RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

28th Meeting, 2018 (Session 5)

Wednesday 7 November 2018

The Committee will meet at 8.30 am in the James Clerk Maxwell Room (CR4).

1. **South of Scotland Enterprise Bill (in private):** The Committee will consider its approach to its scrutiny of the Bill at Stage 1.

2. **Restricted Roads (20mph Speed Limit) (Scotland) Bill (in private):** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

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

4. **Transport (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Stuart Hay, Director, Living Streets Scotland;

   John Lauder, National Director, Sustrans Scotland;

   Iain Smith, Policy and Public Affairs Officer, Inclusion Scotland;

   David Hunter, Member, Mobility and Access Committee for Scotland;

   and then from—

   Alex Rae, NRSWA Manager for Scotia Gas Networks, on behalf of Street Works UK;

   Elizabeth Draper, Head of Compliance & Regulation for Streetworks, Openreach;

   Angus Carmichael, Scottish Road Works Commissioner;

   Mark McEwen, General Manager – Customer Service, Scottish Water;
5. **Agriculture Bill (UK Parliament legislation):** The Committee will consider the legislative consent memorandum lodged by Fergus Ewing, Cabinet Secretary for the Rural Economy (LCM(S5)19).

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The papers for this meeting are as follows—

**Agenda Item 1**

PRIVATE PAPER  
REC/S5/18/28/1 (P)

**Agenda Item 2**

PRIVATE PAPER  
REC/S5/18/28/2 (P)

**Agenda Item 3**

PRIVATE PAPER  
REC/S5/18/28/3 (P)

**Agenda Item 4**

Cover note  
REC/S5/18/28/4

PRIVATE PAPER  
REC/S5/18/28/5 (P)

**Agenda Item 5**

Cover note  
REC/S5/18/28/6
Rural Economy and Connectivity Committee

28th Meeting, 2018 (Session 5), Wednesday, 7 November 2018

Transport (Scotland) Bill

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, and on 24 October, the Committee considered the issue of Low Emissions Zones (LEZ). At this meeting of 7 November, the Committee will consider the Bill provisions on parking and roadworks in two separate evidence panels.

3. Annex A includes written submissions received from Living Streets Scotland, Inclusion Scotland, Mobility and Access Committee for Scotland (MACS), and Sustrans Scotland who are giving evidence on the first panel on parking. MACS will also give evidence on the second panel. It also includes written submissions received from Openreach, Scottish Road Works Commissioner, Scottish Water and Street Works UK who are giving evidence on the second panel on roadworks.

Purpose and content of the Bill

4. 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.

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


**Committee’s evidence gathering**

6. This is the Committee’s fifth 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

November 2018
RURAL ECONOMY AND CONNECTIVITY COMMITTEE
TRANSPORT (SCOTLAND) BILL
SUBMISSION FROM LIVING STREETS SCOTLAND

Introduction

Living Streets Scotland is part of the UK charity that works to make walking safer and more convenient for people of all ages abilities. We have had this mission since 1929 when we were formed as the Pedestrians Association. We are therefore pleased to provide evidence on Section four of the Transport (Scotland) Bill 2018 related to responsible parking. We believe, if implemented correctly, this legislation could offer significant benefits for people on foot, particularly older people, disabled people and parents with children. This submission sets out the benefits and scope for improving the proposed legislation.

A) Commentary on the Bill principles
B) Commentary on the Bill consents
C) Missing or additional clauses
D) Comments on the financial memorandum
E) Other parts of the Bill
F) Summary and conclusions

A) Commentary on the Principles of the Bill

Footway parking the need for action

Living Streets Scotland has worked with disability charities, including Guide Dogs Scotland, on this issue since 2009. Aside from traffic speeds, footway parking is the most significant issue for pedestrians, especially the most vulnerable. Obstructed pavements force people onto the road cause inconvenience and danger. This is a barrier to everyday walking and can lead to stress and isolation for people who are frail or disabled.

In theory, local authorities and Police Scotland already have some powers to tackle these problems. In practice, there are few, if any, meaningful examples of where these powers have been used. Police powers over driving on pavements and obstruction are unenforceable due to the time and complexity of detection. Local Authorities can use signs and lines to ban parking on a street by street basis. However, this is a very resource intensive and slow process and therefore Traffic Regulation Orders (TROs) and rarely deployed.

The situation in Scotland contrasts with London where Borough Councils have had specific footway parking powers since 1974. The Transport (Scotland) Bill 2018 belatedly provides local authorities with similar powers to respond to the needs of concerned communities. In London certain streets with wide pavements have been designated as exempt from the ban...
for practical reasons such as maintaining access for service vehicles. Similar powers to exempt streets via local consultation will be available in Scotland. Part 4 of the Bill adopts a tried and tested approach which is both practical and proportionate.

The existing lack of action can be put down to several factors:

- A failure to recognise that unfettered access to motor vehicles has negative, as well as positive consequences
- A misguided belief that parking can be self-managed at local level, ignoring the rapid growth in vehicle ownership and subsequent parking demands.
- An ignorance of the harm from footway parking causes to the most vulnerable people in communities
- Motorists not recognising laws that make driving on pavements illegal because this offence is never enforced
- Drivers focusing on avoiding damage to their own vehicle and obstructing traffic but failing to consider other people using the pavement.
- A lack of strategic or proactive management of parking, either at the street design stage or once housing, shops and offices are occupied.

Facing up to these issues will be challenging. However, it’s important to recognise:

1. Footway parking diminishes road safety and convenience for everyone on foot, including drivers accessing their cars.
2. Vulnerable street users will experience worry and stress from walking on the road, in some cases leading to isolation if they believe its unsafe to navigate the streets where they live.
3. Pavements aren’t designed for vehicles to drive on, they therefore deteriorate and require early replacement or patch repairs – depleting road budgets.
4. There is frustration in many communities that councils can’t respond effectively to a highly visible and well known problem.

For these reasons every consultation and poll since 2009 has shown overwhelming public backing for clearer and more enforceable laws on responsible parking. Only a national ban that establishes new social norms, in terms of responsible parking behaviours, can tackle this problem. In this respect most of the benefits will be delivered from behaviour change, rather than enforcement.

**Advice to the committee on principles of Part 4**

The Bill is founded on strong principles and will prevent harm to vulnerable pedestrians and damage to pavements. The status quo is not an option. Footways are for people on foot and should be safe places throughout Scotland, the bill will achieve this aim.
B) Commentary On The Bill

Making pavement parking as an offence

The pavement parking and double parking offences are clearly defined in Section 42 of the bill. It would be helpful if the bill referred to footways not pavements as this is the clearer definition in law, a footway being part of the carriageway. The definition set out in this section includes footpaths (clause 20). This is important and should be retained. This definition could be further extended to dedicated off-road cycleways and shared paths.

Advice to the committee: On pavement parking as an offence

Clarity should be sought that the definition covers all pedestrian and dedicated cycling spaces or any area subject to a redetermination order, which creates these spaces. Examples can be set out in the guidance.

Exempting streets from a national ban

The guidance supporting Section 43 on exempting streets needs to ensure that the overall objectives of the legislation aren’t undermined or watered down. To achieve this, it will be important to ensure there is 1.5m minimum width for safe pedestrian movement on the remaining footway area. This is the minimum amount of space a parent can walk with a child, or a wheelchair can pass another pedestrian. It is likely that these orders will only apply to pavements wider than 2 metres and where parking is already established.

In very constrained streets, where it is judged that some parking must be retained and access for vehicles is also needed, creative solutions will be required to ensure vulnerable pedestrians are properly protected. Options such as creating a clear footway on one side of the street only, with protected crossing points on the other, would be a last resort. This would only ever be acceptable where the approach delivers a net improvement for pedestrians. Disability interest groups would also need to been consulted on any arrangement to make sure its acceptable. Local authorities should be required to set out the reasons for the exemption and what mitigation they will put in place to maintain pedestrian movement. Again, well thought through guidance will be required, which emphasises obligations under equalities law.

The only further exemption should relate to historic streets and lanes where pavements are very narrow and in most cases pedestrians already walk on the road because both traffic levels and speeds are very low. Widening the scope of exemptions beyond these parameters increases the costs and complexity of implementing the bill for local authorities.

Exemptions should never be applied where they are likely to cause damage to surfaces not engineered for vehicle movement. This would include, anywhere with slab paving (which will crack or break up) or shallow ducting and trenches likely to collapse.
Advice to the committee on the scope of exemptions

Maintaining safe and convenient access for pedestrians should be the primary consideration in creating exemptions. The guidance needs to focus on this aspect of implementing the legislation, using clear and agreed standards for widths of wheelchairs, guide dogs and their owners and parents accompanying children. A consistent approach is needed based on equalities objectives.

The procedure for introducing exemption orders (Section 44) is acceptable provided the guidance is consistent and clear. Copying the process used by London Boroughs is sensible and avoids the time and expense associated with Traffic Regulation Orders. The process can be light touch, based on consulting, reporting, and committee approval of signs and lines for places where pavement parking is deemed acceptable / non-harmful. We reiterate that it is critical that an assessment of equalities impacts is integrated within the process. Traffic engineering departments will need detailed guidance, training and support to perform this task effectively, as meaningful community engagement can be a challenging process.

Advice to the committee on introducing exemptions:

The process for introducing exemptions is sound and has worked in London Boroughs. It needs to be applied in a consistent way across Scotland, which ensures that those most affected groups (older people, disable people, parents with children) are at the heart of the process.

Section 46 double parking prohibition

This section is welcome and will benefit pedestrians (crossing safely), cyclists and car drivers. The committee should confirm that Police Scotland can enforce this part of the bill, in the course of other duties. Whilst, parking offences should primarily be a local authority enforcement matter, it seems sensible that police officers should also be able to apply civil penalties when required.

Section 47 (1-5) Exceptions for statutory vehicles

Living Streets accepts, the need for some exceptions, but these must be kept to an absolute minimum to avoid undermining the strong message that pavements shouldn’t be parked on. In short ‘exceptions’ should be for ‘exceptional circumstances’ where other parking options aren’t viable for the task at hand. The exceptional nature of this limitation needs to be communicated to statutory undertakers to ensure driver behaviour is
responsible and proportionate. For example, parking on pavement during a lunch break should still be subject to enforcement. The difference between parking that is ‘necessary’ and options that are simply ‘less convenient’ needs to be made clear in the guidance. All statutory undertakers should provide guidance to staff.

We are also not clear why the Royal Mail (a privatised company) is given specific exception, above those of other delivery companies covered in section 47 (6). Mail and parcels are now delivered by many companies so this exception is an anomaly.

Advice to the committee on Section 47 Statutory undertakers’ exemptions

It should be made clear to statutory undertakers that they do not have a blanket exception from this legislation and their drivers must make reasonable efforts to avoid parking on pavements. Pavement parking should be seen as a last resort, where its clear they can’t otherwise perform their duties in the time available. Police Scotland should take a lead in setting an example in limiting pavement parking to operational necessities.

Section 47 (6) Exceptions for Deliveries

This section is problematic in relation to the bill achieving its objectives in terms of preventing obstruction and damage to pavements. It is not acceptable to obstruct vulnerable pedestrians or to put them in danger for 20 minutes. 20 minutes whilst a back stop figure also makes enforcement less practical and inefficient. We believe there is a significant proportion of irresponsible parking within the delivery fleet. Shifting this behaviour will be challenging if delivery drivers feel they have a special dispensation and successful enforcement if unlikely. Therefore, the committee should explore:

- The scope for limiting this exception to commercial vehicles only, e.g. those used for transporting larger loads and goods, not cars.
- Whether it is possible to put the onus on the driver to “demonstrate” that collection and loading cannot be reasonably carried out without being parked on a pavement. This means considering the practicality of guidance related to the type of goods (weight and bulk) and the lack of suitable alternative parking near the premises. Clearly avoiding 2 or 3-minute walk to deliver a small parcel doesn’t justify pavement parking but unloading a piano might leave no other option.
- Whether the 20-minute loading time is workable in terms of enforcements, and whether its possible to avoid this being seen as blanket dispensation which is routinely exploited.

