RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

26th Meeting, 2018 (Session 5)

Wednesday 24 October 2018

The Committee will meet at 8.15 am in the Mary Fairfax Somerville Room (CR2).

1. **Salmon Farming in Scotland (in private):** The Committee will consider a draft report.

2. **Decision on taking business in private:** The Committee will decide whether to take item 5 and future consideration of its approaches to the Restricted Roads (20 mph Speed Limit) (Scotland) Bill and anticipated South of Scotland Enterprise Agency (Scotland) Bill in private.

3. **Transport (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—
   
   Martin Reid, Policy Director, Road Haulage Association;

   Gavin Thomson, Air Pollution Campaigner at Friends of the Earth Scotland, Scottish Environment Link;

   Tony Kenmuir, Treasurer and member of the Executive Committee, Scottish Taxi Association;

   Neil Greig, Policy and Research Director, IAM RoadSmart.

4. **Subordinate legislation:** The Committee will consider the following negative instruments—

   The Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018 (SSI 2018/279)

   Parking Attendants (Wearing of Uniforms) (Falkirk Council Parking Area) Regulations 2018 (SSI 2018/280)

   The Road Traffic (Parking Adjudicators) (Falkirk Council) Regulations 2018 (SSI 2018/281)
The Plant Health (Scotland) Amendment (No.2) Order 2018 (SSI 2018/283)


5. **Pre-Budget Scrutiny:** The Committee will consider a draft letter on its Pre-Budget Scrutiny.

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**

PRIVATE PAPER

**Agenda Item 3**

Cover note

PRIVATE PAPER

**Agenda Item 4**

SSI cover note

SSI cover note

**Agenda Item 6**

PRIVATE PAPER
Background

1. The Transport (Scotland) Bill (“the Bill”) was introduced in the Scottish Parliament by the Cabinet Secretary for Finance and Constitution, Derek Mackay MSP, on 8 June 2018. The Rural Economy and Connectivity Committee has been designated as the lead committee for Stage 1 consideration of the Bill.

2. The Committee has already heard from the Scottish Government’s Bill team, local authorities and regional transport partnerships. On 3 October it specifically considered the sections on the bill about buses and smart ticketing. On 24 October, the Committee will consider the issue of Low Emissions Zones (LEZ).

3. Annex A includes written submissions received from Road Haulage Association and Friends of the Earth Scotland who are both due to give evidence at the meeting, as well as written evidence from RAC Foundation who were unable to attend the meeting.

4. Annex B includes supplementary information sent after previous committee meetings from the Scottish Government and SPT.

Purpose and content of the Bill

5. The Bill covers a wide range of different transport topics in six parts:

   • **Low Emissions Zones** - Part 1 of the Bill enables the creation of low emission zones in Scotland which can be enforced, with the aim of improving air quality and reducing greenhouse gas emissions. This would restrict driving in certain areas by road vehicles which fail to meet emission standards.

   • **Bus services** - Part 2 is intended to provide local transport authorities with options to improve bus services in their areas. This could include partnership working with operators, local franchising or running their own buses. Part 2 also aims to improve the information given to passengers.

   • **Smart ticketing** - Part 3 would create a national technological standard for smart ticketing to assist the spread of smart ticketing across public transport in Scotland, and provide local transport authorities with further powers for smart ticketing arrangements and schemes.

   • **Responsible parking** – Part 4 proposes to improve safety for roads users and pedestrians by prohibiting double parking and parking on pavements.
• **Road works** - Part 5 would strengthen the role of the Scottish Road Works Commissioner (SRWC) and improve the regulation of road works.

• **Regional Transport Partnerships and Scotland’s canals** - Part 6 gives Regional Transport Partnerships (Transport Partnerships) more financial flexibility. It also allows Scottish Ministers to vary the membership and structure of the Scottish Canals Board.

6. Further information on the Bill can be found on the Parliament’s website:


**Committee’s evidence gathering**

7. This is the Committee’s fourth formal evidence session on the Bill. Details of other evidence gathering activities can be found on the Committee’s website:


Clerking team
Rural Economy and Connectivity Committee
October 2018
The Road Haulage Association (RHA) is grateful for the opportunity to comment on aspects of the Bill which will have implications for our members.

We welcome the principle aims of the Bill and what it sets out to achieve. There is a clear need to improve public transport, parking legislation and measures to improve air quality to make urban areas & the road network more accessible for all. The RHA has for some time had dialogue on these matters with Transport Scotland & other stakeholders, listening to others views and put forward the views of hauliers. Through these discussions we believe the Bill is balanced and fair. The Bill had the potential to follow other examples in England which we believe to be “anti-business” and thus, severely impacts the movement of goods in City Centres. We believe the Bill takes a more measured approach and acknowledges the needs of the businesses operating in the affected areas.

We aim to set out our views on certain aspects of the bill in the remainder of this response and explain some of the potential pitfalls & concerns for our members with the proposed Bill.

Low Emission Zones

First of all, we would like to comment on the proposed Penalty Charge Notices which will have a bearing on the remainder of our response & in particular our belief that a longer implementation period would be more beneficial for everyone.

Hauliers are already subject to high scrutiny of their environmental practices through the Operator Licencing system. The introduction of a Low Emission Zones could result in these standards being open to interpretation, leading to further confusion and potentially unintended consequences. In the worst case, a haulier failing to comply with a LEZ could find themselves being brought to the attention of the Traffic Commissioner. We believe this would be overtly punitive for what could be a minor transgression. The proposed Penalty Charge Notice should be kept in isolation and not lead to something disproportionately punitive for what would be a minor case of non-compliance

Deadlines have been set for LEZs in Scotland’s four largest cities. This is something everyone has come to accept but the timescales set for HGVs we believe are still too ambitious. While very supportive of the Bill, we would ask that consideration and time is given for the haulage industry to upgrade their fleet and meet the required standards. Recently we have discovered that Glasgow will not have the infrastructure to properly enforce its LEZ until 2023, meaning the bus fleet will be unaffected by a LEZ until that date. If this is the case for Glasgow, it is hard to imagine the other cities will be any further
forward. In essence therefore, the bus fleet have been given a 4-year period to renew its fleet, where the road haulage industry will be penalised immediately from “go-live date”. What is perhaps more of a concern is not knowing the other three Scottish cities plans.

We have concerns that the Bill may still leave a lot of scope for Local Authorities to set different standards in different cities. For route planners in traffic offices (particularly if we take into account the relative closeness in proximity the Scottish cities have to each other). In practice, this could mean a haulier who would send one vehicle to a delivery run in both Edinburgh & Glasgow, could find his vehicle is exempt in Glasgow but is restricted Edinburgh. This would make planning difficult and potentially add cost to the delivery. A point we will return to later in the response.

Although the Bill does not explicitly say, it is widely recognised that LEZs will be enforced using ANPR cameras. We have some concern over how this system will handle private registration plates in determining the euro standard of that vehicle. Private registrations are extremely common in haulage where a company has purchased a host of plates and will rotate them round their fleet. Likewise, some plates can make vehicles appear older & therefore of a lower emission standard. Similarly, Scotland frequently witnesses a large number of foreign vehicles delivering. We have doubts over how these vehicles will be picked up by ANPR and how their vehicles will be penalised for not meeting the required standard.

In the Financial Memorandum, there are statements made referring to equivalent European low emission zones. According to the Urban Access Regulations in Europe website, the strictest requirement for the current LEZ in Copenhagen is for diesel vehicles to reach Euro IV. It comes as no surprise that there has been “few reported negative business impacts”. Although not mentioned in the Financial Memorandum, low emission zones have been established in the Netherlands for some years but only require Euro III for diesel HGVs in Rotterdam & Utrecht.

France, and more specifically Paris, has a long list of exemptions to their LEZ which includes a host of delivery types that would involve HGVs. These approaches are considerate to business operating within the zone & those who still need to make deliveries in these areas. We think these are appropriate comparisons to add some context to the debate.

The haulage industry is striving to improve their carbon footprint and in doing so are purchasing the latest & best technology. Already our Euro VI diesel fleet percentage is very high, and this will continue to increase naturally our members believe that any standards imposed that devalue their current older vehicles and / or prevent them from delivering to city centres without penalty is a tax on business.

The cost of a new Euro VI HGV is in excess of £120,000.00. Most haulage businesses in Scotland are SME’s and rely heavily on the second-hand market to sell on, or trade in their
old HGVs to be able to purchase new equipment. With Local Authorities looking to set Euro VI diesel as the standard from the outset, we are seeing a marked decrease in the trade in value for their old Euro IV & V diesel HGVs creating a distortion in the marketplace and a further barrier to those seeking to adopt the newer technologies. This is particularly felt when purchasing more specialist equipment, say in the construction industry who commonly operate vehicles for longer periods due to the higher purchase price, and spend a lot of their working life in the City Centre environment. These vehicles can reach £200,000.00 to purchase new. As an example, articulated combinations with a refrigerated trailer used to transport fresh produce to our supermarkets & local convenience stores are classed as specialised equipment. The financial reality of this means that hauliers are forced to hang on to vehicles and run them for longer (distorted trade in values make it prohibitive to upgrade) rather than trade them in for the newer technologies required by this legislation. This naturally affects the new and used vehicle sales markets negatively.

Being able to buy & sell vehicles is critical to hauliers in Scotland as there is currently no Commercial Vehicle Retrofit Accreditation Scheme (CVRAS) retrofit option available (unlike for example, the bus fleet). Green Urban have indicated that, depending on the engine size, a retrofit option for HGVs could cost anywhere between £11,000.00 & £25,000.00 but this becomes a moot point as there is no approved retrofit option for the industry to adopt anyway. The requirement for hauliers to lay out substantial amounts of money, with no idea of payback figures on technology that has not been approved is too big a risk, on what is one of their biggest assets.

To conclude, these measures must work to address the problem at hand and not pass punitive costs on to hauliers (and by extension, the whole supply chain), particularly as there is no option to retrofit for the fleets they have spent many years building up. 90% of everything moved in Scotland will at some point be on the back of a lorry. Additional costs to hauliers will have an impact on every aspect of Scotland’s supply chain. Any legislation which will have this much of an effect on our lives must be thought through carefully, brought in with a phased approach and be sympathetic to those affected. Particularly those who cannot adopt the technology through no fault of their own.

**Pavement Parking and Double Parking**

We believe the Bill outlines a reasonable approach that is commensurate to the problem. By far the most controversial element of the Bill is the exception for delivery vehicles to stop for up to 20 minutes in the course of their work, providing they are not causing an obstruction. Having heard some concerns over this exception, we do not believe that the term is ambiguous or would lead individuals to use this exception as a way to illegally park.

There are additional considerations relative to haulage & site safety that need to be considered in relation to this exception. When delivering to a building site, the driver is unlikely to know the condition on the site and whether they have the facility to turn. It can be extremely unsafe practice to drive straight on to a site on arrival without first investigating
on foot. This reduces sight lines for everyone concerned, the driver has no way of knowing if they will get turned on-site. In this case, it is common for HGVs to stop on the nearby road, and arrive on-site by foot, to assess the situation and speak to the site manager. In this case, we have witnessed vehicles bump up on the kerb in order to not obstruct the main carriageway. While we accept this should not be best or standard practice, in most cases the vehicle is not obstructing the footway beyond the 1.5m minimum clearance requirement and is allowing vehicular traffic to pass, while maintaining their own safety & that of the workers on-site.

A further consideration of this exception is that 20 minutes is often not long enough to complete a delivery. Bearing in mind that in some cases it is a physical impossibility for deliveries to be completed without stopping on or crossing over a footway, we would like to see this time limit extended to 40 minutes.

This Bill should seek to improve urban areas and the transport network for everyone who uses it, not prohibit the movement & delivery of goods in these environments.
RURAL ECONOMY AND CONNECTIVITY COMMITTEE
TRANSPORT (SCOTLAND) BILL
SUBMISSION FROM FRIENDS OF THE EARTH SCOTLAND

Summary of points

- We welcome the proposal to create a new legal basis for Low Emission Zones. However, the draft provisions are highly problematic: they will delay the timely implementation of LEZs in all major Scottish cities by 2020, fail to define key features of LEZs, and do not always strike the right balance of power between which LEZ features should be determined by Ministers and which should be determined by local authorities.

- On buses, the changes to partnership and franchising provisions are welcome, but we would also like to see the Bill do more to allow local authorities to run bus services along any route i.e. including on a commercially competitive basis with private operators.

- On parking, we would like to see an amendment which would enable local authorities to introduce Workplace Parking Levies and levies on other private car parks, in recognition of the fact that many local councils have expressed a willingness to have the powers to do so.

About Friends of the Earth Scotland

Friends of the Earth Scotland exists to campaign, with partners here and across the globe, for a just transition to a sustainable society. We work in Scotland for socially just solutions to environmental problems and to create a green economy; we campaign to end the degradation of our environment and to create a society which cherishes and protects the natural world on which we depend; we think globally and act locally, enabling people to take individual and collective action. We are part of Friends of the Earth International - the world's largest grassroots environmental network, uniting 75 national member groups, over 2 million members and 5,000 local activist groups around the world. We are an independent Scottish charity with a network of thousands of supporters, and 10 active local groups across Scotland. Friends of the Earth Scotland's vision is of a world where everyone can enjoy a healthy environment without exceeding their fair share of the planet’s resources, now and in the future.

Introduction

Scotland’s transport sector is the leading contributor to both carbon emissions and air pollution. It is clear that more ambition is needed from the Scottish Government to deliver on the Paris Agreement, which commits nations to holding global warming to ‘well below 2ºC’, and ‘pursuing efforts to limit the temperature increase to 1.5ºC’. While the Climate Change (Emissions Reduction) (Scotland) Bill has the potential to set a higher level of ambition, any change in targets must be supported by the
Transport Bill delivering a range of policies which will bring about modal shift from the car to public transport, and walking and cycling.

Many parts of Scotland, particularly urban areas, continue to have levels of air pollution which are well above statutory thresholds, years after binding deadlines and in spite of the Cleaner Air for Scotland strategy, which as yet has failed to deliver any tangible improvements in air quality. Air pollution has an adverse impact on everyone’s health, and contributes to the early deaths of 2500 people in Scotland each year. Children, the elderly, and people with pre-existing health conditions, are disproportionately impacted by air pollution, meaning that cleaner air is a matter of social equality for Scotland. Air pollution costs the Scottish economy £1.6bn every year in Scotland.

That is why this Transport Bill needs to set up mechanisms which will drive down CO₂ emissions from the transport sector and improve air quality.

We limit our comments here to LEZs, Buses, and Parking Levies.

**Low Emission Zones**

While the attempts to codify and set up a clear legal basis for the implementation of LEZs are welcome, we have a number of concerns over the drafting of the provisions which fall under three themes: Firstly, the current drafting sets up unnecessary and unjustified delays in LEZ enforcement. Secondly, there are several “watering down” provisions in the Bill which could create ineffectual LEZs, or no LEZs at all in the areas where they are so urgently needed. Finally, we do not consider that the balance of power between aspects of LEZs reserved to Ministers and aspects delegated to local authorities has been struck correctly.

