are members of an Accredited Trade Association (ATA) can obtain vehicle keeper information from the DVLA for parking enforcement purposes. There are presently two ATAs - the British Parking Association (BPA) and the Independent Parking Community (IPC) - having such accreditation. They have approximately 200 members between them.

7. In theory, members of the BPA and IPC must adhere to the respective codes of practice in order to maintain their membership and, therefore, their access to
DVLA information. However, the UK and Scottish Governments currently do not have a say on how these Codes of Practice are developed or maintained. Furthermore, audits undertaken by the ATAs and the DVLA identified that there is clear evidence of inconsistent activities taking place by some parking operators who are seeking to take advantage of members of the public who may be less able to understand or comply with the contractual requirements set by parking operators. Very little appears to be done by the industry to tackle such issues.

8. If the provisions of the Bill are extended to Scotland that will ensure consistency and transparency for motorists across Scotland, England and Wales, particularly as many of the private parking companies that are based in England also operate many car parks in Scotland.

Clause 6 – Delegation of functions

9. Clause 6 makes provision which allows the Secretary of State to enter into an agreement with another public authority to perform any of the functions of altering the Code. The Scottish Government considers this clause to be an appropriate ancillary to clauses 1 to 5. It would potentially enable the Scottish Ministers, in agreement with the Secretary of State, to alter the Code if there were specific issues affecting Scotland that the Code had not already addressed, although consistency across Scotland, England and Wales is the fundamental policy aim.

Clause 7 – Levy for recovery of administrative and investigation costs

10. Clause 7 makes provision for a regulation making power to require ATAs to pay an annual levy which is funded by their members to cover the cost of administration and the investigation of potential breaches of the Code. This provision, if extended to Scotland, would ensure transparency and consistency of the operation of the Code across Scotland, England and Wales. As is noted later in this memorandum, one paragraph of this clause is outwith the legislative competence of the Scottish Parliament.

Clause 8 – Regulations

11. Clause 8 makes provision for the parliamentary procedure applicable to regulations made under the Bill. In addition, this clause makes provision for regulations under the Bill to make different provision for different purposes, to contain incidental, supplemental, consequential or transitional provision or savings, or to provide for a person to exercise discretion in dealing with any matter. This clause is technical in nature, relating to the operation of the regulation making power in clause 7.

Clause 9 – Interpretation

12. This clause makes technical provision as to the meaning of certain expressions in the Bill.
Clause 10 – Application to the Crown

13. This clause makes provision for the Bill to apply to the Crown and to Crown land.

Clause 11 – Commencement, extent and short title

14. This clause is technical in nature as it seeks to commence certain provisions of the Bill via secondary legislation and aims to extend the Bill across Scotland, England and Wales to ensure consistency and fairness for all motorists and landowners.

15. For the reasons set out above, the Scottish Government would support the extension of the Bill to Scotland. The relevant provisions triggering the need for an LCM are clauses 1 to 4, 5(1) and (5), 6, 7 (with the exception of clause 7(2)(g) and 8 to 11.

Provisions outwith the legislative competence of the Scottish Parliament

16. In addition to the provisions described above which are within the legislative competence of the Scottish Parliament, the Bill also contains provisions which are outwith that competence. Those are clauses 5(2) to (4) and clause 7(2)(g). Those provisions relate to the operation of the Secretary of State’s discretion to release (through DVLA) vehicle keeper information to private car park operators in the event of failure to comply with the Code or to pay the levy. An LCM is not needed in connection with an extension of these provisions to Scotland. Extension of these provisions to Scotland would nonetheless support the effective, consistent and transparent operation of the code across Scotland, England and Wales.

Consultation

17. There has been no formal consultation on the Bill as a whole by the Scottish Government. However, the UK Government carried out informal public consultation in 2015 through its discussion paper (*Parking Reform – Tackling Unfair Practices*) into the practices of the industry across Great Britain. 80% of responses acknowledged that there were “significant problems in how the sector conducts its business”. The paper also noted that, for many companies within the private parking industry, income from enforcement is their primary or only income stream and, as such, may be a factor in incentivising companies to issue parking charge notices at the expense of the motorist. The findings of the discussion paper also indicate that a significant section of the industry, including the BPA agrees that self-regulation has failed and that government regulation is now necessary to tackle bad practice.

Financial Implications

18. There may be some financial implications for the Scottish Administration anticipated as a consequence of taking forward an LCM. This is likely to be associated with the requirements of the proposed Code of Practice currently being developed.
Conclusion

19. It is the view of the Scottish Government that it is in the interests of the people of Scotland and of good governance that the relevant provisions be considered by the UK Parliament.

Draft Legislative Consent Motion

20. The draft motion, which will be lodged by the Cabinet Secretary for Rural Economy and Connectivity, is:

“That the Parliament agrees that the relevant provisions of the Parking (Code of Practice) Bill, introduced in the House of Commons on 19 July 2017, relating to private parking, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”.

21. The Scottish Parliament’s legislative competence and the executive competence of the Scottish Ministers are not altered by this Bill.

Scottish Government
March 2018