If these questions can be answered and the committee deems it necessary to retain this exception, it must be substantially strengthened. To do this Living Streets Scotland believes that three new clauses are vital:
• That the vehicle is not left unattended at any time while it is so parked – as is the case with legislation covering HGVs, and Footway Parking Legislation in London. This is a basic health and safety provision where goods are being moved on the pavement.
• That the vehicle must not obstruct or inconvenience the safe movement of pedestrians. This would be defined in guidance for enforcement purposes e.g. 1.5m clearance remaining
• Parking will not cause damage to the footway surface (in effect there should be an absolute ban on parking on slabbled paved surfaces, unless designed for this purpose (e.g. small mono-block).

Problems on high streets should be addressed by creating enough loading bays, which are kept free from illegal long stay parking. Allowing informal pavement parking isn’t a substitute for good parking management. If space is an issue, creation of properly constructed bump up loading bays utilising the pavement can be explored as a possible last resort.

We note HGVs are covered under separate laws. These should be updated in line with section 47 (6), if it is amended. It would be unwise if less strict provisions applied to larger vehicles which are more likely to cause damage or obstruction.

Advice to the committee on Section 47 (6) exceptions for deliveries

The biggest challenge in tackling footway parking is fostering behaviour change, so that obstructing and damaging pavements is no longer seen as normal and acceptable. The exceptions currently, runs counter to the bill aims. On balance we would like to see it removed. If this isn’t deemed possible then substantial amendments are needed particularly in relation to attendance, obstruction and damage. All types and classes of delivery vehicle should be treated the same.

Section 48 Imposition of penalty charges

Living Streets Scotland would welcome clarification that powers within the bill will automatically be available to police officers as “authorised enforcement officers”. Police enforcement will be appropriate in certain circumstances, especially for some double parking offences, (e.g. where a patrol car is obstructed). Criminal convictions are more cumbersome to enforce and disproportionate for more minor infringements. Further statutory guidance defining obstructions should be used to assist the police and successful prosecutors in pursuing convictions for more serious offences.

Section 50 Power to install approved devises
Living Streets Scotland would welcome clarification that this clause allows for the use of mobile camera enforcement particularly, but not exclusively, around schools. We believe it’s unlikely that locally authorities will use fixed installations for either footway parking or double parking. Use of vans should be permitted, as well as use of city centre CCTV footage. As enforcement will be challenging, local authorities would require to be able to exploit these resources.

C) Missing and additional clauses

Part 4 of the Transport Scotland Bill offers a good opportunity to tackle a number of related parking issues, which are problematic both for the public and local authorities.

School Zig Zags

We note that there are concerns that School Zig Zags are unenforceable, unless supported by an accompanying Traffic Regulation Order. The bill presents an opportunity to address this issue and provide statutory protection and a consistent national approach, in line with other aspects of the bill. A local authority school by school approach (albeit applied as a Council wide order) is time consuming, expensive and subject to challenge and delay as a result of objections.

Dropped kerbs

We note efforts are being made to protect drop kerbs via secondary legislation. Whilst this is welcome, our preference is to protect these important facilities for people with mobility difficulties in the primary legislation. A clear definition of this type of facility is needed. Provision of tactile paving offers a good starting point, but many councils have been slow in introducing these vital aids for visually impaired people. A clear definition in law would be beneficial. Again a Traffic Regulation Order based approach is a cumbersome and costly way forward.

Parking Strategies in all local authority areas

We note that few local authorities have an overarching parking strategy that sets the aims, objectives and benefits of proactively managing on street parking. Edinburgh is a notable exception and is therefore much better placed to implement the measures in the legislation. An obligation on every local authority to have an overarching strategy that manages the social, economic and environmental aspects of parking would be helpful. This would put parking policy on a proactive, strategic footing as opposed to a reactive enforcement based approach. It would also help with looking at options for joint working between authorities and Police Scotland. A statutory approach is needed, although the guidance could be light touch and flexible in terms of content and outcome focused.

Work Place Parking Levies
Local authorities should have the opportunity to use this tool as part of plans to promote sustainable travel. Nottingham has shown that workplace parking levies are both acceptable to business, practical to implement, and beneficial in funding alternative transport options.

D) Comments on the bill financial memorandum

We have submitted a response on the Financial Memorandum to the Finance Committee. In the submission we argue that the Scottish Government should honour previous commitments to fund implementation of the legislation as befits a national initiative. Without additional support local authorities will be unable to implement the bill successfully or unlock the long-term financial benefits related to reduced pavement repairs, maintenance and liabilities for trips and falls. Pavement parking acts as a barrier to everyday walking and particularly people who are older and disabled. Therefore, any measure that keeps this group active will have health and social care benefits. Safer pavements could result in significant financial benefits to the NHS.

E) Other Part of the Bill Affecting Pedestrians:

Part 1 Low emission zones.

Living Streets is generally supportive of the approach taken, but believe the committee needs to consider how these provisions can complement and build on existing powers available to Local Authorities. Local Authorities have been slow in taking action using these existing powers. Legislation alone may not yield the swift response needed to address this pressing public health issue.

Part 5 Roadworks

In addition to part 4 of the bill, part 5 has significant implications for pedestrians. The changes are largely technical and tidy up and improve the existing regime. We note the overarching issue for pedestrians is the lack of on-the-spot monitoring of work sites. Practices between utilities and roads authorities vary massively in terms of ensuring equalities duties are observed. Hefty fines must be applied to contractors who obstruct pavements or fail to provide ramps or safe crossing facilities. A commitment from The Scottish Government to review codes of practice and local enforcement capacity is needed alongside changes in legislation.
F) Summary and conclusions

The Parking Provisions in Part 4 of the Bill are welcomed by Living Streets Scotland as a progressive measure that will boost everyday walking and protect vulnerable groups. The approach being taken is tried and tested over 40 years in London Boroughs. We believe that Scottish Councils are as capable as those in London of managing the local implementation of this bill. Local authorities need a consistent and costs effective way of tackling this problem, and the legislation provides it. This must be backed up with strong guidance to ensure a consistent approach to equalities issues and maintaining the safe and convenient movement of pedestrians of all abilities.

The clause on exceptions for deliveries is problematic and risks undermining the bill. Ideally, it should be removed, or failing that substantially constrained. How exceptions are communicated is vital in terms of messages about the need for and acceptability of footway parking.

Opportunities should be taken to tackle issues around school zig zags, drop kerbs and creating parking strategies in every Local Authority area.

If implemented correctly at a local level Part 4 of the Bill has the potential to unlock significant financial (pavement repairs and renewal), social (isolation reduction) and environmental (better places to walk) benefits for communities.

Living Streets Scotland looks forward to expanding on these points in its oral evidence to the committee on the 7th of November 2018. If in the meantime any further clarification is needed please get in touch.
Introduction

Inclusion Scotland is a ‘Disabled People’s Organisation’ (DPO) – led by disabled people ourselves. Inclusion Scotland works to achieve positive changes to policy and practice, so that we disabled people are fully included throughout all Scottish society as equal citizens.

Inclusion Scotland has consistently supported previous attempts through Members’ Bills to introduce a ban on pavement parking and therefore welcomes the proposals in Part 4 of the Bill. However, we are concerned that the proposal falls short of what was previously proposed, specifically in relation to parking next to dropped kerbs.

Inclusion Scotland is disappointed that the Bill contains no reference to the Accessible Transport Framework and sees this as a missed opportunity to enshrine the key principles of the framework in legislation.

Accessible Transport Framework

Going Forward: Scotland’s Accessible Transport Framework\(^1\), was published by the Scottish Government in September 2016. The framework was produced in coproduction with Disabled People’s Organisations, including Inclusion Scotland, disability organisations, transport providers and transport authorities.

The framework was built around 48 transport issues identified by disabled people, with the overarching vision that

“All disabled people can travel with the same freedom, choice, dignity and opportunity as other citizens.

The framework seeks to achieve 4 outcomes:

- More disabled people make successful door-to-door journeys, more often
- Disabled people are involved in the design, development and improvement of transport policies, services and infrastructure
- Everyone involved in delivering transport information, services and infrastructure will help to enable disabled people to travel
- Disabled people feel comfortable and safe using public transport – this includes being free from hate crime, bullying and harassment when travelling

It is disappointing the Transport (Scotland) Bill seems to have been framed without any reference to the Accessible Transport Framework. The opportunity should have been taken

to embed the vision and outcomes to ensure that Transport Scotland, Regional Transport Partnerships and Local Transport Authorities are required to take these into account in all transport policies and services.

**Part 2: Buses**

Inclusion Scotland welcomes the proposals to give local transport authorities more flexibility to respond to local needs and to improve the information available to passengers. Disabled people are often unable to use buses, particularly in rural areas, because the buses are not accessible, too infrequent, unreliable, too far from their homes or have poor connections to where they wish to travel too, for example hospitals. This includes interchanges with other modes of transport such as railway stations or ferry terminals.

It is essential, and in line with the Accessible Transport Framework, that local transport authorities involve disabled people in designing local bus services. This should include accessibility of buses and minimum requirements for bus driver training as well as routes and frequencies of services.

Disabled people have told us of problems caused by changes to local bus services that have been introduced without proper consultation. Changes to services can have serious implications for individuals and can affect their ability to get to work, education, health facilities, etc. It may be more difficult for disabled people to make alternative arrangements, and for some people with learning disabilities or cognitive impairments such as autism, change can be deeply distressing. Inclusion Scotland would therefore urge that the Bill include provisions requiring full public consultation before any alterations or deregistration of bus services.

Inclusion Scotland is aware of the UK Department of Transport consultation on audio and visual information systems on board buses. However, there is also a need to provide real time audio and visual information systems for bus services at bus stops. Inclusion Scotland has recently been told of one bus operator that apparently requires passengers to give a visual signal when they require a bus to stop at a bus stop. This is not possible for people with a visual impairment who cannot see when a bus is approaching, and may also be a problem for people with some physical impairments.

**Part 4: Responsible Parking**

Disabled people have told us that inconsiderate parking can severely restrict accessibility and safety, making it difficult to get where they want to go and therefore limiting their right to independent living and to participate in society. It can prevent them from getting to work, to shop or to health appointments. They may be effectively trapped in (or out) of their own home when there is no accessible route available.

Pavement parking presents both an obstacle and a safety hazard for people with restricted mobility and visual impairments. People with a visual impairment may not see the parked vehicle and therefore may walk into it. Where the pavement is effectively blocked the
person may have to go onto a busy road to get past the vehicle, which presents a safety hazard. For those in wheelchairs or unable to manage steps, it may not be possible to get on and off the pavement.

Inclusion Scotland is disappointed that the Bill does not include a ban of parking at dropped kerbs, as was proposed in the Footways Parking and Double Parking (Scotland) Bill, and was also included in the Scottish Government’s 2017 Improving Parking in Scotland Consultation Paper, nor any explanation of why this has not been included.

Dropped kerbs are essential aids to mobility for people in wheelchairs or restricted mobility. Without them they would literally be unable to get off the pavement and cross the road, meaning they may not be able to access work, shops, education, community centres, leisure facilities, health facilities or family and friends.

Whilst agreeing that parked cars can damage pavement surfaces, which can result in trip hazards, inclusion Scotland is disappointed that the Policy Memorandum for the Bill refers only to this and not to the broader accessibility issues affecting disabled people, elderly people and parents with pushchairs. Ensuring safe and free access to pavements, including dropped pavements, gives people with restricted mobility, wheelchair users and people with visual impairment the same freedom of movement as others, enabling them to fully participate in their communities. In this way it supports independent living.