There already is an existing legal base which could be used for local authorities to implement a LEZ: Part 2 of the Road Traffic Regulation Act 1984 makes it possible for local traffic authorities to make a Traffic Regulation Order which can provide “any provision prohibiting, restricting or regulating the use of a road” for certain purposes including air quality management. The TRO system is well understood by local authorities. The system is far from perfect but the new LEZ provisions must be demonstrably clearer and quicker than the existing legal basis to justify having new legislation.

We address each of our three thematic concerns in detail.

1. **Current drafting sets an excessively slow pathway towards functioning LEZs. Proposed timescales mean LEZs will not be enforceable until 2024-2026 at the earliest, while local authorities are prevented from going faster if they wish. This comprehensively fails to tackle the urgency of our air pollution health crisis.**

The draft provisions on Grace Periods (section 10) ensure that a LEZ is not enforceable for 1-4 years for non-residents, and for an additional 1-2 years for residents. Grace periods are compulsory, thereby preventing local authorities from going more quickly.
This sets up a timeline whereby LEZs will not be operational until 2024 – 2026. This is nearly a decade after the Scottish Government and local authorities formally committed to introducing them, and fourteen to sixteen years after the binding European clean air deadline.

The Scottish Government formally promised that LEZs would be in place by 2018 in Glasgow, 2020 in Dundee, Aberdeen, and Edinburgh, and 2023 in other areas where necessary, in 2017.1 Cleaner Air for Scotland promises that Scotland will achieve compliance with EU legal limits on air quality by 2020.2 The grace period provisions condemn these promises to certain failure. In doing so, the Scottish Government opens itself up to legal challenge for continued breaches of the European Ambient Air Quality Directive, which requires that the exceedance period of the 2010 air quality deadline be kept as short as possible.3

Other cities have successfully introduced LEZs much more quickly. Oslo’s City Council announced in 2015 that it would be entirely car free by 2019. London’s T-charge was announced in May 2016 and introduced in October 2017.4

To ensure more timely introduction of LEZs, the Bill should specify a maximum length of time for grace periods, rather than the proposed minimum length grace period.

2. There are several “watering down” features of the provisions, including a weak suggested emissions standard, lack of proper definition of Low Emission Zones, and potential for broad LEZ objectives which could result in LEZs being ineffectual and/or measured against the wrong performance indicators.

(a) Weak suggested emission standard

The Policy Memorandum suggests a possible emission standard of Euro VI/6 for diesel vehicles and Euro 4 for petrol vehicles. This is justified on the basis that it is “consistent with the general leading emission standards for low emission zones established in Europe”.5 However, Euro 6 was the new standard in 2015 and the average length of time people keep a vehicle is six to eight years, taking us to roughly 2021/2023. Therefore, by the time LEZs kick in in 2026 (thanks to the grace provisions), the standard will be eleven years old and will do very little, if anything at all, to improve emissions standards beyond what would naturally happen without this legislation.

The combination of the proposed emission standard combined with the lengthy grace periods will also create a very weak result set against the Scottish Government’s stated commitments on phasing out fossil fuelled vehicles. The

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1 A Nation With Ambition: The Government's Programme for Scotland 2017-18
2 Cleaner Air for Scotland - The Road to a Healthier Future
3 See ClientEarth Briefing, “The UK Supreme Court ruling in the ClientEarth case: Consequences and next steps” (September 2015)
5 Transport Scotland (Policy Memorandum), paragraph 39
Scottish Government has promised that there will be no need for petrol and diesel vans and cars, across the whole of Scotland, by 2032, a mere six years after just some parts of some towns and cities would be Euro 6 (diesel)/Euro 4 (petrol) compliant.\footnote{A Nation With Ambition: The Government's Programme for Scotland 2017-18} We would hope to see a much better joining up of policy and ambition between LEZs and the electrification of transport altogether.

(b) Lack of definition of a LEZ

A Low Emission Zone is a designated area where access by certain polluting vehicles is restricted or deterred with the aim of improving the air quality. Therefore, a Low Emission Zone should mean that the vehicles circulating in heavily polluted areas are cleaner than they would be without intervention.

The Bill fails to spell out what a LEZ is. A clearly defined LEZ would prevent against the risk, outlined above, that a LEZ is introduced which sets the bar so low as to simply replicate the status quo and be totally ineffectual.

It is already the case that the Glasgow LEZ will barely achieve anything: the Zone will require 20% of buses to be a Euro 6 standard by the end of this year, when back in 2017, already around 15% were. As few as 40 buses will be upgraded as part of that scheme.

(c) Lack of obligation to introduce LEZs

The Bill does not require local authorities with illegal levels of air pollution to actually introduce a LEZ. There should be an express ‘opt-out’ obligation on local authorities to introduce LEZs in areas where they have designated Air Quality Management Areas. There could be some flexibility built into the obligation. For example, there could be a provision which would allow local authorities to apply to Scottish Ministers for a derogation not to introduce a LEZ where they can clearly demonstrate a modelled pathway to achieve air quality standards as soon as possible through other policy interventions.

(d) Lack of deadline for the introduction of LEZs

There should also be a mandate for local authorities to introduce LEZs by a specified deadline, or Scotland runs the risk of continuing to breach European legal limits and Scottish statutory standards on air quality indefinitely. Again, this is especially the case in light of the grace period provisions.

(e) Too broad an approach to LEZ objectives

Section 9(1)(c) of the Bill, as proposed, says that a LEZ scheme must specify its objectives, one of which must be ‘contributing towards meeting the air quality objectives prescribed under section 87(1) of the Environment Act 1995’. We consider that the LEZ objective should be to the improvement of air quality in order to achieve both Scottish regulatory standards \textit{and European legal limits} (currently
omitted), and nothing else. This should be made explicit in an opening section of the Bill.

Leaving the objectives of a LEZ scheme unlimited could result in LEZs being designed to achieve other outcomes unrelated to improving air quality (e.g. to raise revenue, or, as an extreme hypothetical, to boost car manufacturer sales).

(f) List of statutory consultees is not representative of people impacted by poor air quality

Under section 6(d), consultation is to take place with industries and not individuals impacted by air pollution. Any legislative guidance on consultations should include, amongst the list of stakeholders, individuals directly affected adversely by poor air quality, including people living with asthma, GPs and health practitioners, and health experts. We also consider that if drivers are mandatory consultees, cyclists, pedestrians, and public transport users must also be included in this list.

(g) Potential for monies raised via penalties to be poorly reinvested

We welcome the principle of the Bill to provide that penalties are punitive rather than a charging based approach to LEZs. While we welcome the principle of the Bill requiring monies raised via penalties being used facilitate the scheme’s objectives, the inclusion of “indirectly” in section 21(a) is a watering down of this clause and should be removed. However, we would be supportive of proposals in the Bill to reinvest any fines into grants to assist people with the cost of reducing emissions.

(h) Exclusion of the potential for motorways to be included in LEZs

As currently written, the Bill would prevent the possibility for ‘special roads’, which covers motorways, to ever be included in LEZs (section 9(3)(b)). This is particularly problematic in the context of Glasgow, where the M8 runs through the centre of the city and contributes to the city’s air pollution problem. Whilst we appreciate there may be complexities involved in regulating the traffic on a motorway due to special roads being governed by Transport Scotland and not local authorities, to block even the potential consideration of every section of ‘special roads’ within LEZs for the future is overly narrow and prescriptive.

(i) Potential for abuse of time-limited exemptions

While we are broadly understanding of the principle of time-limited exemptions to LEZs set out by section 12, this is undermined by section 12(3) of the Bill which effectively allows potential for unending renewals of time-limited exemptions.

3. Balance of power between Ministers/local authorities/SEPA

Whilst we agree that there needs to be a national framework for LEZs, we are concerned that the provisions do not always strike the right balance between which LEZ aspects should be worked out by Ministers, which should be left to Local Authorities’ discretion, and which should be overseen by SEPA.
(a) Powers which we consider should be devolved to local authorities

(i) Emissions standards:

With regards to the emissions standard, section 1(4) reserves the setting of the emissions standards to Scottish Ministers. This creates a “lowest common denominator” approach and prevents local authorities from going further if they choose. A one-size-fits-all emissions standard also ignores and undermines SEPA modelling work which is being done to provide the evidence base to local authorities about how air quality could be brought to within safe levels as quickly as possible.

Instead, Scottish Ministers should set a minimum emissions standard, with flexibility built in to allow for local authorities to set higher standards. Local authorities should be expected to choose an emissions standard (and other design features of LEZs, including the area) on the basis of modelling results, and on the specified objective to achieve compliance with Scottish and European air quality standards as soon as possible. Such an expectation should be built into the Bill.

Allowing different emissions standards in different places is the approach taken by Germany, which has 80 LEZs in place, with one framework to guide enforcement, but flexibility within the standards.\(^7\)

(b) Powers which we consider should be reserved to Scottish Ministers:

(i) Hours of operation

Section 13 of the Bill, which makes provision on hours of operation for an LEZ, does not make it explicit that this decision is devolved to local authorities. However, this can be inferred from section 18(2), which makes reference to “a local authority’s ability to specify… rules in a low emission zone scheme as to when a zone operates.” Taking a worst-case scenario hypothesis, this could result in a LEZ which applies overnight, for example. There should be a mandate for all LEZs to apply 24 hours/day.

(ii) Determination of the approved device

Section 16 relates to which devices should be used in connection with LEZs. We agree that Ministers should specify which approved device will be used in connection with LEZs, and would only add that examples from elsewhere have shown Automatic Number Plate Recognition technology (ANPR) to be most effective in enforcing LEZs effectively. We would advocate for their use in Scotland.

(iii) Signage

One of the most important aspects of LEZs which needs to be harmonised at the national level is signage. For driver experience and to improve compliance, signs need to be consistent. However, this might not need to be specified in primary

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\(^7\) [http://urbanaccessregulations.eu/countries-mainmenu-147/germany-mainmenu-61](http://urbanaccessregulations.eu/countries-mainmenu-147/germany-mainmenu-61)
legislation - secondary guidance detailing signage design specifications should suffice. This guidance should be set out as soon as possible.

(iv) The determination of “national importance” in the context of temporary suspension of LEZs

With regards to S 18, which allows for the temporary suspension of LEZs for events which are of national importance, we consider that any temporary suspension of LEZ, for ‘events of national importance’ should be determined via an application to Ministers, who are the appropriate body to determine what is of national importance.

(v) Vehicle exemptions

We agree that Ministers should be able to specify which vehicles are exempt from LEZs, and consider this should be limited to emergency service vehicles, and vehicles used by people with disabilities.

(c) Powers which we consider should be given to SEPA

(i) Review procedures

Sections 24-25 covers review procedures for performance of a scheme. To avoid LEZs becoming politicised, the review powers for performances of a scheme should sit with SEPA. This is similar to the LAQM approach under the Environment Act section 85.

(d) Powers which we consider should be removed altogether

(i) Reserve powers for Ministers to regulate process

We do not consider it necessary for Ministers to reserve themselves the right to regulate process (section 8), and think this adds an unnecessary layer of Government involvement and delay to the process.

Conclusion on LEZ provisions

The long grace periods, combined with the fact that the emission standard is reserved to Ministers and may be very weak, make the likelihood of seeing effective, enforceable LEZs on Scotland’s most polluted streets any time soon highly unlikely. This is exacerbated by other watering down features including (but not limited to) a lack of definition for LEZs. The emissions standard should be delegated to local authorities with a specification that they follow modelling results, but there should be an opt-out obligation to introduce LEZs by a specified deadline. Grace periods should be limited under the legislation, not extended out. These changes would ensure flexible, evidence based LEZs which actually make a difference to air quality on the ground as soon as possible.

Buses
We would strongly welcome any ambitious action to improve Scotland’s buses, as they are central to many of the issues Friends of the Earth campaigns on - carbon emissions, modal shift, electric vehicles, improving air quality, and contributing to a fairer transport system.

While the Bill makes some welcome changes to bus partnerships and strengthens current arrangements relating to setting up franchises, in recognition that the existing set-up presented challenges in encouraging private bus operators to upgrade their fleet, we would like to see the Bill go further in allowing local authorities to run bus services along any route, i.e. including on a commercially competitive basis with private operators.

Giving local authorities an opportunity to run services where there is an ‘unmet transport need’ is certainly welcome. But, in all likelihood, if an unmet need can be satisfactorily proved, it will be due to the private bus operators viewing that particular route as loss-making. Given councils are so cash-strapped, it seems unlikely many will have the resource to sufficiently plug a gap in the bus network. Furthermore, it seems fundamentally unfair the taxpayer will be subsiding the network while private operators can cherry pick the busiest/most profitable routes.

Empowering local authorities to compete with private operators will allow councils to bring in revenue on the busier routes to subsidise the routes currently unprovided for. Profits can also be reinvested to upgrade the fleet to electric vehicles as quickly as possible.

Open Data

We would like to see greater provision for transparency of data relating to bus services. Greater availability of data will facilitate greater transparency of the bus service. As with other public services, bus companies should be held accountable based on all the evidence available.

We agree with the Scottish Government that universality and consistency of data is necessary, and that this is unlikely to be achieved with voluntary arrangements on private bus companies, Policy Memorandum, 85. Clearly, a more robust arrangement is needed to ensure bus companies provide data relating to their service provision, such as passenger numbers, revenue, and route information.

This transparency will assist local authorities in their provision of bus services on routes of ‘unmet need’ or, ideally, everywhere.

Premises Parking Levies and/or Workplace Parking Levies

We believe that, in order to deliver the National Outcomes the Bill intends to support, particularly living longer, healthier lives, in well-designed, sustainable places, and reducing the local and global environmental impact of our consumption and production, the Bill should introduce the power for local authorities to introduce parking levies. These levies would be most effective for large workplaces (Workplace Parking Levies) and for car parks at other premises like shopping centres.
The 1999 Transport (Scotland) Bill initially included a provision to set up a framework to allow local authorities to introduce a WPL. This provision was removed from the Transport (Scotland) Act 2001 due to opposition.

**Advantages of WPLs/PPLs:**
Workplace and Premises Parking Levies are proven to discourage unnecessary private car usage and thereby reduce congestion and pollution, whilst improving journey times for public transport.

Nottingham’s WPL has been a huge success. In the first three years after its introduction, the WPL raised £25.3 million, all of which was reinvested into improvements in the city’s transport infrastructure, including a large fleet of electric buses, and the expansion of the tram network. The levy has significantly contributed to a 33% fall in carbon emissions, and a modal shift which has seen public transport use rise to over 40%.8

**Basis for introducing an amendment:**
The previous Transport Minister, Humza Yousaf, committed to considering legislation to allow local authorities to introduce workplace parking levies (WPLs) if they indicated they wanted such legislation.9 Local authorities have expressed such a willingness for such legislation, showing that the time is ripe for the inclusion of the provision:

- **Edinburgh:** In its evidence to the ECCLR Committee on air quality, the City of Edinburgh Council named WPLs as a policy to “assist with addressing the air quality issue” but pointed out that legislative changes were needed.10 It also published a WPL Scoping Paper at its Transport & Environment Committee meeting of 9 August 2018 which detailed the many benefits of having a WPL for the city and which stated “There is an opportunity available now within this proposed Transport Bill, which is unlikely to be present itself again in the future.”11

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9 Before the REC Committee on 27 February 2017, he said: “We have said that we will explore workplace parking levies...There are some good examples of where the workplace parking levy is potentially working—in Nottingham (...) but it is at the very early stages. We have said that we will explore the option further with local authorities. We have not said that we will absolutely commit to a workplace parking levy in specific places because it is clear that it would happen as a result of conversations with local authorities and other partners. We will have those conversations and, if enabling legislation is needed, we can then have that conversation.”