Inclusion Scotland notes the reference in para 163 of the Policy Memorandum, that in the consultation responses “there was agreement that the impact of the prohibitions would benefit children’s health and wellbeing through unimpeded access and greater opportunities to walk or cycle”. Unless there is sufficient width to allow a designated cycling lane, cycling on pavements risks a conflict between cyclists and other pavement users. People with mobility or sensory impairment may be unaware of a cyclist approaching because they cannot see or hear them, or be able get out of their way.

Inclusion Scotland struggles to see circumstances where it would be appropriate to exempt a road without undermining the purpose of the legislation. There may be consequences in relation to shortage of parking spaces, particularly in narrow streets and residential areas which will need to be addressed. However, there is no good reason why priority should be given to the interests of drivers over the interests of pedestrians, particularly where this affects the safe use of pavements for example by disabled people or parents with pushchairs. Drivers may simply have to park further from their final destination and walk.

Roads Authorities have both public sector equality duties and Equality Act requirements to ensure there is no adverse impact of people with protected characteristics from decision they take, and to make reasonable adjustments for disabled people. Permitting the parking of vehicles on pavements or across dropped kerbs can have adverse impact on disabled people, for example having to take a longer route to get to their destination, and roads authorities would have to show what reasonable adjustment they will make to mitigate this before considering exemptions to the ban.
Inclusion Scotland also recognises that there may be occasions when emergency vehicles have no option but to park on a pavement or across a dropped kerb whilst attending an incident. There may also be occasions where delivery vehicles may have to park for a limited period, and roads and utilities vehicles will have to park on a pavement or across a dropped kerb when undertaking works, particularly when undertaking emergency or urgent repairs. However, this should only be where the necessary works cannot unreasonably be carried out otherwise.

There should also be exemptions for designated blue badge parking bays, in circumstances where the only place where the blue badge holder can safely park without causing an obstruction is on the pavement or by the dropped kerb. These will often be spaces provided outside the home of a blue badge holder to enable them to access their home.

Inclusion Scotland agrees with the proposals that enforcement of the parking provisions within the Bill should be by local authorities, and that any surplus raised through fines should be ring fenced. We also note the establishment of a Parking Standards Group, and welcome the move towards promoting best practice in relation to the processes surrounding the management and enforcement of on-street parking.

However, Inclusion Scotland is concerned that the consultation findings associated with the misuse of disabled persons’ parking will be taken forward separately. Whilst the Disabled Persons (Parking Badges) Act 2014 attempted to address the issue of the abuse of blue badges, disabled people have told Inclusion Scotland that the biggest abuse is by people who do not have blue badges at all parking in disabled parking spaces.

A 2012 telephone survey for Transport Scotland asked as a single question “Have you experienced misuse of the Blue Badges/disabled parking spaces by non-disabled people”. 76% said they had regularly or sometimes experienced misuse. 92% of these reported that this was most likely in a supermarket or private shopping centre car park. Legislation needs to change to ensure that disabled parking spaces in privately operated car parks serving public spaces, or buildings used by the public such as town centre car parks, supermarkets, leisure centres, etc, can be enforced by local authority parking attendants, police officers or traffic wardens in the same way as on street parking.

**Part 6 – Miscellaneous and General**

Whilst noting that the provisions in the Bill relate to the finance of Regional Transport Partnerships, Inclusion Scotland is disappointed that the opportunity has not also been taken to review the membership of RTPs to ensure the involvement of disabled people in line with the Accessible Transport Framework. The proposed increased membership of the Scottish Canals Board should also take account of then need to include disabled people.
Introduction

1. MACS is an advisory non departmental public body with a remit to:

   - Give Scottish Ministers advice on aspects of policy, legislation and practice affecting the travel needs of disabled people.
   - Take account of the broad views and lived experiences of disabled people when giving advice.
   - Encourage awareness amongst disabled people in Scotland of developments, which affects their mobility, choices and opportunities.
   - Work closely with Scottish Government and ensure our work programme complements the work being undertaken by the Disabled Persons Transport Advisory Committee (DPTAC), the Equality and Human Rights Commission and other organisations, voluntary and statutory.
   - Promote the travel needs of disabled people with designers including transport planners and operators so that these are fully taken into account in the development of vehicles and infrastructure and delivery of services.
   - Monitor and evaluate the effectiveness of our work against the above aims and objectives in improving travel opportunities for disabled people in Scotland.

2. As such, we welcome the publication of the Transport Bill, which includes a number of provisions, which should improve accessibility and enhance the mobility of disabled people. MACS want to see the goals of improving accessibility and inclusion reflecting in every aspect of transport policy. It must be recognised however that Scotland has a long way to go before the vision in Scotland’s 2016 Accessible Transport Framework becomes a reality: "All disabled people can travel with the same freedom, choice, dignity and opportunity as other citizens."

3. In this context, we therefore welcome the opportunity to comment briefly on each section of the Bill as follows.

Low Emission Zones (LEZs)

4. By reducing air pollution, LEZs should benefit some disabled people (with breathing problems such as asthma, emphysema etcetera). But LEZs could also adversely affect some disabled people reliant on using cars to access the four cities, as the Policy Memorandum (paragraph 236) acknowledges. We note that there are currently a
number of proposals to restrict traffic in city centres, whether through ‘car free days’ (Edinburgh) or in specific locations (Glasgow - George Square project) which have not been subject to rigorous consideration of the impact on disabled people. We appreciate that the need to improve the environment and reduce motor traffic in cities will grow, but it is essential that assessment of the impacts of such measures on disabled and older people is undertaken at the very outset, with proper involvement of disabled people and disability organisations.

5. Cars provided under the Motability scheme will generally be less than 3 years old, and therefore meet Euro 6 standards. However, there will be other disabled people heavily reliant on cars (either as a driver or passenger) that are older and may not meet emission standards. Some of these people may be unable to afford to buy newer cars and could be disadvantaged by LEZ unless exempted. We are therefore pleased that the Bill allows for exemptions or extended ‘grace periods’ which could mitigate this issue.

6. We agree that policy across the four LEZ cities should be consistent, so that exemptions do not differ from one city to another.

Bus Services

7. Many disabled people are heavily reliant on buses for their everyday travel. The new powers for local authorities to promote and run bus services are therefore welcome.

8. However, it is not clear how councils will be able to improve bus services by running them directly or franchising unless additional funding is made available. There appears to be significant hurdles for councils that wish to consider franchising to overcome which may deter local authorities from using these powers any more than they have used powers in the 2001 Transport Act for ‘Quality Contracts’.

9. Following original exemption of transport from the Disability Discrimination Act in 1995, the Public Service Vehicle Accessibility Regulations (PSVAR) were introduced. These regulations cover buses and coaches separately and set dates for compliance. All buses, both single and double-decker now have to be low floor with capacity to take one wheelchair. Coaches have to comply with the regulations by 2020 but regulations only require them to provide access to one wheelchair and this may be achieved by installing a lift. As many registered local bus services in rural Scotland deploy coaches rather than buses, many services in rural areas continue to have poor physical access for those who have difficulty with steps. There may also be a problem in policing compliance as our understanding is that, up to last year, the UK regulatory authority (DVSA) had taken no enforcement action anywhere in the UK over buses which fail to meet PSVAR requirements. Unfortunately, we are not confident that the Bill will significantly improve this situation.

10. The DfT are currently consulting on regulations in relation to the Bus Services Act 2017, which includes a measure to ensure Accessible Information on bus services throughout the UK. This is reserved legislation. As described in (9) above regulations are different for buses and coaches and rather than use the term “bus” it is important that the regulations apply to registered local bus services which may in Scotland be operated with coaches. It will be important that the measures to improve information
on local services ensure that the need for accessible formats for information (digital and print) is properly considered. This includes audio-visual information for people with sight, hearing and intellectual impairments. ‘Plain English’ and simple to absorb information will benefit everybody.

Ticketing

11. Measures to improve joined up ticketing may benefit disabled people (and others) by allowing for better integration of travel modes (for example, from train to ferry, or bus to bus). However, consideration should also be given to the impacts on people who are not used to electronic payments and use cash, to ensure that they are not inadvertently disadvantaged. This may disproportionately affect older people, for example. **It will be important that well thought through Equality Impact Assessments are carried out involving the potential users including older people and disabled people and/or their representatives.**

Pavement Parking and Double Parking

12. Pavement parking has long been recognised as a significant hazard for many disabled people including, but not only, visually impaired people. Damage to pavements caused by vehicles parking on them also causes disabled people significant problems. **The provisions to ban pavement parking throughout Scotland are therefore warmly welcomed.**

13. However, the blanket exemptions to this ban proposed in Section 47 of the Bill seriously undermines the policy intent and would effectively legalise much short-term pavement parking. They would signal that pavement parking is still acceptable and we want to foster a culture that recognises that pavement parking is not acceptable. Waste vehicles (typically 26 tons) can also cause significant damage to pavements, adding expense to roads authorities and making pavements more difficult for pedestrians (especially if disabled and/or elderly) to navigate. **MACS therefore opposes the proposed exemptions to the pavement parking ban for loading and for waste collection in particular.**

14. We are also concerned how the provisions will be enforced in the 11 council areas that do not currently have Decriminalised Parking Enforcement (DPE). It is our understanding that in most of these areas, the local councils say that a business case for DPE does not add up. **We therefore welcome the powers in Section 49 (2) for ministers to authorise devices to monitor/enforce parking (e.g. cameras) as this may will help enforcement/compliance inexpensively and therefore enhance local business cases.** However, although we recognise that the Bill allows councils to share DPE resources, **we are sceptical that this provision will be widely used in those areas where the business case for DPE is currently weak.** Disabled people living in these council areas need to have an equal right to navigate streets and enforcement of new pavement parking laws will need to be monitored thoroughly.

15. We recognise that some provision is required to exempt particular streets or areas from the responsible parking provisions, where particular local circumstances dictate. However, **any process to exempt specific areas or streets must involve a robust Equality Impact Assessment (EqIA) by the local council and involve local people.**
We can foresee legal challenges under the 2010 Equality Act if disabled people’s mobility is hindered by inappropriate local exemptions.

16. We note that ‘Blue Badge’ administration does not form part of the Bill. For many disabled drivers/passengers a private car can be the only available accessible mode of transport and parking charges levied on these individuals can be a significant barrier to daily living. While public car parks do currently allow blue badge holders to park for free, not all private car parks do likewise. We would welcome additional measures to address this.

Roadworks

17. Roadworks are often a significant obstruction and hazard for disabled pedestrians in particular; the provisions to strengthen and harmonise the inspection and regulation of roadworks are therefore generally welcomed. Failure to provide for disabled pedestrians adequately at roadworks is a serious problem and an all too common occurrence on streets throughout Scotland. Typical problems include inappropriately sited road signs on the pavement, lack of useable drops onto kerbs and insufficiently wide pedestrian access routes.

18. We note that the Bill gives powers for ministers to issue codes of practice (S64). However, good guidance is already available and endorsed by Scottish ministers in the form of the Safety at Street Works and Road Works Code of Practice 2013. This Code includes a number of helpful and sensible requirements such as the need to provide ramps, provide clear access and to consider the needs of visually impaired people in placing signage. We are therefore unsure what additional benefits this clause will bring.

19. Compliance with this code is currently weak, as most roadworks are not inspected while they are actually taking place on the street. Our understanding is that roads authorities (usually councils) can only recover £36 from the roadworks undertaker for a site inspection. We believe that this cannot recover the full cost of a “Category A” on-site inspection and therefore councils are deterred from policing roadworks effectively while they are in operation.

20. Similarly, while we welcome the new powers proposed for the Scottish Road Works Commissioner (SRWC) to undertake its own inspections, we are sceptical that they may not be used sufficiently as there is no provision to allow for the SRWC to recover inspection costs.

Concluding remarks

21. Following these comments on specific aspects of the Bill, we would like to conclude by emphasising some more general points which we believe are necessary in order to advance accessible and inclusive transport.

Equality Impact Assessments

22. Many of the clauses in the Bill (and potentially other clauses added as a result of future amendments) will need to be accompanied by robust Equality Impact Assessments
(EqIAs). These clauses include, for example, proposals to create Low Emission Zones, franchise bus services, launch new types of smart ticketing or exempt streets from responsible parking laws. This will not only meet obligations of the 2010 Equality Act but will also achieve better local outcomes. **It is vital that local disability groups and/or disabled people are involved in such EqIAs to ensure the assessments are meaningful and use the lived experiences of disabled people in defining solutions that will provide equity of access for all.**

**Guidance**

23. There are a number of areas in the Bill where new guidance is proposed (for example on ticketing and roadworks). We wish to emphasise the need for guidance to be supported by effective enforcement and also by training. MACS frequently hears of instances where good guidance is misunderstood, or simply ignored. **Guidance is therefore insufficient and needs to be accompanied by effective enforcement measures and by appropriate training.**

24. **We advocate disability awareness training designed and delivered with the involvement of disabled people to support measures in the Bill in order to have a positive impact for disabled people travelling.**

**Digital exclusion**

25. While welcoming the opportunities that digital and other developing technologies bring (for example with regard to bus information, or ticketing) it is important to recognise that not all people have access to computers, smart phones, internet access and such like. This may be especially the case among older people, who can be isolated and disadvantaged by presumptions that everyone will use ‘smart’ communications. There is now considerable evidence that isolation can, and often does, lead to deterioration of a person’s mental health. Again, **this aspect of any initiative should be considered in an EqIA.**

Linda Bamford
National Convener
On behalf of the Mobility and Access Committee for Scotland (MACS)
RURAL ECONOMY AND CONNECTIVITY COMMITTEE

TRANSPORT (SCOTLAND) BILL

SUBMISSION FROM Openreach

Executive Summary

Roads are vital communication links for cities, towns, communities and individuals throughout Scotland and across the whole of the UK and it is important that they are carefully managed, preserved and maintained. They are vital not just for conventional traffic but also for the cost effective deployment of other increasingly vital communications links. The legal structure of land ownership and use in the UK is such that roads, or rather ducts and cables buried within the roads or verges, are the best means of cost effectively delivering the modern high speed digital communications infrastructure that is increasingly seen as vital for the economy, communities and individuals across Scotland and the wider UK. Although much has been done by Openreach and others over the past 10 years to ensure these digital communications links are as widespread as possible (with superfast fibre coverage now available to over 90% of Scottish premises), there is still more to do. In particular this is the case if the Scottish Governments R100 objective of superfast everywhere is to be achieved, and if the “Full Fibre future” envisaged by the governments of the UK are to be progressed.

Openreach deployment to date has relied heavily on the ability to access and utilise the road infrastructure to enable and assist with delivering one of the fastest fibre deployments in the world over the past seven years. It is vital that, as we seek to close in on universal broadband availability and expand from Superfast to Ultrafast capabilities in digital communications, the systems, process and rules that govern access to the road infrastructure for such deployments align with the country’s digital objectives wherever possible, although this will inevitably mean that road works to enable this continued deployment will continue. By doing so we can ensure that not only is the vital traditional role of roads maintained, enabling people and goods to pass as freely as possible, but that roads also continue to act as a key enabler for cost effective, efficient and rapid deployment and enhancement of the vital digital communications transport that will continue to enable and grow the digital economy.

Without cost effective and efficient access to the road infrastructure for deployment of fibre and digital networks, the ability to meet the government’s digital targets will be potentially compromised, with higher costs, lower coverage and the discouragement of further investment. We of course recognise and respect the vital role of roads for ensuring traffic flow and the need to ensure they are kept as free flowing and effective as possible but we also urge that consideration is given to the key role they play in ensuring the cost effective and timely delivery of current and future digital network infrastructure and the inevitable need to perform road works as a result, and we welcome the opportunity to work with the Scottish government to ensure we can best deliver on these twin aims.
Where we have used the terms utility or utilities in this response, please take that to mean all Statutory Undertakers.

**Pavement parking and double parking**

1. Openreach understands the rationale for these measures and supports the proposals as written. The exception *‘where the motor vehicle is being used for or in connection with the undertaking of works in roads’* is necessary and important to avoid inefficient and more costly delivery of works.

**Road works – Scottish Road Works Commissioner: status and functions**

2. Openreach understands and supports the inspection powers being conveyed on the Commissioner with regards to worksites. However, the ability to enter premises appears unnecessary and disproportionate as currently drafted. In particular, we note the new offence for failing to comply with a requirement of an authorised person. Without notice, it’s very easy to envisage a scenario where a relatively junior employee, in the absence of a more senior member of staff on the spot, could be put in a difficult situation and inadvertently commit this offence. This could be avoided entirely by having a notice provision. These concerns could be addressed with an amendment to the Bill stating that premises as defined in the new Section 18A(3)(a) can only be entered where the Commissioner has provided a period of notice, unless there is a reasonable suspicion of an offence or breach of duty. This would be in line with similar powers, for example those stated in the Competition Act 1998.

3. The new Section 18C(4) allows an authorised person to *‘take onto the premises such other persons… as the authorised person considers necessary’*. This appears unnecessarily broad. We would expect all people entering premises to be authorised as per the definition in new Section 18A(4)(a), so that there is clear and transparent rationale as to why anyone entering premises is doing so.

**Road works – Power of Scottish Road Works Commissioner to issue compliance notices**

4. Openreach has no objection to the concept of Compliance notices and welcomes the independent appeal point into a sheriff. This will help to maintain the integrity of the Commissioner role in the long term.

5. The protections in new Sections 153H and 153I are welcomed and will ensure a fairer system where utilities are not penalised multiple times for the same offence.

6. Schedule 6B of the New Roads and Street Works Act (NRSWA) is amended to allow the Commissioner or an authorised person to issue Fixed Penalty Notices, not only for breach of Compliance Notices, but also for all other offences where Fixed Penalty Notices can be issued. Although the policy document implies that *‘at least initially’* these will not be issued by the Commissioner or their staff, this is a concern for the longer term. There will need to be very clear regulations covering when a roads authority can issue Fixed Penalty Notices versus when the Commissioner or their staff can issue them to avoid duplication and an unnecessary volume of appeals.

7. Openreach would welcome a tariff of Fixed Penalty Notice charges to ensure transparency of the penalty amounts up to the maximum £100,000. We would expect
there to be variation in this to ensure proportionality relative to offences. This is particularly important as the appeal point is at the point of issue of the Compliance Notice and not after a penalty has been issued, allowing little opportunity for judicial scrutiny if the breach is accepted but the penalty is felt too harsh relative to the offence.

8. Section 7 of Schedule 6B of NRSWA details the appeal process for Fixed Penalty Notices. As outlined in our earlier response to the Transport Scotland consultation, Openreach does not believe the current process is fair and just. The current process requires utilities to appeal to the road works authority/issuing authority who issued the Fixed Penalty Notice in the first place; this does not facilitate a fair hearing. Openreach suggests that appeals relating to Fixed Penalty Notices issued by roads authorities should be ‘as prescribed’ and then follow the process outlined in the *Code of Practice for Dispute Resolution and Appeals – March 2011*, which is used for all other types of charge dispute. This process is well established and would still allow for a speedy determination as required for Fixed Penalty Notices.

**Road works – Permission to execute works in a road**

9. Openreach understands and supports the proposals in this section.

**Road works – Safety measures for the carrying out of works in roads**

10. Openreach welcomes and fully supports these proposals to introduce parity of safety and qualifications requirements for utilities and authorities. This will inevitably improve overall compliance and enhance the public perception of road works in Scotland.

11. Openreach notes that the Bill enables regulations specifying circumstances in which more than one trained operative must be on site at all times when work is in progress. Openreach is keen to provide input at the drafting stage of these regulations to ensure that the rules achieve the right balance, reflecting the scenarios where many jobs can be safely executed with one individual on site.

**Road works – Commencement and completion notices**

12. As outlined in our original response to the Transport Scotland consultation, Openreach understands and supports these proposals in principle. That said, technology and mobile network reception does not yet facilitate ‘real time’ updates in all circumstances. Drafting of supplementary regulations will need to make sure that the prescribed periods and exceptions take into account the ‘real world environment’. This will avoid a) a costly and inefficient administration burden on utilities and b) unfair issue of penalties for existing offences and the new offence created in the Bill.

**Road works – Reinstatement of roads following works**

13. Openreach fully supports the introduction of reinstatement quality plans.

14. The benefits associated with quality plans would be maximised if they were applicable to both utilities and authorities. As drafted, authorities only need to provide a quality plan if specifically requested to do so by Commissioner. This would leave a
large proportion of works held to a different standard and could arguably make it more difficult for the Commissioner to inspect all sites with parity. A key theme of this Bill is parity of standards, however this is one area where this is lacking.

15. There is some important detail to work through in either the regulations or the Code of Practice to outline the timescales required for the Commissioner to approve a reinstatement quality plan. This will be vitally important where job specific plans are requested, to prevent customer delays.

Road works – Information about apparatus

16. Openreach remains deeply uncomfortable with a requirement to share our apparatus data for Scotland in full. This is mainly due to data security concerns inherent in releasing our network data in full to any third party organisation, but is particularly concerning in the absence of any obligatory assurances as to how the third party will store and protect our data on an ongoing basis. We are also concerned that VAULT is only updated quarterly. Whilst the Commissioner’s office has said that more frequent updates could be accommodated by exception, VAULT will still never be as accurate as utilities own systems that are updated on an ongoing basis as infrastructure development takes place.

17. We already have a ‘Maps by Email’ service which services c.1.9m requests a year, allows users to request and receive maps by a system interface 24/7/365, and (unlike VAULT) is updated on a constant basis to reflect any recent infrastructure development. Openreach suggests that a better solution would be to establish a smart link/Application Processing Interface (API) in the VAULT to the Openreach Maps by Email service. Openreach believes the case for this type of approach is strong. Most, if not all, other utilities have a similar service that could link in to VAULT. The primary advantage of this approach is that it keeps security of the aggregate data, control of usage, plus accountability for accuracy, with the individual utility.

18. Openreach’s network is classed as Critical National Infrastructure. We are working with the Centre for the Protection of National Infrastructure (CPNI) and the National Cyber Security Centre (NCSC) to ascertain how this requirement would affect our obligations under current guidance, and we would urge Scottish Government to do the same.

19. As currently drafted, the proposals require utilities to put a great deal of faith in to the owners of the Scottish Road Works Register to keep their data safe and secure. As a bare minimum, Openreach urges Scottish Government to create some reasonable obligations of the Commissioner within the Bill to keep all utility data safe and secure, with a commensurate right of recourse in the event of a failure to do this. Given the complexities involved in this area, ideally this would be fleshed out at a detailed level in supplementary regulations or a statutory code. Examples of necessary requirements are:

- Defined standards for vetting of new users of the system
- Defined standards for registration and log on to the system, e.g. username, password and password reset protocol
- Data to be held on a separate platform to the rest of the Scottish Road Works Register
Search area limited to single requests of a maximum of 500m square
- Encryption when data is in transit
- Encryption of data when at rest if hosted on a cloud solution
- Defined standards for data destruction process
- Up to date data security and malware protection and obligations to maintain this standard over time
- Defined standards for user reporting and monitoring for suspicious activity
- Agreement that certain types of data will never be shared into VAULT, e.g. apparatus in secure sites

20. The original consultation document from Transport Scotland proposed measures to repeal the requirement for the Commissioner to make the register available for public inspection. This is not covered in the Bill and so is an additional concern.