10 ECCLR Inquiry into air quality in Scotland, written submission from The City of Edinburgh Council

11 “Introducing a Workplace Parking Levy in Edinburgh would achieve many benefits including contribution toward the following outcomes: reducing private car travel to work; improving air quality in the city; reducing the impact of congestion; enhancing conditions for walking, cycling and public transport use; encouraging modal shift; and investing revenue in transport improvements” Item Number 7.7, WPL Scoping, City of Edinburgh Council Transport and Environment Committee meeting of 9 Aug 2018.
• **Glasgow**: In a report of the Local Taxes Working Group of 2016, the group considered that “Congestion charges and in particular the Low Emission Zones and Work Place Parking Levy could be viable opportunities for the Council to generate income and promote a number of environmental aims.”  


• **Dundee City Council**: In the Council’s response to Transport Scotland’s 2017 LEZ Consultation, which was one of the consultations feeding into the development of this Bill, the Council stated that local/central government should consider parking policy in tandem with LEZs, including workplace parking levies. It noted that legislative changes were needed in this regard.  


• **Aberdeen**: An Aberdeen City Council Full Committee meeting report names the consideration of a Workplace Parking Levy as a priority for the Council.  


To fail to introduce provision for Parking Levies, when their need has been so well understood both by the previous Transport Minister and by local authorities, would be a greatly missed opportunity.

**Going beyond WPLs, to wider Premises Parking Levies**

While England has seen only a WPL, we urge Scotland to go further than the rest of the UK. In addition to introducing provision for WPLs, we would encourage the committee to recommend the introduction of a more innovative policy, whereby local authorities have the power to charge parking levies on all types of premises over a defined number of parking spaces – it would be up to the local authority to decide which categories of premises to levy.

It is hard to see why only parking at workplaces would be levied when out-of-town shopping centres, supermarkets, and private leisure centres, which foster extensive car use, escape.

This wider levy would also enable local authorities to help protect town centres - a major government objective - since a premises parking levy on out-of-town stores would over a period of time help encourage such businesses to set up in less car-dependent locations. Disincentives for private car journeys would reduce traffic congestion, improving journey times for buses and making public transport a more attractive option.

**Conclusion**
To conclude, Friends of the Earth Scotland welcomes the opportunities presented by this Bill, which could radically improve the environment and health of people in Scotland for generations to come. Sadly, significant changes are needed if the Bill is to achieve this potential.

To introduce meaningful LEZs the Bill needs to introduce shorter timeframes, clear definitions, and strike a better balance between centralised and delegated powers. But LEZs are only one part of improving air quality. If we want to reduce the number of emissions in our town and city centres, people must have access to better public transport.

The Bill currently proposes changes which offer great risk and little incentive for local authorities to improve bus provision. We hope to see changes made to allow local authorities to operate buses on a commercially competitive, and economically viable, basis – for the good of bus users and council budgets.

To tie up this vision, of a Scotland with cleaner air and greater public transport options, the Bill should also look towards incentivising the reduction in car reliance, and generating revenue from cars more generally – including options like Workplace Parking Levies and premises parking levies.
RURAL ECONOMY AND CONNECTIVITY COMMITTEE

TRANSPORT (SCOTLAND) BILL

SUBMISSION FROM RAC FOUNDATION

The RAC Foundation is an independent transport policy and research organisation which explores the economic, mobility, safety and environmental issues relating to roads and motoring. The Foundation carries out independent and authoritative research with which it promotes informed debate and advocates policy in the interests of responsible road users.

The Foundation is supportive of the development of ultra-low and zero tailpipe emission vehicles that help improve air quality and reduce greenhouse gas emissions.

Unfortunately we are not able to attend the Committee to give evidence in person, but we would wish to offer views, below, for the Committee’s consideration.

Response

Low Emissions Zones (LEZ) in Scotland are being defined differently to Clean Air Zones (CAZ) in England – despite the similar objectives of both initiatives. Although there is clearly a need for schemes to be designed to match local circumstances in terms of geographic coverage and times of operation, we would favour a more standard UK-wide approach to avoid confusion for those driving around the country.

In England the proposals for Clean Air Zones envisage a daily charge for a vehicle entering a CAZ that does not meet certain criteria. This system is intended to create a deterrent to regular entry in a non-compliant vehicle, as the costs add up. But does not prevent infrequent, ‘one-off’ type trips, that are often not possible by other modes.

Scotland’s LEZ system would ban all vehicles that do meet the criteria for entry, backed up with severe penalties levied if banned vehicles do enter. Whilst we recognise the policy intent that wealthier people should not be able to ‘buy’ their way past the restrictions, we are concerned that a ban could create a huge barrier to those who may need to enter a zone for rare ‘one-off’ type trips where other modes may not be possible. This could particularly affect low-income households running older vehicles.

The scale of the problem will depend on the scale of each LEZ – the larger the area and the more streets included the greater the issue. But we can foresee particular issues if, for example, LEZs contain hospitals and care facilities that need to be accessed by many, infrequently, rather than employment or retail areas attracting multiple repeat visits.
We could see this being a problem for those in rural communities where the air quality issue is not significant, and hence the case for encouraging or forcing an ‘upgrade’ to newer, cleaner – but more expensive – vehicles does not stand up.
Dear Mr Farrell,

Transport (Scotland) Bill at Stage 1

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

**Low Emission Zones**

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

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

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

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

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

Pavement and Double Parking

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

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

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

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

The enabling powers are similar in nature to those that have been provided in connection with the establishment of the civil penalties for bus lane contraventions under the Transport (Scotland) Act 2001 and for the civil enforcement of parking under the Traffic Management Act 2004. The
regulations made under those enactments provide a useful reference of the type of provision which could be included in the regulations under the Bill. In particular we would draw the committee’s attention to the Bus Lane (Charges, Adjudications and Enforcement) (Scotland) Regulations 2001 (SSI 2001/442) and Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (SI 2007/3483) and Civil Enforcement of Parking Contraventions (England) (Representations and Appeals) 2007 (SI 2007/3482). The Traffic Act 1991 and the designation orders made under schedule 3, paragraphs (1)–(3) of that Act set out the enforcement regime applicable to the enforcement of decriminalised parking offences and again provide a useful reference tool of the type of provisions which could be made under the new powers in the Bill. We would however emphasise that these existing provisions are referenced as examples only and the actual content of the regulations to be made under the Bill provisions has not yet been determined.

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

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

**Bus Services**

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

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

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

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

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

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

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

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

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

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

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

The financial memorandum provides example costs for setting up a bus company from scratch. While these may seem substantial it should be noted that several LTAs already own and/or operate bus fleets for other purposes where no operator’s licence is required, such as non-commercial bus services for educational purposes and non-profit community bus services. The
bill provisions would allow them to extend the use of these vehicles to operate socially necessary services.

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

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

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

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

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

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

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

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

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

Smart ticketing

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

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

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

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

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2 Initial results from TS Smart Travel research over July-August 2018 have indicated that over 70% of respondents would find this smartcard flexibility of use.
the Scottish Government would need to understand the impact this would have on their ability to continue to operate effectively in a commercial market. While the Scottish Government has franchises/contracts covering much of the rail and ferry network, the provision and regulation of railway services is a reserved matter.

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

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

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

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

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

Road works

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

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

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3 https://www.ukauthority.com/articles/transport-for-the-north-plans-for-smart-ticketing
independently verified information. Given the lack of a statutory power to do so, the work was only made possible by the voluntary agreement of the community, who allowed unannounced site visits as part of an 'information gathering’ exercise which included comparing their sites to the current safety code.

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

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

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

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

Under the New Roads and Street Works Act 1991 there are 18 sections under which an offence can be committed. Only four of them can currently be addressed by Fixed Penalty Notices (FPNs). Figures published by Jim Barton as part of his review\(^4\) showed that where a duty became enforceable by FPN, improved compliance was generally achieved. Comparing late utility notices sent to South Lanarkshire Council (by utilities) in February 2007 (before FPNs) and again in February 2016, (post FPN introduction) the trends show that FPNs drive compliance well:

<table>
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<td>24 Hour</td>
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<td>One month</td>
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<td>5</td>
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<tr>
<td>Works clear</td>
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<tr>
<td>Works closed</td>
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<td>6</td>
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<tr>
<td>TOTAL</td>
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<table>
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<tr>
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\(^4\) https://www.transport.gov.scot/media/10269/srwc-review-consultants-report.pdf
As there are currently no FPNs for reinstatement quality, there is no direct evidence regarding their effect in that context. However, there is evidence on the basis of SRWC penalties more generally. Every two years the road works community in Scotland undertakes a coring exercise, where roads are physically cut into to confirm compliance with the national standard in the areas of the road not normally visible and therefore not open to inspection. The first SRWC, John Gooday, took the decision to impose financial penalties on those organisations which failed to achieve a reasonable benchmark pass rate in that exercise. Following the introduction of penalties in 2012 (£90,000 combined) in this area, the national pass rate has increased from 64% in 2008/9 to 83% in 2012/13. In 2015/6 the figure was 82%, a small decrease resulting from the poor performance of a single individual UK wide undertaker. It would be reasonable to assume that allowing the SRWC to issue FPNs on the basis of reinstatement quality would drive similar compliance at a local level.

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

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

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

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

The purpose of reinstatement quality plans is to demonstrate that an undertaker or roads authority which is required to enter such a plan on the SRWR can safely and effectively carry out reinstatement works, and has in place its own quality control procedures as regards those works. The approach taken by the Bill requires the SRWC to approve a plan prepared by an undertaker or authority. The SRWC may only approve a plan where satisfied that the plan demonstrates that the undertaker or authority can safely undertake the work, and has in place the necessary quality control procedures. Failure to enter a plan which has been approved by the SRWC where required to do so is to be an offence. It is by this approval mechanism, rather than by imposing penalties
in the event that a plan is not followed, that the Bill seeks to ensure that individual undertakers and authorities can safely and competently carry out reinstatements. This is likely to include a community led and agreed advice note or code of practice which will provide both general guidance and specific details regarding the content of a quality plan. As the specific requirements will be fairly technical and related to site based practice and current industry standards, they should retain a degree of flexibility less appropriate for primary legislation.

Canals

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

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

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

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

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

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

Yours sincerely,

Alison Irvine
Director, Transport Strategy and Analysis
17 October 2018

Edward Mountain MSP
Convener
Rural Economy and Connectivity Committee
Scottish Parliament
EDINBURGH
EH99 1SP

Dear Mr Mountain

REC COMMITTEE - 3 OCTOBER EVIDENCE SESSION - FOLLOW-UP INFORMATION

I would firstly take the opportunity to thank you and the committee for the kind invitation to provide evidence on the Transport (Scotland) Bill, bus and smart ticketing sessions. As stated during the session, I would be more than happy to meet with any of the committee members who may feel there is still a need to better understand some of the issues arising from the proposals set out in the Bill. Given the broad range of subjects covered in the Bill, it is very likely we will share additional information over the coming weeks with the committee members, either by meeting with them direct or by email.

Turning to the question raised by Stewart Stevenson, MSP on what is the Difference between Bus Quality Partnerships (currently) and Bus Services Improvement Partnerships (included in the Bill)?, I would make the following observations:

1. I believe there was a level of agreement that a more flexible and balanced, partnership approach, as proposed in the Bill, provided an improved model, compared to the partnership models set out in the Transport (Scotland) Act 2001. The new model feels like a partnership approach and one which could achieve wider acceptance across Scotland, than its predecessors did, with only five formal QP’s being introduced in Scotland, following the introduction of the aforementioned Act.

2. The new model set out in the Bill, Bus Service Improvement Partnerships (BSIP), provides an updated and improved model, where both partners have a say and work together in developing the both the BSIP plan and BSIP schemes. Only once all the parties to the plan agree to the plan, schemes and delivery can the BSIP progress. So, I see this as a clear demonstration that it is a true partnership approach, whereas the previous model did feel rather one sided.

3. BSIPs require the local transport authority to commit to action for the scheme or plan in some way (to assist operators). However, the requirement that facilities (infrastructure) must be included has been removed (as in quality partnerships) to allow local transport authorities to bring forward ‘measures’, for example on car parking, instead of or in conjunction with the provision of facilities.

4. BSIPs also offer an extended range of available ‘service and operational standards’ which can be required of operators, as compared to that in the quality partnership model.
5. The extended range of service and operational standards are set out in Sections 3C and 3D, with the range being broader and more comprehensive to that in the quality partnership model.

6. Part 3 of inserted schedule A1 sets out the procedure for revoking partnership plans and schemes, where it appears to me that there are fewer steps to this procedure than was previously the case.

7. The proposed Bill also amends the competition test in section 37 of the 2001 Act to ensure it is applied whenever a local transport authority is considering or making or varying a partnership scheme. Also, as a further competition safeguard, the Competition and Markets Authority are mandatory consultees at a number of stages in the process of making and varying partnership plans and schemes.

8. Section 31 of the Bill makes a number of changes to the Transport Act 1985 to deal with the implications of a BSIP plan and scheme being in place on the registration of local services and the functions of the Traffic Commissioner.

9. New section 6K of the 1985 Act caters for situations where a partnerships scheme has imposed an operational service standard on a local service and a person is either applying to be registered to provide that service or to vary an existing registration that they have in respect of that service. The section requires the Traffic Commissioner to refuse such an application where the Traffic Commissioner considers the applicant is unlikely to be able to comply with the service standard in relation to the services. The Traffic Commissioner does not have any discretion in this respect.

I believe the above information highlights some of the areas where there are very real differences between the proposed BSIP model compared to those listed in Bus Quality Partnerships. I also believe that BSIPs offer the basis for a stronger partnership to be developed, with both the operators and local transport authorities working together to develop their plans and schemes to improve the services in their area and taking responsibility for their delivery. Hopefully this would help with keeping existing customers, as well as attracting much hoped for new ones.

I do think, however, that there is a blatant imbalance in the proposed model, whereby an operator who fails to meet the service standards set in the scheme could be reported to the Traffic Commissioner and be faced with the risk of losing the right to operate the said service. Rather unfairly, there is no similar threat to a local transport authority, if they should fail to deliver on their commitments. Perhaps giving the Traffic Commissioner some additional powers in this area may be worthy of consideration.

I hope the above information is helpful and I would be more than happy to amplify these points if you felt it to be necessary.