Additional considerations

Openreach operates equally in England, where works are subject to permits and in some areas, lane rental. Openreach firmly believes that the noticing system operating in Scotland achieves the same aims under the original NRSWA powers without needing to employ these additional costly measures. By way of example, authorities are already empowered to issue works directions to prevent working at traffic sensitive times and don’t need a permit, permit conditions, or a lane rental scheme, to do this.

This view is supported by the Evaluation of Street Works Permit Schemes commissioned and published by the Department for Transport (DfT). The report draws a positive conclusion about permit schemes reducing disruption caused by works, but then goes on to say “LHAs with permit schemes reported that they perceive having increased control of the road network. However, analysis of works data shows limited and inconsistent use of directions and conditions which would be another means of exerting control (although there is a possibility of some under-reporting in this data).”

The introduction of permit schemes in England has created a challenging landscape for utilities to navigate, in a large part due to the level of variation across the country and even in neighbouring authority areas. The report states, “In theory, differences between schemes are limited due to the need to comply with legislation; however in practice, there are differences in interpretation of certain elements (such as national conditions) and how the scheme is applied in different LHAs. This inconsistency increases compliance costs for works promoters (statutory undertakers) which typically work across multiple schemes.” This is in spite of England having two sets of Statutory Guidance on permit schemes, published by the DfT. The system in Scotland is able to drive a much greater level of consistency through the use of one noticing system and the role of the Commissioner setting common standards and driving parity.

A separate report commissioned by the DfT reviewed the effectiveness of the Lane Rental trials in London and Kent, the Street Works Lane Rental Evaluation, A Report to the
Department for Transport. This demonstrated no evidence of actual costs saved to either the motorist or highway authorities involved in Lane Rental. It also highlighted that “Overall, it appears that Lane Rental has helped to reinforce and encourage behavioural change but that it is only one of several factors and that internal drivers (such as the need to reduce costs and improve customer service) and the influence of the regulator are also important factors which are perceived to have already led to promoters exploring new ways of working and investing in innovation.”

In summary, Openreach believes that permit and lane rental schemes drive unnecessary cost into street works; these are costs that are ultimately borne by consumers of utility services. There are other ways to achieve the same aims and Scotland is currently doing this, with some further enhancements proposed in this Bill.

Summary

Openreach supports the overarching objective of these proposals and remains fully committed to delivering quality road works in Scotland. Broadly speaking, the Bill contains a lot of good that will improve the standard of road works in Scotland, not least because it creates greater parity of requirements for authorities and utilities. There are a few areas where we feel strongly that regulatory safeguards are required to avoid unnecessary and disproportionate cost and to future proof the proposals regardless of who is in post as Commissioner at the time. We have made suggestions as to how we feel this could be relatively easily achieved, with the key points for the Bill pulled out below.

- A minor change to the inspection powers 1, to ensure that a period of notice for entry to premises is provided unless there is reasonable suspicion of a breach and 2, for all persons accessing premises to be authorised as per the definition provided.
- Provision of a tariff of Fixed Penalty Notice charges for breaches of Compliance Notices, relative to severity of offences.
- Introduction of a fair appeals process for Fixed Penalty Notices. For Fixed Penalty Notices issued by roads authorities, the existing dispute resolution and appeal process defined by the Roads Authorities and Utilities Committee (RAUC) would provide this, as opposed to the appeal going back to the same roads authority.
- Reconsideration of the requirement to ‘hand over’ apparatus data and instead accept the solution of a smart link into utilities’ existing systems. This would still provide a ‘one stop shop’ for those needing maps and also keeps security, control and accountability for accuracy with the utility.
- If the requirement to share apparatus data must proceed, introduction of obligations on the Commissioner to meet a defined set of security standards.

There is much of the important detail to be worked through in secondary regulations and Openreach is ready to engage in and support this process as these progress.
In general terms, I fully support paragraphs 59 to 68 of the Transport (Scotland) Bill as introduced.

59 Status of the Scottish Road Works Commissioner

I welcome the proposed clarification of the juristic status of the Office of Scottish Road Works Commissioner (SRWC) which was a particular concern to my predecessors.

60 Inspection Functions

Whilst a 30% sample of utility company road works has been inspected annually by roads authorities since the New Roads and Street Works Act came into force in 1991, roads authority road works were not subject to any level of scrutiny until the Transport (Scotland) Act 2005 was enacted. It is appropriate that this scrutiny is further formalised and that a more level playing field is established for all road works, regardless of promoter. It is particularly important that all road works are undertaken safely, with due regard to signing, lighting and guarding standards on live sites, where recent evidence suggests that roads authorities have room for improvement. Following the establishment of the SRWC in 2007, roads authority noticing performance improved dramatically. I fully expect a similar improvement if / when an inspection regime is put in place.

With respect to evidence gathering, I support the Bill proposals as introduced.

It is appropriate that the proposed regulatory inspection function does not rely on inspection charges, similar in principle to other regulators, including the HSE.

61 Compliance notices

Experience since the introduction of the Transport (Scotland) Act 2005 suggests that the current Scottish Road Works Commissioner’s powers of direction require clarification and a more structured enforcement and escalation process. It is appropriate that a mechanism exists to require an organisation to improve it’s performance without immediate recourse to a financial penalty.

62 Fixed penalty notices

I fully support the proposal as drafted to create an offence for a failure to comply with a compliance notice and to allow Scottish Ministers to make regulations as they consider appropriate in connection with Fixed Penalty Notices. Fixed Penalty Notices are a measured escalation for non-compliance without immediately reverting to criminal proceedings.
63 Permission to execute works in a road

The existence of the New Roads and Street Works Act 1991 (NRSWA), Section 109, and the Roads (Scotland) Act 1984 (R(S)A), Section 61 has for many years led to significant inconsistencies across roads authorities. R(S)A Section 61 places fewer statutory obligations on private parties granted approval and limits the ability of roads authorities to co-ordinate road works and utility companies to co-operate with roads authorities. In 2012, my predecessor John Gooday issued a direction requiring all roads authorities to adopt NRSWA Section 109 for all road works undertaken by third party organisations and this has worked well for the last 6 years. When NRSWA Section 109 is used, works are registered on the Scottish Road Works Register where details are available to all utility companies and roads authorities and to the travelling public through the public facing website https://roadworks.scot

Although not essential, I would strongly recommend that paragraph 63 is taken forward in conjunction with paragraph 68 which will ensure that apparatus installed by third parties is recorded for other organisations undertaking road works to view.

64 Fencing and lighting of obstructions and excavations

The Code of Practice – Safety at Street Works and Road Works (the Red Book) has been used extensively across the UK for several years. It is a well respected and easy to navigate good practice guide enabling organisations to undertake road works safely in a variety of situations. Undertakers in England, Wales, Northern Ireland and Scotland must currently comply with the Code. However, whilst highway authorities in England and Wales and the road service in Northern Ireland must also comply with the Code, roads authorities in Scotland are exempt.

As with other aspects of the Bill as introduced, it is appropriate that a level playing field exists in Scotland across all organisations carrying out road works.

The Health and Safety Executive (HSE) currently consider this Code to provide minimum safety standards for undertaking road works on all roads, except motorways and any dual carriageways with a speed limit of 50 mph or more.

65 Qualifications of supervisors and operatives

As with paragraph 60 of the Bill as introduced, this is a further levelling of the “playing field” used by roads authorities and utility companies. It is completely appropriate that supervisors and operatives, regardless of their employer, should be qualified to a similar high standard. Road workers repairing a road are no less vulnerable to danger than operatives laying a cable, and both groups need to reinstate to a high quality first time to avoid repeat visits, consequent costs and disruption to the travelling public.

66 Commencement and Completion Notices
The proposed amendments greatly enhance the availability of real time information to roads authorities and utility companies with access to the Scottish Road Works Register. They also have significant potential to improve journey planning by the travelling public, by more accurately providing real time information available through the public facing website. Provision already exists in the Scottish Road Works Register for operatives to press a button on their mobile phone to register a road works start on site. This can easily be achieved within the proposed 2 hour window and well ahead of the existing deadline of 12 noon the following day. The existing process can result in short duration works being completed before a start is registered and the roads authority becoming aware that they have commenced.

67 Reinstatement Quality Plans

The introduction of quality plans would be a major step towards improving safety on road works sites and to improving the quality of reinstatements. Currently, the onus for inspection and compliance lies largely with roads authorities to scrutinise utility company road works. The quality system consists of visual inspections by roads authorities of a 30% sample of utility company road works and a bi-annual national coring programme. The latter only examines a 2% sample of reinstatements in the chosen 12 month period under scrutiny. Coring programmes are retrospective and only test the upper bituminous layers. There is no robust testing of the unbound backfill layers in reinstatements which are, in my view, responsible for longer term failures.

Quality plans, robustly drafted, would encourage organisations (utility companies, section 109 works promoters and roads authorities) to develop a culture of “right first time”.

68 Information about Apparatus

The existing “Community Apparatus Data Vault”, referred to as “Vault”, is a map based system which primarily displays underground apparatus. It is unique to Scotland and is a non statutory addition to the world leading Scottish Road Works Register. Whilst the majority of roads authorities and utility companies, across all sectors, now supply regular updates, a number of smaller utilities and one major telecoms provider do not supply details of their apparatus despite themselves using the system to interrogate the location of apparatus. The proposal as introduced will further improve the safety of road works, particularly in respect of out of hours urgent and emergency works, through a reduction in apparatus strikes.

Permit and Lane Rental Schemes

It would be remiss of me to avoid the subject of Permit and Lane Rental Schemes, which are currently used inconsistently in around 57% of English highway authorities, and which will likely be raised in evidence in respect of this Bill.
Putting matters in context, Permit Schemes are used in an environment where around 170 disparate highway works registers exist in England, and highway authorities are not required to register their own works unless a Permit Scheme is in operation. Existing registers in England do not provide transparency as organisations cannot view the proposed works of others and performance cannot be measured consistently across the country. Permit Schemes are bureaucratic, expensive and will likely reduce investment and stifle innovation in Scotland.

As I understand matters the recent direction by the Minister for Transport requiring all English highway authorities to introduce a Permit Scheme by 31 March 2019 is only necessary to enable the currently developing DfT Street Manager Project (English Street Works Register?) to be rolled out.

Unlike the landscape in England, the single Scottish Road Works Register (SRWR) has led the UK, and indeed some would suggest the world, going back to its infancy 40 years ago. Since 2005, both roads authorities and utility companies have been required to register all qualifying works and have been able to view the proposed works of other organisations when planning their own road works to avoid conflicts. The SRWR allows performance to be measured on a consistent basis across Scotland. Recent research undertaken by the DfT in England suggests that the predicted performance of organisations under a country wide Permitting regime will fall short of the existing performance in Scotland under a Noticing regime, which I believe will continue to improve.

With respect to Lane Rental, this was trialled in Kent on 4% of their network and in Transport for London on 56% of their network. However, it should be borne in mind that around 90% of the UK’s imports come through Kent and around 6 times as many road works are undertaken on the TfL road network as are undertaken in Glasgow per unit length of road. In the case of TfL, research by Professor David Begg suggests that road works are also only responsible for 7% of the congestion on their network. In comparison, an early review of the ongoing TfL £4b Road Modernisation Programme, suggests that associated works are causing greater congestion than utility road works.

Roads authorities can currently formally direct utility companies, eg NRSWA Section 115, timing of works and placing of apparatus and NRSWA Section 125, undue delay. Roads authorities can also challenge the proposed duration of any works. The use of these sections of the existing legislation is relatively infrequent, as generally organisations comply without the need for formal direction. In 2017, from around 130,000 works, there were 720 directions and 44 duration challenges (<1%). Whilst a number of major projects and other emergency works will impact on journey times and can cause delays, the majority of road works do not generally increase congestion on most Scottish roads.
General Comments

The Scottish Government’s proposals contain a number of positive measures to improve the quality of road works that Scottish Water welcomes, including the introduction of quality plans and the focus on greater consistency between utilities and roads authorities.

There are a number of proposals, which Scottish Water supports in principle, but where consistency, proportionality and balance are critical to ensure their implementation is successful. Scottish Water is keen to continue working with the Scottish Government on the detailed implementation of these proposals to ensure that they work as effectively as possible as a whole package of measures.

While the UK government has pushed ahead with developing proposals for lane rental and permit schemes in England and the ongoing use of Overstay Charges, it is Scottish Water’s view that these schemes would provide no benefit or improvements to road works performance and standards in Scotland. Processes currently in place in Scotland are working to minimise disruption on the road network due to essential road works and are achieving better performance levels than in England under permits, lane rental and overstay charging regimes. The introduction of lane rental, permit schemes and overstay charges in Scotland would therefore achieve little in terms of Scottish Government aims in relation to improved regulation of roadworks, improved quality of works nor improved planning and coordination. They would however, add further financial burden on Scottish Water, with potential for higher bills for the Scottish public who are our customers and impact our ability to continue to invest in major capital infrastructure improvements.

PART 5: ROAD WORKS

59: Status of the Scottish Road Works Commissioner

Scottish Water fully supports the office of the Scottish Road Works Commissioner (SRWC) and the clarification of their status as a juristic person.

60: Inspection Functions

Scottish Water agrees in principle with these changes and the parity they will introduce between standards for road authority and utility road works. However, this should be introduced proportionately and in a consistent way for both parties. Scottish Water supports the introduction of an independent inspection of all road works sites, but would like to see greater clarity on the standards used in these inspections, processes for ensuring the training and quality of inspectors and disputes management processes.
Scottish Water would also seek clarity on the estimated costs of the introduction of this inspection function and how these will be recovered. The impact of these changes on the overall inspection burden that currently sits with utilities needs to be recognised and reassessed in conjunction with the introduction of reinstatement quality plans under Section 67 of the Transport (Scotland) Bill.

Scottish Water would also seek clarification within the Bill of the definition of premises that may be inspected and that, if these are at office locations rather than road works sites, appropriate notice of this is given unless there is a suspicion of breaching NRSWA. It should also be recognised that there might be cases where it is not appropriate for an inspection of a road works site to take place on safety grounds. Utilities, road authorities and their contractors should retain the ability to refuse access as the ultimate body responsible for site safety.

61: Compliance Notices

Scottish Water supports this section of the bill as it addresses performance of both utilities and road authorities and will give the SRWC the powers to resolve any issues identified.

62: Fixed Penalty Notices

Scottish Water supports the greater accountability that this change proposes should it replace the current SRWC penalty. It is Scottish Water’s view that the performance levels achieved in Scotland on road works coordination have been through encouraging collaboration.

Scottish Water also notes that Fixed Penalty Notices are, in general, an administrative function and cost. It is important that this be considered in any future regulation to minimise costs for consumers.

63: Permission to execute works in a road

Scottish Water supports this measure, as it will clarify the requirements for the public and developers that require permission from a road authority to excavate the road.

64: Fencing and lighting of obstructions in the road

Scottish Water welcomes the introduction of parity for regulatory regimes applied to road authorities and utilities in terms of safety on road works sites. The requirement for road authorities to comply with the Code of Practice for Safety at road will improve the safety of all parties working on road works sites and has support from across the road works sector.

65: Qualifications of supervisors and operatives

Scottish Water supports the introduction of the requirement for qualified operatives and supervisors in respect of road authority works and reinstatement works. It is our view that, whilst we must ensure that all operatives are working safely, the current requirements are sufficient. However, Scottish Water has concerns regarding the proposed future regulations
that may determine when more than one qualified operative is required on site and how many may be required on those sites. This may affect Scottish Water’s operational works that will, in many cases, be attended by one or two person squads. Any changes to the current requirements must not adversely affect skills and resourcing issues facing the sector or restrict training programmes such as apprenticeships. Furthermore, any changes should only be adopted after an appropriate period of consultation and transition.

66: Commencement and completion notices

Scottish Water supports the requirement for actual start notices to be sent and notes that in the majority of cases these notices are currently provided. Scottish Water also supports the reduction of the timescale for provision of commencement and completion notices; however, this should be implemented in conjunction with technology to support the reduction in timescale for provision of this information. Cognisance should also be taken of areas where mobile connections cannot be made for technical or geographical reasons. It is Scottish Water’s view that failure to meet the timescales should in these cases be based on the time a notice is sent rather than received once a connection has been made.

67: Reinstatement Quality Plans

Scottish Water supports the introduction of reinstatement quality plans. Scottish Water operates a number of quality control measures in relation to reinstatement including coring of completed works and audit of works that are both in progress and completed to ensure compliance with statutory obligations. While the Bill allows the SRWC to request quality plans from road authorities, there appears to be no ongoing requirement for them to operate in accordance with this. This appears to be a missed opportunity to improve the quality of works carried out across all road works. The quality of works carried out by road authorities directly impacts on the quality of the reinstatements carried out by utilities and the extent to which they will withstand any guarantee period.

However, whilst quality plans must be robust, transparent and provide confidence to road authorities and the SRWC in utility reinstatement performance, it is important these do not become overly complex or burdensome. To support this, the overall burden of inspections and national coring programmes for example should be reassessed to ensure there is sufficient focus on the successful implementation of quality plans and remove the burden of inspections from road authorities. It is positive that RAUC(S) will support the development of how a quality plan could look, to ensure that the plans produced are practical and effective in improving or maintaining reinstatement quality.

68: Information about apparatus

Scottish Water recognises that there will be benefits from the use of the Community Apparatus Data Vault (VAULT) for all utility and road authority plant information. The principle of access to all plant information in one location for the purposes of safe digging is supported but there are some concerns regarding the security of data that, in some cases,
may relate to critical national infrastructure. Scottish Water would like to see these addressed.

**Alternative Approaches**

We note that proposals relating to reinstatement guarantee periods and levels of Fixed Penalty Notices (FPNs) do not require primary legislation and are not contained within the Bill. We will provide our views on those proposals as and when they are subject to separate consultation when considering the required changes to secondary legislation and Codes of Practice.
RURAL ECONOMY AND CONNECTIVITY COMMITTEE

TRANSPORT (SCOTLAND) BILL

SUBMISSION FROM STREET WORKS UK

Part 5 of the Bill – Road works

General Comments

Street Works UK is the UK’s only trade association representing utilities and their contractors on street works issues, we promote best practice, self-regulation and a two-way relationship with government and other relevant stakeholders.

The Scottish government’s proposals contain a number of positive measures to improve the quality of road works which Street Works UK welcomes, including the introduction of quality plans and the focus on greater consistency between utilities and roads authorities.

There are a number of proposals which Street Works UK broadly supports in principle but where consistency, proportionality and balance are critical to ensure their implementation is successful. Street Works UK is keen to continue working with ministers and officials on the detailed implementation of these proposals to ensure that they work as effectively as possible.

Street Works UK would note that a number of these proposals are highly interconnected, and it would be appropriate for detailed consideration to be given to the implications of specific proposals on other measures set out in this package to ensure that they work effectively as a whole.

While the UK government has pushed ahead with developing proposals for lane rental and permit schemes in England, our members in Scotland believe that these schemes should not be replicated north of the border. Our members believe existing processes in Scotland are working to good effect and are delivering a better quality of works than in England. The introduction of lane rental and permit schemes would lead to additional compliance costs for utility companies which in turn will result in higher bills for consumers. This will also have an impact on the ability for companies to carry out ambitious and necessary infrastructure improvements.

ROAD WORKS Scottish Road Works Commissioner: status and functions

59 Status of the Scottish Road Works Commissioner

Street Works UK fully supports the office of the Scottish Road Works Commissioner (SRWC), though it questions the proposals related to enforcement as there is not sufficient evidence that these additional powers are necessary.
60 Inspection functions
Street Works UK agrees in principle with these changes. Protecting the independence and status of the SRWC is fully supported.

The implementation of these changes is important, and it must be done proportionately and with consideration to the increased costs. Street Works UK would like clarity on the likely scale of these costs and information on how these would be recovered.

These changes should be considered in the round, with the overall impact of the changes taken in to account. The impact of these changes on the overall inspection burden need to be recognised.

It is important that this is introduced in a consistent way for both utilities and RAs, and works both ways. Independence and balance are key, and Street Works UK welcomes the opportunity for external independent verification that this could provide. Street Works UK would like to see greater clarity on the standards used in these inspections and would recommend that there is a process for ensuring the training and quality of inspectors, and sufficient auditing of their inspections. There needs to be a facility for dealing with disputes.

There may be cases where it is not appropriate for an inspection to take place on safety grounds. Utilities and their contractors should retain the ability to refuse an inspection as the ultimate body responsible for the site. All people who do enter a premises, should be authorises, as defined in the Bill.

61 Compliance notices
Street Works UK are supportive of this section of the bill. It is aimed at both undertakers and road authority and will give the SRWC the powers to resolve issues and problems.

62 Fixed penalty notices Permission to execute works in a road
While Street Works UK supports the greater accountability that this change proposes, it questions the need for this change. There is not sufficient evidence that these additional powers for the SRWC are necessary. Street Works UK would suggest that the focus of the role should remain on early intervention, encouraging collaboration and better understanding, and promoting the use of evidence.

Street Works UK does not agree with the proposals to increase charges for Fixed Penalty Notices (FPNs). FPNs are an administrative cost. It is important that authorities drive maximum efficiencies to minimise costs for consumers.

63 Permission to execute works in a road
Street Works UK are supportive of this and view it as a common-sense solution to a long-standing issue. Whilst utilities are not directly affected by this, we can see the advantages to both road authorities and the Scottish general public who use this to supply and receive various services.
Safety measures for the carrying out of works in roads

64 Fencing and lighting of obstructions and excavations
Street Works UK supports requiring all workers to have basic competence in the “Signing, Lighting and Guarding” of a site. However, it is not appropriate for all workers to be qualified in this. It is important that this proposal is introduced in a way that does not exacerbate the skills and resourcing issues facing the sector, or restrict apprentices, for example.

65 Qualifications of supervisors and operatives
It will now be a requirement that at least one operative is qualified when road works are conducted, and this will include improvements carried out by roads authorities, and the reinstatement of roads. Street Works UK would suggest that the current requirements are sufficient. However, every operative working on site must be capable of working safely.

Commencement and completion notices

66 Commencement and completion notices
Street Works UK are supportive of this change, however, we would hope that implementation is rolled out only as and when it is fully supported by technology.

We would also hope that allowances can be made where mobile connections cannot be made for technical or topographical reasons and a notice is late in being uploaded once a connection has been made.

Reinstatement of roads following works

67 Reinstatement quality plans Information about apparatus
The quality plan must be robust, transparent, and provide sufficient detail to be worthwhile, but it is important it does not become overly complex or burdensome on utilities. A proportionate approach has significant benefits for all parties.