Yours sincerely

George Mair
Director, Scotland

Confederation of Passenger Transport UK - Scotland
2 Walker Street Edinburgh EH3 7LA Telephone: 0131 260 5107 DDI: 0131 260 5109 Facsimile: 0131 260 5106
Email: george.mair@cpt-uk.org website: www.cpt-uk.org
Title of Instruments

- SSI 2018/279: The Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018
- SSI 2018/280: The Parking Attendants (Wearing of Uniforms) (Falkirk Council Parking Area) Regulations 2018
- SSI 2018/281: The Road Traffic (Parking Adjudicators) (Falkirk Council) Regulations 2018

Type of Instruments: Negative

Coming into force: 19 November 2018

Laid Date: 21 September 2018

Minister to attend the meeting: No

Procedure

1. Under the negative procedure, an instrument comes into force on the date specified on it (the "coming into force date") unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Purpose

2. The purpose of this package of Scottish Statutory Instruments (SSI's) is to introduce a decriminalised parking regime within the Falkirk Council area. The Committee has looked at similar sets of SSIs previously for other local authority areas.

3. To date, 20 Scottish local authorities have introduced decriminalised parking regimes. This enables them to administer their own parking penalty schemes, and to retain the penalties collected to finance parking enforcement procedures and other traffic management measures.

Consideration by the Delegated Powers and Law Reform Committee

4. The Delegated Powers and Law Reform Committee considered these instruments at its meeting on 2 October 2018 and determined that it did not need to draw the attention of the Parliament to the instruments on any
grounds within its remit.

INSTRUMENTS

SSI 2018/279: The Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018:

5. The SSI defines the area within Falkirk where DPE can be enforced. This area covers all roads in Falkirk, except such lengths of the M80, M876, M9, A876 and the A985 trunk roads as fall within the Falkirk Council area (see schedule 1 of the Order). The trunk roads excluded from the DPE regime will continue to be the responsibility of Police Scotland, following agreement with the Council that they are best equipped to enforce these sections.

The Parking Attendants (Wearing of Uniforms) (Falkirk Council) Regulations 2018 (SSI. 2018/280)

6. This SSI stipulates that a parking attendant must be wearing an identifiable uniform when carrying out the duties associated with a parking attendant.

The Road Traffic (Parking Adjudicators) (Falkirk Council) Regulations 2018 (SSI. 2018/281)

7. This SSI provides for the adjudication process to be followed where a motorist believes that a penalty charge notice has been incorrectly issued.

8. The regulations and accompanying documents are included this Annex. They are also available online here:

- SSI 2018/279: The Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018
- SSI 2018/280: The Parking Attendants (Wearing of Uniforms) (Falkirk Council Parking Area) Regulations 2018
- SSI 2018/281: The Road Traffic (Parking Adjudicators) (Falkirk Council) Regulations 2018

Recommendation

The Committee is invited to consider any issues that it wishes to raise in reporting to the Parliament on these instruments.

Rural Economy and Connectivity Committee Clerks
10 October 2018
SCOTTISH GOVERNMENT POLICY NOTE

THE ROAD TRAFFIC (PERMITTED PARKING AREA AND SPECIAL PARKING AREA) (FALKIRK COUNCIL) DESIGNATION ORDER 2018 SSI 2018/279

THE PARKING ATTENDANTS (WEARING OF UNIFORMS) (FALKIRK COUNCIL PARKING AREA) REGULATIONS 2018 SSI 2018/280

THE ROAD TRAFFIC (PARKING ADJUDICATORS) (FALKIRK COUNCIL) REGULATIONS 2018 SSI 2018/281

1. The above instruments were made in exercise of powers conferred by Schedule 3 of the Road Traffic Act 1991, sections 73(11) and (12) of the Road Traffic Act 1991, and section 63A of the Road Traffic Regulation Act 1984 respectively. The instruments are subject to the negative procedure before the Scottish Parliament.

Policy Objectives and background

2. The purpose of the three Scottish Statutory Instruments is to introduce a decriminalised parking regime within the Falkirk Council area.

3. The Road Traffic Act 1991 introduced provisions enabling the decriminalisation of most non-endorseable parking offences in London and permitted similar arrangements to be introduced elsewhere in the UK. Decriminalised Parking Enforcement (DPE) is a regime which enables a local authority to administer its own parking penalty schemes, including the issuing of Penalty Charge Notices (PCNs) to motorists breaching parking controls in specific areas. DPE seeks to ensure compliance with parking controls through transparent, effective enforcement aimed at dissuading motorists from breaching parking controls and achieving 100% compliance with such controls.

4. To date, 20 Scottish local authorities have now introduced DPE within their areas. Under these arrangements, local authorities are allowed to retain the penalties collected. However, section 55 of the Road Traffic Regulation Act 1984 requires that any surplus accrued by local authorities from their DPE regimes should be ring-fenced and may only be used for certain transport-related provisions, including the provision and maintenance of off-street parking, the provision or operation of (or facilities for) public passenger transport services or for road improvement projects in the local authority area.

5. Previously, and continuing for authorities that have not introduced DPE, income generated from fines arising from parking infringements accrue to the Exchequer as these are non-endorseable criminal offences. Under DPE, enforcement powers no longer rest with the police but are implemented by parking attendants employed either directly by, or under contract to, the local authority. As such, a breach of parking rules within an area where DPE is in force requires payment to the local authority of a penalty charge.

The Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018 (SSI. 2018/279)

6. The SSI defines the area within Falkirk where DPE can be enforced. This area covers all roads in Falkirk, except such lengths of the M80, M876, M9, A876 and the A985 trunk roads as fall within the Falkirk Council area (see schedule 1 of the Order). The trunk roads excluded from the DPE regime will continue to be the responsibility of Police Scotland, following agreement with the Council that they are best equipped to enforce this section.
The Parking Attendants (Wearing of Uniforms) (Falkirk Council) Regulations 2018 (SSI. 2018/280)

7. This SSI stipulates that a parking attendant must be wearing an identifiable uniform when carrying out the duties associated with a parking attendant.

The Road Traffic (Parking Adjudicators) (Falkirk Council) Regulations 2018 (SSI. 2018/281)

8. This SSI provides for the adjudication process to be followed where a motorist believes that a penalty charge notice has been incorrectly issued.

Consultation

9. All statutory requirements regarding the consultation for these three Scottish Statutory Instruments have been carried out. We received a response from the Scottish Traffic Commissioner’s office in relation to Falkirk Council’s draft SSIs, indicating that they were content with the proposals. Police Scotland have also formally confirmed to Falkirk Council their support for the Council’s plans.

Business and Regulatory Impact Assessment

10. As the draft regulations relate to the enforcement of existing parking restrictions and do not therefore constitute an additional burden on business a Business and Regulatory Impact Assessment is not required. The enforcement costs incurred by Falkirk Council are expected to be absorbed by income from parking penalties.

Financial Effects

11. These SSIs will have no financial effect on the Scottish Government.

Roads Policy Team
Transport Scotland
19 September 2018
The Scottish Ministers make the following Order in exercise of the powers conferred by paragraphs 1(1), 2(1) and 3(3) of schedule 3 of the Road Traffic Act 1991(a) and all other powers enabling them to do so.

In accordance with paragraphs 1(1)(d) and 2(1)(c) of that schedule they have received an application for this Order from Falkirk Council.

In accordance with paragraphs 1(3) and 2(3) of that schedule they have consulted the chief constable of the Police Service of Scotland.

Citation and commencement

1. This Order may be cited as the Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018 and comes into force on 19 November 2018.

Interpretation

2. In this Order—
   “the 1991 Act” means the Road Traffic Act 1991; and
   “the parking area” means the area designated as a permitted parking area and a special parking area by article 3.

Designation as permitted parking area and special parking area

3. That part of the Falkirk local government area(b) specified in schedule 1 is designated as—
   (a) a permitted parking area; and
   (b) a special parking area.

(a) 1991 c.40; paragraphs 1(1) and 2(1) of schedule 3 were relevantly amended by the Local Government etc. (Scotland) Act 1994 (c.39), schedule 13, paragraph 171. The functions of the Secretary of State under that schedule of the 1991 Act, so far as they are exercisable within devolved competence, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46).

(b) Falkirk local government area was established by section 1(2) and (4) and schedule 1 of, the Local Government etc. (Scotland) Act 1994.
Modifications and application of Part II of the 1991 Act

4. Sections 66, 69 to 74, 79 and 82 and schedule 6 of the 1991 Act apply in relation to the parking area subject to the modifications specified in schedule 2.

Modifications of the Road Traffic Regulation Act 1984

5. The Road Traffic Regulation Act 1984(a) is modified in relation to the parking area as specified in schedule 3.

Consequential modification

6. In relation to a parking adjudicator appointed under section 73(3) of the 1991 Act by virtue of this Order, the reference in paragraph 40(b) of schedule 1 of the Tribunals and Inquiries Act 1992(b) to a parking adjudicator appointed under section 73(3)(a) of the 1991 Act shall be construed as if it were a reference to a parking adjudicator appointed under section 73(3) of that Act by virtue of this Order.

MICHAEL MATHESON
A member of the Scottish Government

St Andrew’s House,
Edinburgh
19th September 2018

(a) 1984 c.27.
(b) 1992 c.53.
SCHEDULE 1

SPECIFICATION OF PARKING AREA

The Falkirk local government area, except such lengths of the following roads as fall within that area—

(a) the M80 Glasgow – Stirling Trunk Road;
(b) the M876/A876 Dennyloanhead – Kilbagie Roundabout Trunk Road;
(c) the M9/A9 Edinburgh – Stirling – Thurso Trunk Road;
(d) the A985 Kincardine – Rosyth Trunk Road.
SCHEDULE 2

MODIFICATIONS OF PROVISIONS OF PART II OF THE ROAD TRAFFIC ACT 1991

1.—(1) Section 66 is modified as follows.
(2) In subsection (1) omit “in a designated parking place”.
(3) In subsection (2) omit—
   (a) “For the purposes of this Part of the Act”; and
   (b) paragraphs (a)(i), (b) and (c).
(4) In subsection (3)—
   (a) in paragraph (d) for “the specified proportion” substitute “one half”; and
   (b) in paragraph (e) for “London” substitute “parking”.
(5) Omit subsection (4).
(6) For subsection (5)(b) substitute—
   “(b) the parking authority.”.

2.—(1) Section 69 is modified as follows.
(2) In subsection (1)—
   (a) omit “in a designated parking place”; and
   (b) for “specified in section 66(2)(a), (b) or (c) of this Act” substitute “in which a penalty charge is payable”.
(3) In subsection (8) for the words from “London” to the end substitute “parking authority”.

3.—(1) Section 71 is modified as follows.
(2) In subsection (1) for “a London” substitute “the parking”.
(3) For subsection (4) substitute—
   “(4) The grounds are—
   (a) that there were no reasonable grounds for the parking attendant concerned to believe that the vehicle had been permitted to remain at rest in the parking area in circumstances in which a penalty charge was payable;
   (b) that the vehicle had been permitted to remain at rest in the place where it was by a person who was in control of the vehicle without the consent of the owner;
   (c) that the place where the vehicle was at rest was not in the parking area;
   (d) in a case within subsection (1)(d) above, that, by virtue of an exemption given by section 70 of this Act, section 69 of this Act did not apply to the vehicle in question at the time in question; or
   (e) that the penalty or other charge in question exceeded the amount applicable in the circumstances of the case.”.
(4) In subsection (8)(b) for “costs” substitute “expenses”.

4.—(1) Section 73 is modified as follows.
(2) Omit subsections (1), (1A) and (2).
(3) For subsection (3) substitute—
   “(3) The traffic commissioner must, with the consent of the Lord Advocate, appoint persons to act as parking adjudicators.”.
(4) After subsection (3) insert—

“(3A) A parking adjudicator appointed by virtue of this section is authorised to act as a parking adjudicator in relation to the parking area.

(3B) The parking authority, after consultation with the traffic commissioner—

(a) must—

(i) provide, or enter into arrangements for the provision of, accommodation and administrative staff for the parking adjudicators acting in relation to the parking area; and

(ii) determine the places at which such parking adjudicators are to sit; and

(b) may enter into arrangements for the remuneration of such parking adjudicators.”.

(5) In subsection (4) for the words from “have” to the end substitute “be an advocate or solicitor of at least five years’ standing”.

(6) In subsection (5) for “appointing authorities” substitute “traffic commissioner”.

(7) For subsections (8) to (10) substitute—

“(8) The reasonable expenses of the traffic commissioner incurred in connection with the discharge of the duties imposed on him by this section, shall be met by the parking authority.”.

(8) In subsection (11) for “The Secretary of State” substitute “The Scottish Ministers”.

(9) In subsection (12)—

(a) in each of paragraphs (i) and (j) for “costs” substitute “expenses”; and

(b) in paragraph (j) for “county” substitute “sheriff”.

(10) In subsection (15) for the words from “if a” to the end substitute “be recoverable by the person to whom the amount is payable as if it were payable under an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court for any sheriffdom in Scotland”.

(11) In subsection (17) for “Joint Committee”, in each place where it occurs, substitute “parking authority”.

(12) In subsection (18)—

(a) for “Joint Committee” substitute “parking authority”; and

(b) for “the Secretary of State” substitute “the Scottish Ministers”.

5. For section 74 substitute—

“Fixing of certain parking and other charges for parking area

74.—(1) It shall be the duty of the parking authority to set the levels of additional parking charges to apply in the parking area.

(2) Different levels may be set for different parts of the parking area.

(3) The levels of additional parking charges set by the parking authority under this section shall accord with any guidance given by the Scottish Ministers whether such guidance is given specifically to the parking authority or to local authorities generally.

(4) Any guidance given by the Scottish Ministers under subsection (3) above may be varied at any time by them.

(5) The parking authority must publish, in such manner as the Scottish Ministers may determine, the levels of additional parking charges which have been set under this section.

(6) In this section “additional parking charges” means penalty charges, charges made by the parking authority for the removal, storage and disposal of vehicles and charges for the release of vehicles from immobilisation devices fixed under section 69 of this Act.”.

6.—(1) Section 82 is modified as follows.
(2) For subsection (1) substitute—

“(1) In this section and sections 66, 69 to 74 and 79 and schedule 6 of this Act(a)—

“hiring agreement” and “vehicle-hire firm” have the same meanings as in section 66 of the Road Traffic Offenders Act 1988(b);

“immobilisation device” has the same meaning as in section 104(9) of the Road Traffic Regulation Act 1984(c);

“parking area” means the area designated as a permitted parking area and a special parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018(d);

“parking attendant” has the same meaning as in section 63A(e) of the Road Traffic Regulation Act 1984;

“parking authority” means—

(a) in relation to a parking place which was provided or authorised under section 32(1) of the Road Traffic Regulation Act 1984, the local authority as defined by section 32(4)(a) of that Act in relation to the parking place;

(b) in any other case, the traffic authority (other than the Scottish Ministers) as defined by section 121A(f) of that Act;

“penalty charge” means a penalty charge which is payable by virtue of paragraph 3(1) and (2) of schedule 3 of this Act;

“prescribed” means prescribed by regulations made by the Scottish Ministers; and

“traffic commissioner” means the traffic commissioner appointed for the Scottish Traffic Area under section 4 of the Public Passenger Vehicles Act 1981(g).”.

(3) In subsection (5) for “London authority concerned” substitute “parking authority”.

(4) In subsection (6) for “a Minister of the Crown” substitute “the Scottish Ministers”.

(5) In subsection (7) for “either House of Parliament” substitute “the Scottish Parliament”.