It is particularly positive that RAUC(S) has been given a key role in proposing what a quality plan could look like. The exact format and detail of the quality plans, and how these are considered and used by roads authorities, is crucial. Street Works UK’s members – through RAUC(S) – remain committed to being involved in the development of this.
68 Information about apparatus

Street Works UK support this section of the Bill and members have been supplying data for many years. However, the Bill should introduce obligations on the Commissioner to keep data safe and secure, as detailed in a statutory code.
RURAL ECONOMY AND CONNECTIVITY COMMITTEE
TRANSPORT (SCOTLAND) BILL
SUBMISSION FROM SUSTRANS SCOTLAND

Introduction

This response to the bill will concentrate on Parts 1 and 4, the creation of low emission zones and responsible parking respectively.

Sustrans Scotland are broadly supportive of the provisions of the Transport (Scotland) Bill. However, our response will comment on some of the proposed exemptions, omissions and the manner of implementation. In addition, it is the view of Sustrans Scotland that the Bill misses the opportunity to enable local authorities to implement Workplace Parking Levies.

Low emission zones in Scotland (Part 1 of the Bill)

Sustrans Scotland are broadly supportive of the provisions for low emission zones (LEZs).

We support the framework for LEZs designed to prohibit access for polluting vehicles, rather than to permit entry for a fee. This is likely to mean that a successful LEZ raises minimal or no revenue, but any revenue raised should offset the costs of running the scheme or fund alternative modes of transport.

Sustrans Scotland recommend an amendment to the proposed legislation in the statutory consultees for a LEZ. The legislation mandates only that statutory consultees extend to bus operators and “drivers”. Though people driving motor vehicles will be directly affected by prohibitions on certain vehicles, anyone living, travelling or working inside the LEZ is also affected by poor air quality. The duty to consult should not be based on vehicle ownership. Consultation should include all who suffer the consequences of air pollution, which includes drivers.

Much of the detail for establishing LEZs is to be issued in subsequent guidance, making it difficult to assess implementation. Sustrans Scotland believe it is important that the government should legislate at this point or issue guidance to ensure that the approach to targeting vehicles places the onus for pollution reduction equitably.

For example, an approach based on modelling is important to ensure that actions improve air quality, but we would be discomforted by an approach that targets buses in isolation. This is often the first conclusion of modelling and the easiest short-term measure. Though buses are a source of pollution, they offer a net reduction in emissions per person compared to the average private car or taxi.
Emissions per passenger kilometre of bus passengers are smaller than those of occupants of a private car, and congestion in urban areas is more commonly a problem created by private cars. 76% of traffic in Scotland is comprised of cars, 2/3 of which are single-occupancy. We are pleased to note Glasgow City Council plan to include all vehicles in their LEZ by 2022.

Sustrans Scotland believe that difficult conversations regarding congestion in urban areas are being avoided or delayed. Guidance on LEZs should make it clear that reducing the number of car trips into urban areas is a priority. We ask the Committee to consider our evidence on Workplace Parking Levies presented below.

**Responsible Parking (Part 4 of the Bill)**

Sustrans Scotland strongly support the provisions to ban pavement (footway) parking. Below we set out why this is a necessary and beneficial measure, and comment on what we see as a problematic exemption for commercial vehicles.

At present, vehicles parked on pavements create a physical obstacle to journeys on foot and discourage people from making the choice to walk. Sustrans research conducted on behalf of Connect (formerly the Scottish Parent Teacher Council) found that 42.4% of parents saw unsafe walking routes and inadequate pavements as a barrier to letting children walk to school. Reduced visibility caused by parking was also cited as a safety concern. A ban on pavement parking would improve safety by reducing the incidence of people being forced into live carriageways, due to lack of space on footways.

New legislation banning pavement parking in Scotland would promote the importance of walking, identified as the priority mode of travel in the National Transport Strategy (2016) sustainable travel hierarchy. Offering more reliable accessibility would help all people using footways to choose to make their regular journeys by walking, particularly the elderly and people pushing prams, and those with disabilities.

There is an inherent unfairness in the currently accepted behaviour of mass pavement parking. Leaving a vehicle when not in use should not come at the expense of people with additional mobility needs or to the detriment of people walking. Research indicates that 90% of blind or partially sighted people have found a car parked on the pavement problematic for their mobility.

The proposed ban on pavement parking has gained support across the spectrum, including disability and accessibility groups the RNIB, Disability Equality Scotland and Guide Dogs, as well as calls from motoring bodies to clarify what is and isn’t acceptable.

Further to this, an addition to the bill should be considered to ban parking in front of dropped kerbs. These are essential for wheelchairs users to complete journeys and the omission is a surprise given the prominence of this issue in the Improving Parking in Scotland consultation.
Banning parking on the pavement will make places more attractive for walking, aiding participation in walking and improving public health. Places that encourage walking have been linked to promoting health and correlate to residents with a healthier weight status, especially in low income neighbourhoods.\textsuperscript{vii}

Pavement parking causes significant damage to kerbs which imposes large on-going costs on local authorities.\textsuperscript{viii} Research by the AA found that there were 10,200 claims for trips and slips on pavements in the 12 months up to 31 May 2018.\textsuperscript{ix} UK Local authorities spent at least £106 million on compensation claims for trips and falls on the footway between 2006 and 2010.\textsuperscript{x}

We see a need for enforcement and the capacity of local authorities to enforce the parking provisions to be monitored, and steps taken to assist local authorities if there are problems with compliance levels.

Whilst we welcome the ban on pavement parking, Sustrans Scotland has serious concerns with the proposed exemption to allow commercial vehicles to park on the pavement for 20 minutes when making deliveries.

At present, there is an ambiguity in the law, in that it is not illegal to park on the pavement but it is illegal to drive onto the pavement. Instead of an ambiguity, the proposed exemption will formalise pavement parking in Scottish law, setting one law in direct opposition to the other.

Furthermore, the exemption encourages delivery vehicles to park on the pavement directly outside their destination instead of using designated loading bays.

Sustrans Scotland accept that the intent of this exemption is to allow deliveries to be made where no alternative parking is available and Transport Scotland will issue subsequent guidance that this would only be permissible if no alternative option is available.

However, Sustrans Scotland believe that establishing the exemption in law and having separate guidance to clarify when delivery vehicles can park on pavements is an unnecessary separation that will lead to confusion and lower levels of compliance. Sustrans Scotland recommend that the exemption is withdrawn from the bill.

**Workplace Parking Levies**

Sustrans Scotland believe that enabling legislation for Workplace Parking Levies (WPLs) should be including in the Bill. There is clear evidence that they reduce congestion, raise valuable revenue for local authorities and improve air quality.
To be clear, this would not impose WPLs on local authorities. Replicating the enabling legislation introduced in 2000 in England and Wales, and used to great success in Nottingham, would give local authorities the freedom to choose what is right for their area.

There is strong evidence of the success of WPLs based on the experience of Nottingham City Council. A WPL, introduced in 2012 now raises revenue of £9 million per year that has helped to fund tram infrastructure, a smart card scheme, electric buses, cycling facilities and match-funding for national funding programmes. It has led to reduced congestion, increases in public transport usage, improved air quality, and a reduction in land used for parking. There is no evidence of negative economic impact, in fact Nottingham experienced faster job creation than other UK cities of a comparable size.xi

The UK legislation is entirely workable in Scotland. City of Edinburgh Council have already carried out scoping exercises, and believe that a levy would raise around £9 million per year.

Similar exemptions to those in Nottingham should be adopted, and a minimum car park size should be recommended. This will help to exempt small and medium-sized business and reduces the administrative burden of small car parks that will raise negligible revenue. The cost of financing the scheme is as a mere 5% of the revenue raised in Nottingham.xii

WPLs act as a tax on congestion. They transfer the cost of congestion on our roads onto those journeys that cause the congestion and encourage the use of sustainable transport and active travel. They would help local authorities to meet national government transport, air quality and health priorities.

Scotland needs the Transport Bill to include enabling legislation that would give local authorities the freedom to implement Workplace Parking Levies within a reasonable framework if they decide they are right for the area.

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Rural Economy and Connectivity Committee
28th Meeting (Session 5), Wednesday 7 November 2018
UK Agriculture Bill – Legislative Consent Memorandum

Background to the process

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

2. Legislative Consent Memorandums are usually lodged in the Scottish Parliament by the Scottish Government. They relate to Bills under consideration in the United Kingdom Parliament which contain what are known as “relevant provisions”. These provisions could:

   - change the law on a “devolved matter” (an area of policy which the UK Parliament devolved to the Scottish Parliament); or
   - alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).

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

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

UK Agriculture Bill

5. A Legislative Consent Memorandum has been lodged regarding the UK Agriculture Bill. The memorandum and the Bill can be found on the Scottish Parliament website. The LCM is also attached at Annexe A.

6. This is a UK Government Bill which seeks to provide the legal framework required to transition out of the EU, replace the Common Agricultural Policy (CAP) and deliver a range of reforms. It lays the foundations for a future system based on public money for public goods, for the next generation of farmers and land managers.

7. The UK Government and the Scottish Government have different views as to how the Bill affects devolved administrations. The UK Government has stated
that it is not seeking consent from the Scottish Parliament on this Bill because it considers that it does not legislate in areas of devolved competence in Scotland.

8. However, the Scottish Government considers that the UK Agriculture Bill is a relevant Bill under Rule 9B.1 of the Parliament’s Standing Orders. It considers that legislative consent is required for Parts 6 and 7 of the Bill (and Part 9 of the Bill so far as relating to those Parts – in particular, clauses 29 (apart from paragraphs (2), (6)(b) and (c), and (7)(b) and (c)); 30; 32; 34; 35 and 36)).

9. In the Scottish Parliament chamber on 26 September 2018 Fergus Ewing MSP, Cabinet Secretary for Rural Economy and Connectivity said - "unfortunately, the current UK Agriculture Bill impinges on devolved powers in three respects." These three areas are -

- **clauses 22- 24 on producer organisations** - debate surrounds whether the purpose of this clause is the promotion of an effective agricultural market (which is devolved) or the regulation of anti-competitive practices (which is reserved).
- **clause 25 on fair dealing obligations** – debate is around whether the clause is directed at unfair contractual terms, which is a devolved matter, or anti-competitive agreements and practices which is reserved.
- **clause 26 on the World Trade Organisation (WTO) agreement on agriculture.** - Debate has arisen as to whether the purpose of the WTO clause is to regulate international trade (which is reserved) or to implement and observe international obligations (which is devolved).

10. A [SPICe briefing on the Bill](#) sets out the detail on how the respective views of the Scottish and UK Government’s differ.

**Legislative Consent Motion**

11. The Scottish Government does not intend to lodge a legislative consent motion in relation to the Bill to accompany this Memorandum. The Scottish Government considers that the approach taken to this Bill is not consistent with devolved responsibilities and therefore it cannot recommend that the Parliament gives its consent to the Bill at this time.

12. The Scottish Government also indicates in the Memorandum that it is seeking urgent discussions with the UK Government on how to strengthen and protect the Sewel Convention, and has set out proposals for how the Scottish Parliament’s confidence in the operation of the legislative consent convention could be restored. The Memorandum states that the Scottish Government will consider progress in those discussions in deciding its position on seeking legislative consent for the Bill as its UK Parliamentary consideration proceeds.
13. On 25 October 2018, Mr Ewing wrote to the Secretary of State for Environment, proposing amendments to the UK Agriculture Bill. The amendments were to the clauses where there is dispute over the devolved/reserved nature of the provisions detailed above.

**Recommendation**

The Committee is invited to consider whether it wishes to—

a) note the contents of the Memorandum and request to be kept updated by the Scottish Government on the progress of its proposed amendments to the Bill; and on its discussions with the UK Government on the operation of legislative consent convention as these relate to the Bill; or

b) pursue another course of action.