7.—(1) Schedule 6 is modified as follows.

(2) In paragraph 1(1) for “London authority concerned” substitute “parking authority”.

(3) In paragraph 2—

(a) in subparagraph (1) for the words from “London” to the end substitute “parking authority”;

(b) in subparagraph (2) for the words from “such” to the end substitute “writing”;

(c) in subparagraph (3) after “The”, where it first occurs, insert “parking”;

(d) in subparagraph (4)(c) for “place” substitute “area”; and

(e) in subparagraph (7) for “an authority to whom representations are duly made” substitute “the parking authority when representations are duly made to it”.

(4) In paragraph 3(1) and (2) for “London authority concerned” in each place where it occurs substitute “parking authority”.

(5) In paragraph 4—

(a) for “London authority concerned” substitute “parking authority”;

(b) in subparagraph (b), for “costs” substitute “expenses”; and

(c) for “authority consider appropriate” substitute “parking authority consider appropriate”.

(a) Road Traffic Act 1991 c.40.
(b) 1988 c.53.
(c) 1984 c.27.
(d) S.S.I. 2018/279.
(e) Section 63A was inserted by the 1991 Act, section 44(1).
(f) Section 121A was inserted by the New Roads and Street Works Act 1991 (c.22), schedule 8, paragraph 70.
(g) 1981 c.14.
(6) In paragraph 5—
   (a) in subparagraph (1)—
      (i) for “an authority” substitute “the parking authority”; and
      (ii) for “authority’s decision” substitute “parking authority’s decision”;
   (b) in subparagraph (2) for “London authority concerned” substitute “parking authority”; and
   (c) in subparagraph (3) for the words from “any” to the end substitute “the parking authority to comply with any direction given to it under subparagraph (2) above”.

(7) In paragraph 6—
   (a) in subparagraph (1) for “authority serving the notice” substitute “parking authority”; and
   (b) in subparagraph (2)(b)(ii) for “authority concerned” substitute “parking authority”.

(8) In paragraph 7 for the words from “authority concerned” to the end substitute “parking authority may recover the increased charge as if the charge certificate were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court in any sheriffdom in Scotland”.

(9) Omit paragraph 8.
SCHEDULE 3

MODIFICATIONS OF THE ROAD TRAFFIC REGULATION ACT 1984

1. In section 46(1A)(a) for “Greater London” substitute “the parking area”.

2.—(1) Section 55 is modified as follows.
   (2) For subsection (1) substitute—
   “(1) A local authority must keep an account—
   (a) of their income and expenditure in respect of designated parking places for which
   they are the local authority and which are in the permitted parking area; and
   (b) of their income from additional parking charges (as defined in section 74(6) of the
   Road Traffic Act 1991) received by them in respect of vehicles found within the
   special parking area and the expenditure incurred by them in relation to that area
   by virtue of any provision of Part II of the Road Traffic Act 1991 as it applies in
   relation to that area.
   (1A) As soon as reasonably practicable after the end of each financial year, the local
   authority must send to the Scottish Ministers a copy of the account for that year.”.
   (3) Omit subsections (3A) and (3B)(b).

3. In section 63A(4)(c)—
   (a) for “Greater London”, where it first occurs, substitute “the parking area”; and
   (b) for “Greater London Authority” substitute “Scottish Ministers”.

4.—(1) Section 101 is modified as follows.
   (2) Omit subsection (4).
   (3) In subsection (4A)(d) for “Greater London” substitute “the parking area”.
   (4) Omit subsection (5).
   (5) In subsection (5A)(e) for “Greater London” substitute “the parking area”.

5.—(1) Section 102 is modified as follows.
   (2) For subsection (1) substitute—
   “(1) If a vehicle is removed by the local authority in circumstances in which an offence
   would have been committed but for the provisions of paragraph 1(4) or 2(4) of schedule 3
   of the Road Traffic Act 1991, the local authority will be entitled to recover from any
   persons responsible such charges in respect of the removal, storage and disposal of the
   vehicle as they may require.”.
   (3) Omit subsections (2) and (3).
   (4) For subsection (4) substitute—
   “(4) Without prejudice to subsection (1) above, where any sum is recoverable in respect
   of a vehicle by a local authority in whose custody the vehicle is, the local authority shall be
   entitled to retain custody of it until that sum has been paid.”.
   (5) In subsection (5) for “an authority” substitute “the local authority”.

(a) Section 46(1A) was inserted by the 1991 Act, section 64(2).
(b) Section 55(3A) and (3B) were inserted by the 1991 Act, schedule 7, paragraph 5.
(c) Section 63A was inserted by the 1991 Act, section 44(1).
(d) Section 101(4A) was inserted by the 1991 Act, section 67(4).
(e) Section 101(5A) was inserted by the 1991 Act, section 67(6).
(6) Omit subsections (6) and (7).

(7) In subsection (8), in paragraph (b) of the definition of “appropriate authority”, for the words “outside Greater London” substitute “within the parking area”.

6. In section 142(1)—

(a) after the definition of “owner” insert—

“parking area” means the area designated as a permitted parking area and a special parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018(a); and “permitted parking area” and “special parking area” are to be read accordingly;”; and

(b) in the definition of “prescribed” for “the Secretary of State” substitute “the Scottish Ministers”.

(a) S.S.I. 2018/279.
EXPLANATORY NOTE
(This note is not part of the Order)

This Order applies, to the Falkirk local government area, arrangements for enforcing parking controls already available in London and certain other areas in England and in Edinburgh, Glasgow, Perth and Kinross, Aberdeen, Dundee, South Lanarkshire, Renfrewshire, East Renfrewshire, East Ayrshire, South Ayrshire, Fife, East Dunbartonshire, Argyll and Bute, Inverclyde, Highland, East Lothian, Angus, Stirling, North Lanarkshire and Midlothian local government areas.

The Order designates Falkirk local government area (with specified exceptions) as a permitted parking area and as a special parking area in accordance with schedule 3 of the Road Traffic Act 1991 (“the 1991 Act”). The Order applies, to the designated area, various provisions of the 1991 Act and modifies them where necessary. It also makes consequential modifications to certain provisions of the Road Traffic Regulation Act 1984 (“the 1984 Act”) dealing with parking and related matters.

While the Order is in force, certain specified offences will be decriminalised: for example, in the case of the permitted parking area, breaches of orders relating to free on-street parking places and, in the case of the special parking area, orders prohibiting or restricting waiting, loading and unloading.

Enforcement will be carried out by parking attendants provided under section 63A of the 1984 Act. A system of parking adjudicators will deal with disputes.
The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 63A of the Road Traffic Regulation Act 1984(a) and all other powers enabling them to do so.

In accordance with section 134(8)(b) of that Act they have consulted with such representative organisations as they think fit.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Parking Attendants (Wearing of Uniforms) (Falkirk Council Parking Area) Regulations 2018 and come into force on 19 November 2018.

(2) In these Regulations—

“the 1984 Act” means the Road Traffic Regulation Act 1984;

“the 1991 Act” means the Road Traffic Act 1991(e); and

“the Falkirk Council parking area” means the area designated as a permitted parking area and a special parking area by article 3 of the Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018(d).

Prescribed functions

2.—(1) All functions conferred on parking attendants by or under the enactments mentioned in paragraph (2) are prescribed for the purposes of section 63A(4) of the 1984 Act (wearing of uniforms by parking attendants when exercising prescribed functions) in its application to the Falkirk Council parking area.

(a) 1984 c.27. Section 63A was inserted by the Road Traffic Act 1991 (c.40), section 44(1); section 142(1) contains a definition of “prescribed” relevant to the making of these Regulations. Sections 63A and 142(1) are modified in relation to the Falkirk Council parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018, S.S.I. 2018/279. The functions of the Secretary of State, so far as they are exercisable within devolved competence, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46).

(b) Section 134(8) was inserted by the Scotland Act 2016 (c.11), schedule 2, paragraph 12(5).

(c) 1991 c.40.

(d) S.S.I. 2018/279.
(2) The enactments referred to in paragraph (1) are—

(a) section 99 of the 1984 Act (removal of vehicles);
(b) section 66(1) of the 1991 Act (issue of a penalty charge notice)(a); and
(c) section 69 of the 1991 Act (immobilisation of vehicles).

MICHAEL MATHESON
A member of the Scottish Government

St Andrew’s House,
Edinburgh
19th September 2018

(a) Sections 66 and 69 of the 1991 Act are modified in relation to the Falkirk Council parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018.
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations prescribe functions during the exercise of which a parking attendant must wear such uniform as the Scottish Ministers may determine (regulation 2).

The requirement to wear a uniform is contained in section 63A(4) of the Road Traffic Regulation Act 1984. Section 63A itself applies to Greater London only but by virtue of the Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018 that section is modified so as to apply to the parking area designated by that Order. Accordingly, parking attendants exercising the prescribed functions within that parking area are required to wear a uniform when doing so.
2018 No. 281

ROAD TRAFFIC

The Road Traffic (Parking Adjudicators) (Falkirk Council) Regulations 2018

Made - - - - 19th September 2018
Laid before the Scottish Parliament 21st September 2018
Coming into force - - 19th November 2018

CONTENTS

PART I
Preliminary

1. Citation and commencement
2. Interpretation

PART II
Procedure relating to Appeals

3. Making an appeal
4. Action upon receipt of notice of appeal and copy
5. Further representations
6. Power to require attendance of witnesses
7. Disposing of an appeal without a hearing
8. Notice of time and place of hearing
9. Procedure at a hearing
10. Decisions on appeals
11. Review of adjudicator's decision
12. Expenses
13. Conjoining of appeals
14. Miscellaneous powers of the adjudicator
15. Clerical errors
16. Sending of documents

PART III
The Register

17. The Register
The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 73(11) and (12) of the Road Traffic Act 1991(a) and all other powers enabling them to do so.

PART I
Preliminary

Citation and commencement

1. These Regulations may be cited as the Road Traffic (Parking Adjudicators) (Falkirk Council) Regulations 2018 and come into force on 19 November 2018.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Road Traffic Act 1991;

“adjudicator” means a parking adjudicator appointed under section 73(3) of the Act;

“appeal” means an appeal under section 72 or paragraph 5 of schedule 6 of the Act;

“fax” means the making of a facsimile copy of a document by the transmission of electronic signals;

“hearing” means an oral hearing;

“proper officer” means a member of the administrative staff provided under section 73(3B)(a)(i)(b) of the Act appointed to perform the duties of the proper officer under these Regulations; and

“register” means the register of appeals and decisions kept in pursuance of these Regulations.

(2) In these Regulations, in relation to an appeal or any process connected with an appeal—

“appellant” means the person making the appeal;

“disputed decision” means a decision of the parking authority against which an appeal is made under these Regulations;

“original representations” means the representations made to the parking authority under section 71 or paragraph 2 of schedule 6 of the Act; and

“parking authority” has the meaning ascribed to it in section 82(1) of the Act(c).

(3) Unless the context otherwise requires, any reference in these Regulations to—

(a) a provision of the Act is a reference to that provision as applied and, where appropriate, modified by the Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018(d);

(b) a numbered regulation is a reference to the regulation bearing that number in these Regulations; and

(c) a numbered paragraph is a reference to the paragraph bearing that number in the regulation in which that reference appears.

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(a) 1991 c.40; section 82(1) contains a definition of “prescribed” relevant to the making of these Regulations. The functions of the Secretary of State so far as they are exercisable within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) Section 73(3B)(a)(i) was inserted by schedule 2 of the Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018, S.S.I. 2018/279.

(c) A definition of “parking authority” was inserted by schedule 2 of the Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018.

(d) S.S.I. 2018/279.
PART II
Procedure relating to Appeals

Making an appeal

3.—(1) An appeal is to be made by a notice of appeal sent to the proper officer.

(2) A notice of appeal—
   (a) must state the full name and address of the appellant;
   (b) may specify some other address as being the address to which the appellant wishes documents to be sent to him or her in connection with the appeal;
   (c) must state the date and reference number of the disputed decision; and
   (d) may include any representations which the appellant desires to make in addition to the original representations.

(3) If the appeal is made later than the time limit mentioned in section 72(1) or (as the case may be) paragraph 5(1) of schedule 6 of the Act, the notice of appeal must include a statement of the reasons on which the appellant relies for justifying the delay, and the adjudicator must treat any such statement of reasons as a request for extending that time limit.

(4) The notice of appeal must be signed by the appellant or his or her authorised representative.

Action upon receipt of notice of appeal and copy

4.—(1) Upon receiving a notice of appeal in accordance with regulation 3 the proper officer must—
   (a) send an acknowledgement of receipt to the appellant;
   (b) enter particulars of the appeal in the register; and
   (c) send to the parking authority a copy of the notice of appeal and any direction extending the time limit for appealing.

(2) Upon receiving a copy of the notice of appeal in accordance with paragraph (1)(c), the parking authority must within 21 days send to the proper officer a copy of—
   (a) the original representations;
   (b) the relevant penalty charge notice (if any) issued under section 66(1) of the Act; and
   (c) the notice served under section 71(6) or (as the case may be) paragraph 2(7) of schedule 6 of the Act.

Further representations

5.—(1) Any party to an appeal under these Regulations may send representations to the proper officer at any time before that appeal is determined.

(2) The adjudicator may invite a party to send to the proper officer representations dealing with any matter relating to an appeal within such time and in such a manner as may be specified.

(3) Where a party fails to respond to an invitation under paragraph (2), the adjudicator may draw such inferences as appear to him or her proper.

(4) Any representations sent under this regulation must be signed by the party concerned or his or her authorised representative.

(5) Where the appellant sends representations to the proper officer under this regulation, the proper officer must send a copy of the representations to the parking authority.

(6) Where the parking authority sends representations to the proper officer under this regulation, it must at the same time send a copy of those representations to the appellant.

(7) This regulation is without prejudice to the powers of an adjudicator under regulation 9.
Power to require attendance of witnesses

6.—(1) The adjudicator may require the attendance of any person (including a party to the proceedings) as a witness, at a time and place specified by him or her, at the hearing of an appeal and require the person to answer any questions or produce any document in the person’s custody or control which relate to any matter in the proceedings.

(2) Where the adjudicator makes a requirement under paragraph (1) the adjudicator must make reference to the fact that, under section 73(14) of the Act, any person who without reasonable excuse fails to comply with this requirement is liable on summary conviction to a fine, and the adjudicator must state the amount of the maximum fine current at that time.

(3) A person in respect of whom a requirement has been made under paragraph (1) may apply to the adjudicator to vary or set aside that requirement.

(4) A person is not bound to comply with the requirement under paragraph (1) unless he or she has been given at least 7 days’ notice of the hearing or, if less than 7 days, the person has informed the adjudicator that he or she accepts such notice as he or she has been given.

(5) A person other than an appellant is not bound to comply with the requirement under paragraph (1) unless the necessary expenses of his or her attendance are paid or tendered to him or her.

(6) No person is required to give any evidence or produce any document under paragraph (1) which he or she could not be required to give or produce in proceedings before a court.

Disposing of an appeal without a hearing

7.—(1) Subject to paragraph (2), the adjudicator may dispose of an appeal without a hearing.

(2) The adjudicator must not dispose of an appeal without a hearing if either party has requested a hearing unless—

(a) the party who made the request withdraws his or her request before notice of a hearing has been sent to the other party under regulation 8; or

(b) both parties have subsequently consented to the appeal being disposed of without a hearing.

(3) Unless both parties consent to the disposal taking place on an earlier date, the adjudicator must not dispose of an appeal without a hearing until after the expiry of 28 days beginning on the day an acknowledgement is sent in accordance with regulation 4.

(4) Notwithstanding anything in paragraphs (2) and (3), if both parties, having been sent a notice of the hearing of an appeal in accordance with regulation 8, fail to attend or be represented at the hearing, the adjudicator may subsequently dispose of the appeal without a hearing.

Notice of time and place of hearing

8.—(1) This regulation has effect where a hearing is to be held for the purpose of disposing of an appeal.

(2) The proper officer must fix the time and place of the hearing and, not less than 28 days (or such shorter time as the parties may agree) before the date so fixed, send to each party a notice that the hearing is to be at such time and at such place or notify them in such other manner as he or she thinks fit.

(3) The adjudicator may alter the time and place of any hearing and the proper officer must, not less than 7 days (or such shorter time as the parties may agree) before the date on which the hearing is then to be held, send to each party notice of the time and place of the hearing as altered or notify them in such other manner as he or she thinks fit.

(4) This regulation applies to an adjourned hearing but, if the time and place of the adjourned hearing are announced before the adjournment, no further notice is required.
Procedure at a hearing

9.—(1) At the beginning of the hearing the adjudicator must explain the procedure which he or she proposes to adopt.

(2) Subject to the provisions of this regulation, the adjudicator must conduct the hearing of an appeal in such manner as he or she considers most suitable to the clarification of the issues before him or her and generally to the just handling of the proceedings and he or she must, so far as appears to him or her appropriate, seek to avoid formality in the proceedings.

(3) A hearing of an appeal must be held in public except where the adjudicator is satisfied that, by reason of exceptional circumstances, it is just and reasonable for the hearing, or part of the hearing, to be held in private.

(4) Any adjudicator appointed under section 73(3) of the Act may attend the hearing of an appeal whether or not it is held in private.

(5) The adjudicator, with the consent of the parties, may permit any other person to attend the hearing of an appeal which is held in private.

(6) Without prejudice to any other powers the adjudicator may have, he or she may exclude from the hearing of an appeal, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the adjudicator, to disrupt the hearing.

(7) Subject to paragraph (8), at the hearing of an appeal the appellant may conduct his or her case him or herself (with the assistance of any person he or she wishes) or may appear and be represented by any person whether or not legally qualified.

(8) If in any particular case the adjudicator is satisfied that there are good and sufficient reasons for doing so, he or she may refuse to permit a particular person to assist or represent the appellant at the hearing.

(9) At the hearing of an appeal—

(a) the parties are entitled to give evidence, to call witnesses, to question any witnesses and to address the adjudicator both on the evidence and generally on the subject matter of the appeal; and

(b) the adjudicator may receive evidence of any fact which appears to him or her to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court.

(10) Without prejudice to regulation 7(4), where a party who has been sent a notice of the hearing of an appeal or otherwise notified of the hearing in accordance with regulation 8, fails to attend or be represented at the hearing, the adjudicator may dispose of the appeal in his or her absence.

Decisions on appeals

10.—(1) Where an appeal is disposed of at a hearing, the decision of the adjudicator may be given orally at the end of the hearing or reserved.

(2) Where an appeal has been disposed of, whether at a hearing or otherwise, the decision when given must be entered forthwith in the register with (save in the case of a decision by consent) a statement of the reasons for the decision and the proper officer must send a copy of that entry to each party.

Review of adjudicator’s decision

11.—(1) The adjudicator has power on the application of a party, to review and revoke or vary any decision to dismiss or allow an appeal or any decision as to expenses on the grounds in each case that—

(a) the decision was wrongly made as the result of an error on the part of his or her administrative staff;
(b) a party who had failed to appear or be represented at a hearing had good and sufficient reason for his or her failure to appear;

(c) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing the existence of which could not have been reasonably known of or foreseen;

(d) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not have been reasonably known of or foreseen; or

(e) the interests of justice require such a review.

(2) An adjudicator has power, on the application of a party, to review and revoke or vary any interlocutory decision.

(3) An application under this regulation must be made to the proper officer within 14 days after the date on which a copy of the entry of the decision was sent to the parties and must state in full the grounds for that application.

(4) The parties have the opportunity to be heard on any application for review under this regulation and if, having reviewed the decision, the adjudicator directs the decision to be revoked, he or she shall substitute such decision as he or she thinks fit or order a redetermination by either the same or a different adjudicator.

(5) Regulation 10 applies to a decision under paragraph (1) as it applies to a decision made on the disposal of an appeal.

Expenses

12.—(1) The adjudicator is not normally to make an order as to expenses but may, subject to paragraph (2), make such an order—

(a) against a party (including an appellant who has withdrawn his or her appeal or the parking authority if that authority has consented to an appeal being allowed) if he or she is of the opinion that that party has acted frivolously or vexatiously or that that party’s conduct in making, pursuing or resisting an appeal was wholly unreasonable; or

(b) against the parking authority where he or she considers that the disputed decision was wholly unreasonable.

(2) An order is not to be made under paragraph (1) against a party unless that party has been given an opportunity to make representations against the making of the order.

(3) An order under paragraph (1) is to require the party against whom it is made to pay to the other party a specified sum in respect of the expenses incurred by that other party in connection with the proceedings.

Conjoining of appeals

13.—(1) Where there are pending two or more appeals and at any time it appears to the adjudicator that—

(a) some common question of law or fact arises in both or all the appeals; or

(b) for some other reason it is desirable to make an order under this regulation,

the adjudicator may order that some or all of the appeals as may be specified in the order are to be considered together and may give such consequential directions as he or she may consider necessary.

(2) An order is not to be made under this regulation unless all parties concerned have been given an opportunity to make representations about the making of such an order.
**Miscellaneous powers of the adjudicator**

14.—(1) The adjudicator may, if he or she thinks fit—
(a) extend the time appointed by or under these Regulations for doing any act notwithstanding that the time appointed may have expired;
(b) if the appellant at any time gives notice of the withdrawal of his or her appeal, dismiss the proceedings;
(c) if the parking authority consents to an appeal being allowed, allow the appeal;
(d) if both or all of the parties agree in writing on the terms of a decision to be made by an adjudicator, decide accordingly; or
(e) adjourn a hearing.

(2) The powers of the adjudicator conferred by—
(a) these Regulations (other than regulation 11);
(b) section 72(1)(b) of the Act; and
(c) paragraph 5(1)(b) of schedule 6 of the Act,
may be exercised on his or her own motion or on the application of a party.

**Clerical errors**

15. Clerical errors or omissions in any document recording a direction or decision of the adjudicator may be corrected by the proper officer on the direction of the adjudicator.

**Sending of documents**

16.—(1) This regulation has effect in relation to any notice or other document required or authorised by these Regulations to be sent to a party to an appeal, to the proper officer or to any other person.

(2) Subject to paragraph (3), any such document is to be regarded as having been sent to the person concerned if it is—
(a) delivered to him or her personally;
(b) left at his or her proper address;
(c) sent to him or her at that address by post or through a document exchange; or
(d) transmitted to him or her by fax or other means of electronic data transmission in accordance with paragraphs (3), (4) and (5).

(3) A document may be transmitted by fax where the person concerned has indicated in writing that he or she is willing to regard the document as having been duly sent to him or her if it is transmitted to a specified fax number and the document is transmitted to that number.

(4) In the case of the parking authority, an indication under paragraph (3) can be expressed to apply to any appeal to which it is a respondent.

(5) Paragraphs (3) and (4) apply with the appropriate modification to a transmission of electronic data other than by fax as it applies to a transmission by fax.

(6) Regulations 3(4) and 5(4)—
(a) are, in the case of a document transmitted by fax, satisfied if a copy of the signature of the relevant person appears on the transmitted copy; and
(b) do not apply in relation to a document transmitted by other means of electronic data transmission.

(7) Where the proper address includes a numbered box number at a document exchange, a document may be sent by leaving the document addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that
exchange; and any document which is left at a document exchange in accordance with this paragraph is, unless the contrary is proved, deemed to have been delivered on the second business day following the day on which it is left.

(8) For the purposes of these Regulations and of section 7 of the Interpretation Act 1978(a) in its application to this regulation—

(a) the proper address of the appellant is the address specified in his or her notice of appeal pursuant to regulation 3(2)(b) or (if no such address is so specified) the address stated pursuant to paragraph (2)(a) of that regulation; and

(b) the proper address of the parking authority in proceedings in which it is the respondent is such address as the parking authority from time to time specifies in a notice sent to the proper officer as being the proper address in all such proceedings.

(9) If no address has been specified or stated, the proper address for the purposes of these Regulations and section 7 of the Interpretation Act 1978 is—

(a) in the case of an individual, his or her usual or last known address;

(b) in the case of a partnership, the principal or last known place of business within the United Kingdom; or

(c) in the case of an incorporated or unincorporated body, the registered or principal office of that body.

(10) An appellant may at any time by notice in writing to the proper officer change his or her proper address for the purposes of these Regulations and section 7 of the Interpretation Act 1978.

(11) A party may by notice in writing sent to the proper officer vary or revoke any indication given by him or her under paragraph (3).

PART III
The Register

The Register

17.—(1) The register must be kept at the principal office of the adjudicator and is to be open to the inspection of any person without charge at all reasonable hours.

(2) The register need not be kept in visible or legible form.

(3) If the register is kept otherwise than in a legible form, the duty to allow inspection is to be treated as a duty to allow inspection of a reproduction in legible form of the entry the inspection of which is being sought.

(4) A document purporting to be certified by the proper officer to be a true copy of any entry of a decision in the register is sufficient evidence of that entry and of the matters contained therein.

MICHAEL MATHESON
A member of the Scottish Government

St Andrew’s House,
Edinburgh
19th September 2018

(a) 1978 c.30.
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations prescribe the procedure to be followed in relation to appeals before parking adjudicators against decisions of the parking authority under a decriminalised parking regime in the Falkirk local government area (regulations 3-16). The parking adjudicators are appointed under section 73 of the Road Traffic Act 1991 (“the 1991 Act”). That section, along with other provisions of that Act relating to the decriminalisation of certain parking offences, is applied with modifications, where appropriate, to Falkirk Council parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (Falkirk Council) Designation Order 2018.

The procedure relates to appeals under section 72 and paragraph 5 of schedule 6 of the 1991 Act.
Title of Instruments:
- SSI 2018/283: The Plant Health (Scotland) Amendment (No. 2) Order 2018
- SSI 2018/284: The Marketing of Ornamental Plant Propagating Material Amendment (Scotland) Regulations 2018

Type of Instrument: Negative

Coming into force: 17 November 2018

Laid Date: 21 September 2018

Minister to attend the meeting: No

Procedure

1. Under the negative procedure, an instrument comes into force on the date specified on it (the “coming into force date”) unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Purpose

2. Rhynchophorus ferrugineus (Olivier) is a highly invasive plant pest more commonly known as the red palm weevil. Red palm weevil causes severe damage to plants belonging to the Palmae family. These plants are widely used for ornamental purposes and are of high environmental and economic importance.

The Marketing of Ornamental Plant Propagating Material Amendment (Scotland) Regulations 2018

3. The EU has decided to set out specific requirements to ensure the quality of the propagating material of those genera and species of Palmae which are at risk of being infested. It also fixes out of date references to previous regulations and transposes a table setting out the schedule indicating the conditions to be met by plant propagating material and ornamental plants.

The Plant Health (Scotland) Amendment (No. 2) Order 2018

4. Plant Health legislation is updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other
developments.

5. This instrument makes amendments to the EU Plant Health Order by removing the provisions introduced by S.S.I 2007/498 which outlined emergency measures relating to red palm weevil. Despite the policy intention of the 2007 measures the weevil is widespread in the European Union.

6. The Policy Note and instrument are attached and available online at the below link. No Business and Regulatory Impact Assessment has been prepared:


Consideration by the Delegated Powers and Law Reform Committee

7. The Delegated Powers and Law Reform Committee considered these instruments at its meeting on 2 October 2018 and determined that it did not need to draw the attention of the Parliament to the instruments on any grounds within its remit.

Recommendation

The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.
POLICY NOTE
THE PLANT HEALTH (SCOTLAND) AMENDMENT (No. 2) ORDER 2018
SSI 2018/283

Introduction

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 2, 3 and 4(1) of the Plant Health Act 1967 as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972, and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the instrument

2. The purpose of this instrument is to implement Commission Implementing Decision (EU) 2018/490 repealing Decision 2007/365/EC on emergency measures to prevent the introduction into and spread within the Community of *Rhynchophorus ferrugineus* (Olivier) (“the 2018 Decision”).

Legislation

3. Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (“the PH Directive”) establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of pests and diseases injurious to plants and plant produce which are specified in the Annexes to the PH Directive. The PH Directive is implemented in Scotland by the Plant Health (Scotland) Order 2005 (S.S.I. 2005/613) (“the PH Order”) (and, in relation to forest materials, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517), which extends to Great Britain). Similar but separate plant health legislation to the PH Order operates in England, Wales and Northern Ireland.

4. This instrument amends the PH Order. Commission Decision 2007/365/EC (“the 2007 Decision”) introduced emergency measures to prevent the introduction and spread within the EU of *Rhynchophorus ferrugineus* (Olivier). The 2007 Decision was implemented in Scotland by way of an amendment to the PH Order by S.S.I 2007/498. Given that, despite those emergency measures, *Rhynchophorus ferrugineus* (Olivier), also known as Red Palm weevil, is nonetheless widespread in the European Union, the 2018 Decision repeals the 2007 Decision. Accordingly, this instrument makes amendments to the PH Order, namely, removing the provisions in the PH Order introduced by S.S.I 2007/498.

Policy Background

5. The PH Directive (and therefore the PH Order) is updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments. This instrument implements the 2018 Decision by revoking specific European Union measures arising from the 2007 Decision.
Timing

6. This Order is necessary to comply with European Union obligations.

Consultation

7. The changes outlined in paragraph 2 are required to implement EU law. These changes are necessary technical updates for this pest and have limited impact on UK business.

Consolidation

8. The PH Order has been amended on a number of occasions and it is likely that further amendments will be required as EU legislation takes account of new or revised risk assessment, pest interceptions, changes in distribution of pest and other developments. The EU has conducted the review of the Plant Health Regime as part of the Smarter Rules for Safer Food package on the agri-food chain and EU Plant Health Regulation EU 2016/2031 has been published. This will come into force on 14 December 2019 however the Commission are still considering issues relating to the implementing/delegating acts to this Regulation and in light of this, there are no immediate plans to consolidate the PH Order.

Business and Regulatory Impact

9. A Business and Regulatory Impact Assessment has not been prepared as the Order has no impact on the costs for business. There is no transition or savings to be made.

SASA
Agriculture, Food and Rural Communities Directorate
September 2018
2018 No. 283

PLANT HEALTH

The Plant Health (Scotland) Amendment (No. 2) Order 2018

Made - - - - 19th September 2018

Laid before the Scottish Parliament 21st September 2018

Coming into force - - 17th November 2018

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 2, 3 and 4(1) of the Plant Health Act 1967(a), as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972(b), and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Plant Health (Scotland) Amendment (No. 2) Order 2018 and comes into force on 17th November 2018.

Amendment of the Plant Health (Scotland) Order 2005

2.—(1) The Plant Health (Scotland) Order 2005(c) is amended as follows—

(2) In regulation 2(1) (general interpretation) omit the definition of “Decision 2007/365/EC”.

(3) In schedule 1 (plant pests which shall not be landed in or spread within Scotland), Part A (plant pests not known to occur in any part of the European Union), under the heading of “Insects, mites and nematodes” omit item 35(d).

(4) In schedule 4 (restrictions on the landing in and movement within Scotland of relevant material)—

(a) in Part A (relevant material, from third countries, which may only be landed in Scotland if special requirements are satisfied)—

(i) omit item 57a(e); and

(ii) in column 3 (requirements of landing) of item 57b, for “items 57 and 57a” substitute “item 57”; and

(b) in Part B (relevant material, from another part of the European Union, which may only be landed in or moved within Scotland if special requirements are satisfied), omit item 6a(f).

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(a) 1967 c.8. Sections 2(1), 3(1) and 4(1) were amended by the European Communities Act 1972 (c. 68), section 4(1) and schedule 4, paragraph 8 and further amended by S.I. 2011/1043. Section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c.48) and further amended by the Statute Law (Repeals) Act 1993 (c.50), section 1(1) and schedule 1, Part XIV. The functions of the Secretary of State, so far as exercised within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 1972 c.62.


d) Item 35 was inserted by S.S.I. 2007/498, article 3(2).

e) Item 57a was inserted by S.S.I. 2007/498, article 3(3).

f) Item 6a was inserted by S.S.I. 2007/498, article 3(4).
(5) In schedule 5 (relevant material from a third country for which a phytosanitary certificate may be required), Part A (relevant material which may only be landed in Scotland if accompanied by a phytosanitary certificate), in schedule 6 (prohibitions on the landing in and movement within Scotland of relevant material without a plant passport), Part A (relevant material, from Scotland or elsewhere in the European Union, which may only be landed in or moved within Scotland if accompanied by a plant passport) and in schedule 7 (prohibitions on the consignment of relevant material to another part of the European Union without a plant passport), Part A (relevant material which may only be consigned to another part of the European Union if accompanied by a plant passport), omit item 1a(a).

Revocation

3. Article 3 (prevention of the introduction into and spread within the European Union of Rhynchophorus ferrugineus (Olivier)) of the Plant Health (Scotland) Amendment (No. 2) Order 2007(b) is revoked.

MAIRI GOUGEON
A member of the Scottish Government

St Andrew’s House,
Edinburgh
19th September 2018

(a) Item 1a was inserted to schedules 5, 6 and 7 by S.S.I. 2007/498, article 3(5).
(b) S.S.I. 2007/498.
EXPLANATORY NOTE
(This note is not part of the Order)

This Order amends the Plant Health (Scotland) Order 2005 (S.S.I. 2005/613). It implements Commission Implementing Decision 2018/490 repealing Decision 2007/365/EC on emergency measures to prevent the introduction into and spread within the Community of *Rhynchophorus ferrugineus* (Olivier) (OJ L 81, 23.3.2018, p.22). Decision 2007/365/EC (OJ L 139, 31.5.2007, p.24) provided for measures to prevent the introduction of *Rhynchophorus ferrugineus* (Olivier), however, despite those measures, that organism is nonetheless widespread throughout the European Union. Therefore, that Commission Decision has been repealed.
THE MARKETING OF ORNAMENTAL PLANT PROPAGATING MATERIAL AMENDMENT (SCOTLAND) REGULATIONS 2018

SSI 2018/284

Introduction

1. The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. It is subject to negative resolution procedure.

Policy objectives

2. (i) Transposition of (EU) 2018/484 - The instrument transposes Commission Implementing Directive (EU) 2018/484 as regards requirements to be fulfilled by the propagating material of certain genera or species of Palmae in respect of Rhynchophorus ferrugineus (Olivier). It does so by amending the Marketing of Ornamental Plant Propagating Material Regulations 1999 (the 1999 Regulations). Specifically, the instrument introduces certain requirements to be fulfilled in the production of propagating material of certain genera or species of Palmae prior to marketing in respect of Rhynchophorus ferrugineus (Olivier) which is a plant pest.

   (ii) Fix out of date references – The instrument corrects references within the 1999 Regulations which are now out of date.

   (iii) Remedial transposition – The instrument fully transposes the table which is contained in the annex of Directive 93/49/EEC setting out the schedule indicating the conditions to be met by plant propagating material and ornamental plants.

Policy Background

3. (i) Transposition of Directive (EU) 2018/484 - Rhynchophorus ferrugineus (Olivier) is an insect which is a highly invasive plant pest. It is more commonly known as the red palm weevil. Red palm weevil has been found in most of the endangered Union territories and it is now known to occur in a substantial part of Union territory. Red palm weevil causes severe damage to plants of host species belonging to the Palmae family. Those plants are present in many parts of the Union. They are planted in large numbers for ornamental purposes and are of high environmental and economic importance. The EU has therefore decided to set out specific requirements to ensure the quality of the propagating material of those genera and species of Palmae which are most commonly marketed in the Union and which are at risk of being infested by red palm weevil. The transposition of these new requirements into domestic legislation is achieved by adding them to the existing requirements which are contained in the 1999 Regulations. The instrument inserts a new schedule 2 into the 1999 Regulations which includes a list of the genera and species of Palmae to which the new requirements apply.

   (ii) Fix out of date references - The 1999 Regulations contain a number of out of date references to EU legislation. This instrument updates those references.

EU Legislative Background


5. The Marketing of Ornamental Plant Propagating Material Amendment (Scotland) Regulations 2018, in their transposition of the Annex of Commission Directive 93/49/EEC (by an addition of a new Schedule 2 to the 1999 Regulations), incorporate on the advice of SASA (Science and Advice for Scottish Agriculture) a number of technical updates to the nomenclature of the genus or species of both plants/ plant material and harmful organisms/diseases. This is to ensure that the Directive is given full effect where there is an error in the nomenclature in the Directive or else the nomenclature has not been updated with scientific changes. These changes are listed below with explanations.

In the section in relation to the species/genus of “Dianthus caryophyllus L. and hybrids”, under the heading “Fungi and fungus-like organisms”, *Phytophthora nicotiana* f. sp. *parasitica* has been cited as *Phytophthora nicotiana* var. *parasitica*, to reflect its current nomenclature and as, technically, it’s no longer considered a fungus the heading has accordingly been changed from Fungi to “Fungi and fungus- like organisms”.

The contemporary spelling of *oxysporum* is spelt with a ‘y’ and not an ‘i’. In addition, each time this name appears with a third name following it, that third name should always be preceded with ‘f. sp.’. Again, this is reflect correct nomenclature.

In some incidents the Instrument has made a change from “spp” to “sp”. Spp denotes that more than one species (possibly even all of them) within the listed genus are viewed as harmful organisms for the host plant which, where it has been altered from the Directive, is to reflect that the Directive must have stated spp in error.

The species/genus of *Euphorbia pulcherrima* (Wild ex Kletch) has had its spelling corrected to *Euphorbia pulcherrima* (Willd ex Klotzch). It is an nomenclature error in the Directive.

In summary, the changes are:

- Fusarium oxysporum spp. Chrysanthemi change to Fusarium oxysporum f.sp. Chrysanthemi
- Change title from Fungi to Fungi and fungus-like organisms
- Fusarium Oxisporum f.spp dianthi to Fusarium oxysporum f. sp. dianthi
- Phytophthora nicotiana spp. Parasitica to Phytophthora nicotiana var. parasitica
- Titled corrected to Wild ex Klotzch
- Fusarium Oxisporum spp gladioli to Fusarium oxysporum f. sp. gladioli

Consultation
6. (EU) 2018/484 imposes no burden on business (as the UK already has protected zone status for red palm weevil) and there is no legal requirement to consult. However we are planning to send out an information note to the main stakeholders in order to advise them of the new marketing requirements.

Financial Effects

7. (i) As the UK already has protected zone status for red palm weevil we anticipate no imposition or financial burden on ornamental stakeholders.

(ii) There will be no financial implementations to the Scottish Government or the tax payer.

BRIA

8. A BRIA is not required as consultation is not being carried out with ornamental stakeholders.

Transposition Note

9. In the Scottish Government's view, the resources required to produce a Transposition Note are significantly greater than can be justified by the resulting added benefit to the reader.

Timing

10. This instrument will come into force on 17 November 2018.

Graham Hall
Scottish Government
Agriculture and Rural Economy Directorate
Science and Advice for Scottish Agriculture Division
2018 No. 284

PLANT HEALTH

SEEDS

The Marketing of Ornamental Plant Propagating Material Amendment (Scotland) Regulations 2018

Made - - - - 19th September 2018
Laid before the Scottish Parliament 21st September 2018
Coming into force - - 17th November 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation, commencement and extent

1. These Regulations may be cited as the Marketing of Ornamental Plant Propagating Material Amendment (Scotland) Regulations 2018 and come into force on 17th November 2018.

2. These Regulations extend to Scotland only.

Amendments to the Marketing of Ornamental Plant Propagating Material Regulations 1999

3.—(1) The Marketing of Ornamental Plant Propagating Material Regulations 1999(b) are amended in accordance with paragraphs (2) to (10).

(2) In regulation 2(1) (interpretation)—

(a) omit the definition of “Directive 77/93/EEC”; and

(b) after the definition of “Directive 98/56/EC” insert—

In regulation 4 (quality requirements for propagating material), after paragraph (a) insert—
“(aa) in respect of the genera and species listed in column 1 of the table in schedule 2 (organisms and diseases), be free from the organisms and diseases listed in the corresponding entry in column 2 of that table;”.

(4) After regulation 6 (further provision relating to flower bulbs) insert—

“Further provisions relating to propagating material of Palmae

6A.—(1) In addition to meeting the requirements of regulation 4, propagating material of Palmae belonging to the genera and species listed in column 1 of the table in schedule 2 (organisms and diseases) under the heading “the following genera and species as regards Palmae”, and having a diameter of the stem at the base of over 5 cm must comply with—

(a) the requirement in paragraph (2); or
(b) the requirements in paragraph (3).

(2) The requirement is that the material must have been grown throughout its life in an area established as free from the organism listed in the corresponding entry in column 2 of the table in schedule 2 by the responsible official body in accordance with relevant International Standards for Phytosanitary Measures.

(3) The requirements are that the material must, during a period of at least two years prior to marketing, have been grown in a site within the EU with—

(a) complete physical protection against the introduction of the organism listed in the corresponding entry in column 2 of the table in schedule 2; or
(b) the application of appropriate preventive treatments against that organism,

and have been subject to visual inspections carried out at least once every four months to confirm freedom of that material from that organism.

(4) In this regulation—

“International Standards for Phytosanitary Measures” means International Standards for Phytosanitary Measures prepared by the Secretariat of the International Plant Protection Convention established by the Food and Agriculture Organization of the United Nations(a); and

“responsible official body” means either the body described in paragraph (i) or a body described in paragraph (ii) of Article 2(1)(g) of Directive 2000/29/EC.”.

(5) In regulation 7(4) (registration), for “regulation 15 of the Plant Health (Great Britain) Order 1993” substitute “article 25 of the Plant Health (Scotland) Order 2005”(b).

(6) In regulation 8(3) (measures to be taken by suppliers)—

(a) for “Schedule 6 to the Plant Health (Great Britain) Order 1993” substitute “article 42(2) of the Plant Health (Scotland) Order 2005”; and
(b) for “article 20” substitute “article 42”.

(7) In regulation 9 (information on propagating material)—

(a) in paragraph (1), for “the Schedule to” substitute “schedule 1 of”; and
(b) in paragraph (2)—

(ii) for “the Schedule to” substitute “schedule 1 of”.

(8) In regulation 12(3) (propagating material produced in third countries), for “reforwarding phytosanitary certificate in respect of the consignment in accordance with article 12(5) of the Plant

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(a) Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at https://www.ippc.int/en/core-activities/standards-setting/ispms/.
(b) S.S.I. 2005/613.
Health (Great Britain) Order 1993” substitute “phytosanitary certificate for re-export in respect of the consignment in accordance with article 9(1) of the Plant Health (Scotland) Order 2005”.

(9) The schedule becomes schedule 1 (and, accordingly, for the heading “SCHEDULE”, substitute “SCHEDULE 1”).

(10) After schedule 1 insert—

“SCHEDULE 2

Organisms and diseases

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Genus / species</td>
<td>Specific harmful organisms and diseases</td>
</tr>
<tr>
<td><strong>Begonia x hiemalis Fotsch</strong></td>
<td><strong>Insects, mites and nematodes at all stages of their development</strong></td>
</tr>
<tr>
<td></td>
<td>— Aleurodidae, in particular, <em>Bemisia tabaci</em></td>
</tr>
<tr>
<td></td>
<td>— <em>Aphelenchoides</em> spp.</td>
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<tr>
<td></td>
<td>— <em>Ditylenchus destructor</em></td>
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<td></td>
<td>— <em>Meloidogyne</em> spp.</td>
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<tr>
<td></td>
<td>— <em>Myzus ornatus</em></td>
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<td></td>
<td>— <em>Otioryynchus sulcatus</em></td>
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<td></td>
<td>— <strong>Sciara</strong></td>
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<tr>
<td></td>
<td>— Thysanoptera, in particular, <em>Frankliniella occidentalis</em></td>
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<tr>
<td></td>
<td><strong>Bacteria</strong></td>
</tr>
<tr>
<td></td>
<td>— <em>Erwinia chrysanthemi</em></td>
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<tr>
<td></td>
<td>— <em>Rhodococcus fascians</em></td>
</tr>
<tr>
<td></td>
<td>— <em>Xanthomonas campestris pv. begoniae</em></td>
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<tr>
<td></td>
<td><strong>Fungi</strong></td>
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<tr>
<td></td>
<td>— Powdery mildew</td>
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<tr>
<td></td>
<td>— Stem rot pathogens (<em>Phytophthora</em> spp., <em>Pythium</em> spp. and <em>Rhizoctonia</em> spp.)</td>
</tr>
<tr>
<td></td>
<td><strong>Viruses and virus-like organisms, and in particular</strong></td>
</tr>
<tr>
<td></td>
<td>— Leafcurl disease</td>
</tr>
<tr>
<td></td>
<td>— Tospoviruses (Tomato spotted wilt virus, Impatiens necrotic spot virus)</td>
</tr>
<tr>
<td></td>
<td><strong>Citrus</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Insects, mites and nematodes at all stages of their development</strong></td>
</tr>
<tr>
<td></td>
<td>— <em>Aleurothrixus floccosus</em> (Mashell)</td>
</tr>
<tr>
<td></td>
<td>— <em>Meloidogyne</em> spp.</td>
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<tr>
<td></td>
<td>— <em>Parabemisia myricae</em> (Kuwana)</td>
</tr>
<tr>
<td></td>
<td>— <em>Tylenchulus semipenetrans</em></td>
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<tr>
<td></td>
<td><strong>Fungi</strong></td>
</tr>
<tr>
<td></td>
<td>— <em>Phytophthora</em> spp.</td>
</tr>
<tr>
<td></td>
<td><strong>Viruses and virus-like organisms, and in particular</strong></td>
</tr>
<tr>
<td></td>
<td>— Viroids such as exocortis, cachexia-xyloporosis</td>
</tr>
<tr>
<td></td>
<td>— Diseases that induce psorosis - like young leaves symptoms such as psorosis, ring spot, cristacortis, impietratura, concave</td>
</tr>
</tbody>
</table>
| **Dendranthema x grandiflorum**  
(Ramat) Kitam | **Insects, mites and nematodes at all stages of their development**  
| --- | --- |
| | — Agromyzidae  
| | — Aleurodidae, in particular, *Bemisia tabaci*  
| | — Aphelencoides spp.  
| | — *Diarthronomia chrysanthemi*  
| | — Lepidoptera, in particular, *Cacoecimorpha pronubana*, *Epichoriastodes acerbella*  
| | — Thysanoptera, in particular, *Frankliniella occidentalis*  
| | **Bacteria**  
| | — *Agrobacterium tumefaciens*  
| | — *Erwinia chrysanthemi*  
| | **Fungi**  
| | — *Fusarium oxysporum* f. sp. *chrysanthemi*  
| | — *Puccinia chrysanthemi*  
| | — *Pythium* spp.  
| | — *Rhizoctonia solani*  
| | — *Verticillium* spp.  
| | **Viruses and virus-like organisms, and in particular**  
| | — *Chrysanthemum B* mosaic virus  
| | — Tomato aspermy cucumovirus  
| **Dianthus caryophyllus L.**  
and hybrids | **Insects, mites and nematodes at all stages of their development**  
| --- | --- |
| | — Agromyzidae  
| | — Aleurodidae, in particular, *Bemisia tabaci*  
| | — Thysanoptera, in particular, *Frankliniella occidentalis*  
| | — Lepidoptera, in particular, *Cacoecimorpha pronubana*, *Epichoriastodes acerbella*  
| | **Fungi and fungus-like organisms**  
| | — *Alternaria dianthi*  
| | — *Alternaria dianthicola*  
| | — *Fusarium oxysporum* f. sp. *dianthi*  
| | — *Mycosphaerella dianthi*  
| | — *Phytophthora nicotiana var. parasitica*  
| | — *Rhizoctonia solani*  
| | — Stem rot: *Fusarium* spp. and *Pythium* spp.  
| | — *Uromyces dianthi*  
| | **Viruses and virus-like organisms, and in particular**  
| | — Carnation etched ring caulimovirus  
| | — Carnation mottle carmovirus  
| | — Carnation necrotic fleck closterovirus  
| | — Tospoviruses (Tomato spotted wilt virus, Impatiens necrotic spot virus)  

<table>
<thead>
<tr>
<th>Plant</th>
<th>Insects, mites and nematodes at all stages of their development</th>
</tr>
</thead>
</table>
| *Euphorbia pulcherrima* Willd ex Klotzch | - Aleurodidae, in particular, *Bemisia tabaci*  
**Bacteria**  
- Erwinia chrysanthemi  
**Fungi**  
- *Fusarium* spp.  
- *Pythium ultimum*  
- *Phytophthora* spp.  
- *Rhizoctonia solani*  
- *Thielaviopsis basicola*  
**Viruses and virus-like organisms, and in particular**  
Tospoviruses (Tomato spotted wilt virus, Impatiens necrotic spot virus) |
| *Gerbera L.* | - Agromyzidae  
- Aleurodidae, in particular, *Bemisia tabaci*  
- *Aphelenchoides* spp.  
- *Lepidoptera*  
- *Meloidogyne*  
- *Thysanoptera*, in particular, *Frankliniella occidentalis*  
**Fungi**  
- *Fusarium* spp.  
- *Phytophthora cryptogea*  
- Powdery mildew  
- *Rhizoctonia solani*  
- *Verticillium* spp.  
**Viruses and virus-like organisms, and in particular**  
Tospoviruses (Tomato spotted wilt virus, Impatiens necrotic spot virus) |
| *Gladiolus L.* | - *Ditylenchus dipsaci*  
- *Thysanoptera*, in particular, *Frankliniella occidentalis*  
**Bacteria**  
- *Pseudomonas marginata*  
- *Rhodococcus fascians* |
<table>
<thead>
<tr>
<th><strong>Fungi</strong></th>
<th><strong>Viruses and virus-like organisms, and in particular</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>— <em>Botrytis gladiolorum</em></td>
<td>— Aster yellow mycoplasm</td>
</tr>
<tr>
<td>— <em>Curvularia trifolii</em></td>
<td>— Corky pit agent</td>
</tr>
<tr>
<td>— <em>Fusarium oxysporum f. sp. gladioli</em></td>
<td>— Cucumber mosaic virus</td>
</tr>
<tr>
<td>— <em>Penicillium gladioli</em></td>
<td>— Gladiolus ringspot virus (syn. Narcissus latent virus)</td>
</tr>
<tr>
<td>— <em>Sclerotinia</em> spp.</td>
<td>— Tobacco rattle virus</td>
</tr>
<tr>
<td>— <em>Septoria gladioli</em></td>
<td></td>
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<tr>
<td>— <em>Urocystis gladiolicola</em></td>
<td></td>
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<tr>
<td>— <em>Uromyces trasversalis</em></td>
<td></td>
</tr>
</tbody>
</table>

**Other harmful organisms:**
— *Cyperus esculentus*

<table>
<thead>
<tr>
<th><strong>Lilium L.</strong></th>
<th><strong>Insects, mites and nematodes at all stages of their development</strong></th>
<th><strong>Fungi</strong></th>
<th><strong>Viruses and virus-like organisms, and in particular</strong></th>
<th><strong>Other harmful organisms</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>— <em>Aphelechoides</em> spp.</td>
<td>— <em>Cylindrocarpon destructans</em></td>
<td>— Cucumber mosaic virus</td>
<td>— <em>Cyperus esculentus</em></td>
</tr>
<tr>
<td></td>
<td>— <em>Rhizoglyphus</em> spp.</td>
<td>— <em>Fusarium oxysporum f. sp. lili</em></td>
<td>— Lily symptomless virus</td>
<td></td>
</tr>
<tr>
<td></td>
<td>— <em>Pratylenchus</em> penetrans</td>
<td>— <em>Pythium</em> spp.</td>
<td>— Lily virus x</td>
<td></td>
</tr>
<tr>
<td></td>
<td>— <em>Rotylenchus</em> robustus</td>
<td>— <em>Rhizoctonia</em> spp.</td>
<td>— Tobacco rattle virus</td>
<td></td>
</tr>
<tr>
<td></td>
<td>— <em>Thysanoptera</em>, in particular, <em>Frankliniella occidentalis</em></td>
<td>— <em>Rhizopus</em> spp.</td>
<td>— Tulip breaking virus</td>
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<tr>
<td></td>
<td></td>
<td>— <em>Sclerotium</em> spp.</td>
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</tbody>
</table>

**Bacteria**
— *Erwinia carotovora* subsp. *carotovora*  
| — *Rhodococcus fascians* |

| **Viruses and virus-like organisms, and in particular** |
| — Cucumber mosaic virus |
| — Lily symptomless virus |
| — Lily virus x |
| — Tobacco rattle virus |
| — Tulip breaking virus |

**Other harmful organisms**
— *Cyperus esculentus*
Insects, mites and nematodes at all stages of their development

- *Anarsia lineatella*
- *Eriosoma lanigerum*
- Scale insects, in particular, *Epidiaspis leperii, Pseudaulacaspis pentagona, Quadraspidiotus perniciosus*

**Bacteria**

- *Agrobacterium tumefaciens*
- *Pseudomonas syringae pv. syringae*

**Fungi**

- *Armillariella mellea*
- *Chondrostereum purpureum*
- *Nectria galligena*
- *Phytophthora cactorum*
- *Rosellinia necatrix*
- *Venturia spp.*
- *Verticillium spp.*

**Viruses and virus-like organisms**

All

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Insects, mites and nematodes at all stages of their development

- *Aphelenchoides subtenuis*
- *Ditylenchus destructor*
- *Eumerus spp.*
- *Merodon equestris*
- *Pratylenchus penetrans*
- *Rhizoglyphidae*
- *Tarsonemidae*

**Fungi**

- *Fusarium oxysporum f. sp. narcissi*
- *Sclerotinia spp.*
- *Sclerotium bulborum*

**Viruses and virus-like organisms, and in particular**

- Tobacco rattle virus
- Narcissus white streak agent
- Narcissus yellow stripe virus

**Other harmful organisms**

- *Cyperus esculentus*

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Insects, mites and nematodes at all stages of their development

- *Rhynchophorus ferrugineus* (Olivier)

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The following genera and species as regards Palmae

- *Areca catechu* L.
— Arenga pinnata (Wurmb) Merr.
— Bismarckia Hildebr. & H.Wendl.
— Borassus flabellifer L.
— Brahea armata S. Watson
— Brahea edulis H.Wendl.
— Butia capitata (Mart.) Becc.
— Calamus merrillii Becc.
— Caryota cunningii Lodd. ex Mart.
— Caryota maxima Blume
— Chamaerops humilis L.
— Cocos nucifera L.
— Copernicia Mart.
— Corypha utan Lam.
— Elaeis guineensis Jacq.
— Howea forsteriana Becc.
— Jubaea chilensis (Molina) Baill.
— Livistona australis C. Martius
— Livistona decora (W. Bull) Dowe
— Livistona rotundifolia (Lam.) Mart.
— Metroxylon sagu Rottb.
— Roystonea regia (Kunth) O.F. Cook
— Phoenix canariensis Chabaud
— Phoenix dactylifera L.
— Phoenix reclinata Jacq.
— Phoenix roebelenii O’Brien
— Phoenix sylvestris (L.) Roxb.
— Phoenix theophrasti Greuter
— Pritchardia Seem. & H.Wendl.
— Ravenea rivularis Jum. & H.Perrier
— Sabal palmetto (Walter) Lodd. ex Schult. & Schult.f.
— Syagrus romanzoffiana (Cham.) Glassman
— Trachycarpus fortunei (Hook.) H. Wendl.
— Washingtonia H. Wendl.
<table>
<thead>
<tr>
<th>Plant</th>
<th>Insects, mites and nematodes at all stages of their development</th>
</tr>
</thead>
</table>
| **Pelargonium L.** | — Aleurodidae, in particular, *Bemisia tabaci*  
|  | — Lepidoptera  
|  | — Thysanoptera, in particular, *Frankliniella occidentalis*  
| **Bacteria** | — *Rhodococcus fascians*  
|  | — *Xanthomonas campestris* pv. *pelargonii*  
| **Fungi** | — *Puccinia pelargonii zonalis*  
|  | — Stem rot pathogens (*Botrytis* spp., *Pythium* spp.)  
|  | — *Verticillium* spp.  
| **Viruses and virus-like organisms, and in particular** | — Pelargonium flower break carmovirus  
|  | — Pelargonium leaf curl tombusvirus  
|  | — Pelargonium line pattern virus  
|  | — Tospoviruses (Tomato spotted wilt virus, Impatiens necrotic spot virus)  
| **Phoenix** | — Thysanoptera  
| **Fungi** | — *Exosporium palmivorum*  
|  | — *Glacialium* *wermoeseni*  
|  | — *Graphiola phoenicis*  
|  | — *Pestalozzia Phoenicis*  
|  | — *Pythium* spp.  
| **Viruses and virus-like organisms** | All  
| **Pinus nigra** | — Blastophaga spp.  
|  | — *Rhyacionia buoliana*  
| **Fungi** | — *Ophodermium seditiosum*  
| **Viruses and virus-like organisms, and in particular** | All  
| **Prunus L.** | — *Capnodis tenebrionis*  
|  | — *Meloidogyne* spp.  
|  | — Scale insects, in particular, *Epidiaspis leperii*,  
|  | *Pseudaulacaspis pentagona, Quadraspidiotus perniciosus*  
| **Bacteria** | — Agrobacterium tumefaciens  
|  | — *Pseudomonas syringae* pv. *mors prunorum*  
|
### Pyrus L.

<table>
<thead>
<tr>
<th>Insects, mites and nematodes at all stages of their development</th>
</tr>
</thead>
<tbody>
<tr>
<td>— Anarsia lineatella</td>
</tr>
<tr>
<td>— Eriosoma lanigerum</td>
</tr>
<tr>
<td>— Scale insects, in particular, <em>Epidiaspis leperi</em>, <em>Pseudaulacaspis pentagona</em>, <em>Quadraspidiotus perniciosus</em></td>
</tr>
</tbody>
</table>

### Bacteria

| — Agrobacterium tumefaciens |
| — *Pseudomonas syringae pv. syringae* |

### Fungi

| — Armillariella mellea |
| — Chondrostereum purpureum |
| — Nectria galligena |
| — Rosellinia necatrix |
| — Taphrina deformans |
| — Verticillium spp. |

### Viruses and virus-like organisms

| — Prune dwarf virus |
| — Prunus necrotic ringspot virus |

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### Rosa

<table>
<thead>
<tr>
<th>Insects, mites and nematodes at all stages of their development</th>
</tr>
</thead>
<tbody>
<tr>
<td>— Lepidoptera, in particular, <em>Epichoristodes acerbella</em>, <em>Cacoecimorpha pronubana</em></td>
</tr>
<tr>
<td>— Meloidogyne spp.</td>
</tr>
<tr>
<td>— <em>Pratylenchus</em> spp.</td>
</tr>
<tr>
<td>— <em>Tetranychus urticae</em></td>
</tr>
</tbody>
</table>

### Bacteria

| — Agrobacterium tumefaciens |

### Fungi

| — Armillariella mellea |
| — Chondrostereum purpureum |
| — Nectria galligena |
| — Rosellinia necatrix |
| — Verticillium spp. |
— *Chondrostereum purpureum*
— *Coniothyrium* spp.
— *Diplocarpon rosae*
— *Peronospora sparsa*
— *Phragmidium* spp.
— *Rosellinia necatrix*
— *Sphaeroteca pannosa*
— *Verticillium* spp.

**Viruses and virus-like organisms, and in particular**

— Apple mosaic virus
— Arabis mosaic nepovirus
— Prunus necrotic ringspot virus”.

**MAIRI GOUGEON**
A member of the Scottish Government

St Andrew’s House,
Edinburgh
19th September 2018
EXPLANATORY NOTE
(This note is not part of the Regulations)


Regulation 3 makes, in particular, the following amendments to the principal Regulations:

- replaces references to the Plant Health (Great Britain) Order 1993 (S.I. 1993/1320) with references to the Plant Health (Scotland) Order 2005 (S.S.I. 2005/613); and
- inserts a new regulation 6A providing for additional requirements to be met when marketing propagating material of the Palmae family of the genera and species listed in schedule 2 (which is also inserted by these Regulations).

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.

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