Clerking team

Rural Economy and Connectivity Committee
November 2018
LEGISLATIVE CONSENT MEMORANDUM

AGRICULTURE BILL

Introduction

1. The Agriculture Bill was introduced into the House of Commons on 12 September 2018. It gives the UK Government broad powers to provide support for agriculture in England, both for an initial agricultural transition period and for the longer term, and to extend similar powers to Wales and Northern Ireland. The Scottish Government considers that it is a relevant Bill under Rule 9B.1 of the Parliament's Standing Orders. This memorandum has been lodged by Fergus Ewing, Cabinet Secretary for the Rural Economy, in accordance with Rule 9B.3.1(a). The Bill and supporting documents can be found at https://services.parliament.uk/Bills/2017-19/agriculture/documents.html. This memorandum relates to the Bill as introduced.

2. The Scottish Government believes that the best option for the UK as a whole, and for Scotland, is to remain in the EU. Short of continued EU membership, the Scottish Government believes that membership of the European Single Market and Customs Union would be the least damaging option for the UK and Scotland. However, the Scottish Government accepts the need to make preparations for withdrawing from the EU under other circumstances, and maintaining continuity for Scotland’s agriculture sector.

3. The Scottish Government does not currently intend to lodge a legislative consent motion in relation to the Bill. In line with Rule 9B.3.3(d) of the Standing Orders, the Scottish Government’s reasons for not including a draft motion are set out in paragraphs 17 – 26 below. The Scottish Government is considering amendments which, if made, and in conjunction with wider discussions with UK Government on legislative consent, could allow it to consider recommending that the Parliament gives consent to the Bill. The Scottish Government may lodge a supplementary legislative consent memorandum, potentially with a draft legislative consent motion, on this Bill in due course, depending on progress with the Bill and on restoring the confidence of the Scottish Government and Scottish Parliament in the operation of the legislative consent convention.

Background

4. The UK Department for Environment, Food and Rural Affairs (Defra) consultation paper “Health and Harmony: the future of food, farming and the environment in a Green Brexit”, published on 27 February 2018, set out the UK Government’s emerging approach to future agriculture policy, after the UK has left the EU and the CAP.

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1 http://www.parliament.scot/parliamentarybusiness/26512.aspx
5. The paper said that the UK Government would introduce an Agriculture Bill that breaks from the CAP, providing the ability to set out a long term domestic policy that includes:

- Replacing the CAP with a new system that pays public money for public goods such as environmental enhancement and protection, improved plant and animal health and animal welfare.
- Removing income support (direct payments) to farmers over an “agricultural transition” period.
- Introducing a new system of environmental land management schemes.

6. The paper also included a section on devolution that said:

i. Common frameworks will be established where they are necessary in order to:
   - Enable the functioning of the UK internal market, while acknowledging policy divergence.
   - Ensure compliance with international obligations.
   - Ensure the UK can negotiate, enter into and implement new trade agreements and international treaties.
   - Enable the management of common resources.
   - Administer and provide access to justice in cases with a cross-border element.
   - Safeguard the security of the UK.

ii. Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:
   - Be based on established conventions and practices, including the competence of the devolved institutions and will not normally be adjusted without their consent.
   - Maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules.
   - Lead to a significant increase in decision making powers for the devolved administrations.

7. The paper states that Defra will continue to work closely with the devolved administrations to agree where a common approach is required across the UK. It also states that Defra will continue to work closely on areas where commonality is desirable and where it may be possible to consider co-operative arrangements such as memorandums of understanding or more informal arrangements. Informal arrangements could include information sharing on new design and outcomes of environmental and productivity schemes.

**Content of the Bill**

8. The Explanatory Notes³ accompanying the Bill set out the UK Government's view of its purpose and main functions, which operate alongside the powers conferred by the European Union (Withdrawal) Act 2018. The UK Government describes the principal purpose of the Bill as providing the legal framework for the UK to leave the

Common Agricultural Policy (CAP) and establish a new system, based on public money for public goods for the next generation of farmers and land managers, (paragraph 1 of the Explanatory Notes). The main provisions of the Bill are as follows:

**Part 1**

This Part creates new powers for the Secretary of State to give financial assistance, in England, for or in connection with a range of purposes including land management, environmental protection, plant and animal health and welfare. This includes rules on the forms and conditions for granting support, and on monitoring and enforcing compliance with these rules, allowing the creation of a new policy to replace the CAP in England after exiting the EU.

**Part 2**

This Part deals with financial support in England after exiting the EU, and an agricultural transition period in England, and includes powers to allow for the rolling over and continuation of the current basic payment scheme following the UK’s withdrawal from the EU, termination of the scheme at the end of its last full scheme year, and a transition period during which direct payments would be phased out and replaced.

**Part 3**

This Part provides new powers for the Secretary of State to collect and share data from those within or closely connected to the agri-food supply chain in relation to their activities in England.

**Part 4**

This Part provides the Secretary of State with powers to declare a period of exceptional market conditions in relation to England, and to give financial assistance to support farmers who have been affected. They also enable the Secretary of State to use the additional public intervention and private storage powers in retained EU legislation concerning the CAP. Public intervention and private storage are market support measures that can be used to help stabilise the price of certain products; the Bill, mirroring provisions in the CAP, provides that when the price of these products drops below a certain reference threshold due to a supply surplus, product can be removed from the market thus increasing prices.

**Part 5**

This Part provides the Secretary of State with powers to set and amend marketing standards for agricultural products, and to make provision about the classification of carcasses by slaughterhouses in relation to England.
**Part 6**

This Part sets out rules on giving special status to groups of farmers (i.e. producer organisations) to exempt them from some parts of competition law. It also contains powers to create statutory codes of fair conduct in agri-food supply chains.

These clauses give the Secretary of State power to amend or revoke retained EU law in relation to producer and inter-branch organisations, and to introduce new legislation regarding the recognition of and rules governing such organisations, including the extension of the rules to non-members and their exemption from competition law.

The Secretary of State’s powers in this Part extend to the UK as a whole.

**Part 7**

This Part (clause 26) provides the Secretary of State with regulation-making powers in relation to the United Kingdom’s compliance with the World Trade Organisation (WTO) Agreement on Agriculture (AoA).

This includes powers to set financial ceilings in relation to the amount of agricultural support that each administration of the UK can provide, and the establishment of a decision-making process in relation to the classification of support for the purposes of the WTO AoA, including a dispute resolution process. It also includes powers requiring devolved authorities to provide information to the Secretary of State to allow for the classification and reporting of agricultural support to the WTO. In practice, this would allow the Secretary of State to decide how schemes, such as the Beef and Sheep coupled support schemes and the Less Favoured Area Support Scheme, would be classified under WTO rules, and how much money could be paid from them. The powers also enable the Secretary of State to act as the final arbiter if any devolved administration disputed this classification.

The Secretary of State’s powers in this Part extend to the UK as a whole.

**Part 8 and Schedules 3 and 4**

This Part, and these schedules, create similar powers, at their request, for the Welsh Government and for Northern Ireland Departments to those in parts 1 to 5 of Bill. The Scottish Government is currently considering its options for obtaining these powers, and will set out its plans in due course.

9. Further detail on the structure and provisions of the Bill is set out at Annex A.
Requirement for legislative consent

10. The Explanatory Notes to the Bill\(^4\) set out the UK Government’s view that the legislative consent of the Scottish Parliament is not required for any of its provisions\(^5\). The Scottish Government does not share this view.

11. The Scottish Government believes the Bill is “a relevant Bill” within Rule 9B.1.1 of Standing Orders, as it makes provision applying to Scotland for purposes within the legislative competence of the Parliament, and alters the executive competence of the Scottish Ministers.

12. In particular, the Scottish Government considers that legislative consent is required for Parts 6 and 7 of the Bill (and Part 9 of the Bill so far as relating to those Parts – in particular, clauses 29 (apart from paragraphs (2), (6)(b) and (c), and (7)(b) and (c)); 30; 32; 34; 35 and 36)).

13. Part 6 (clauses 22 to 24) of the Bill concerns producer organisations. It requires the Scottish Parliament’s consent as it is for a devolved purpose, namely the promotion of an effective agricultural market. It effectively replaces the EU producer organisation regime, which was clearly for that purpose. That, in pursuance of that purpose, it is necessary to exempt producer organisations from the Competition Act regime does not mean that the provisions relate to competition law: their purpose is not to regulate anti-competitive agreements. Whilst clause 23(1) and schedule 2 (amendments to the Competition Act 1998) would not be within the legislative competence as those modify the law on reserved matters, these provisions pursue the same devolved purpose as the remainder of the provisions in clauses 22-24.

14. Part 6 (clause 25) also concerns fair dealing with agricultural producers. It requires the Scottish Parliament’s consent as it is for devolved purposes, namely the regulation of unfair contractual terms in commercial contracts by agricultural producers in Scotland. It does not relate to the competition law reservation which is specifically directed at the regulation of anti-competitive agreements – i.e. agreements which adversely affect the competitive structure of the market - and the abuse of a dominant position. The regulation of contract terms which are considered to be unfair on other grounds is not within the scope of that reservation.

15. Part 7 (clause 26) of the Bill requires the Scottish Parliament’s consent as it concerns the implementation of international obligations (namely those arising from the WTO AoA) as regards matters (agriculture support) which are not reserved. The establishment of UK-wide arrangements for allocating financial ceilings under the WTO AoA to the various jurisdictions of the UK, in so far as it is concerned with the implementation of an international obligation in non-reserved matters, requires the Scottish Parliament’s consent. Although the allocation of a quota requires to be dealt with on a UK-wide basis, respect for the allocation of competences implicit on the Scotland Act 1998 requires that this should be on the basis of consent. In any event, clause 26 contains provisions which would affect the executive competence of the

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\(^5\) See paragraphs 46 – 48 and Annex A of the Explanatory Notes
Scottish Ministers as regards the exercise of functions concerning agricultural support in Scotland.

16. The clauses which the Scottish Government considers that legislative consent is required for are shown in the table at Annex B.

**Scottish Government view**

17. The legislative consent memorandum on the European Union (Withdrawal) Bill, submitted to the Scottish Parliament on 12 September 2017, set out the Scottish Government’s position that policy responsibility and expertise for matters within devolved competence lie with the Scottish Government, accountable to the Scottish Parliament. As noted above, Parts 6 and 7 of the Agriculture Bill deal with matters within the legislative competence of the Scottish Parliament in relation to the regulation of agricultural producers and agriculture support in Scotland.

18. Whilst the United Kingdom is responsible in international law for compliance with its international obligations, it does not follow that it is the UK Government alone which is responsible for the measures required to implement those obligations in domestic law. Paragraph 7(2) of Schedule 5 to the Scotland Act 1998 explicitly provides that observing and implementing international obligations are not reserved matters.

19. Moreover, Part 7 of the Agriculture Bill places constraints on the Scottish Ministers’ ability to exercise functions within devolved competence in relation to agriculture support in Scotland. In particular, the Scottish Ministers’ powers to adopt policies to support farming in Scotland would be affected by decisions made by the UK Government in exercise of powers under Part 7 of the Bill.

20. The Scottish Government does not therefore accept that the scheme set out in the Bill is an accurate reflection of devolved responsibilities in this area, and would not support or recommend to the Scottish Parliament powers for the Secretary of State in the areas covered by Parts 6 and 7 of the Bill. The Scottish Government is considering amendments to the Bill which will address its concerns to inform debate on the Bill both in the Scottish Parliament, at the UK Parliament and more widely.

**Draft Legislative Consent Motion**

21. Under Rule 9B.3.3(d) of the Parliament’s Standing Orders, if a member of the Scottish Government does not propose to include a draft motion in the Memorandum, the Memorandum must explain why not. As the Scottish Government is not in a position to recommend consent to the Bill, no draft motion is included.

22. For the purposes of complying with Rule 9B.3.3(d), the Scottish Government cannot recommend to the Parliament that it gives consent to the Bill as currently drafted for the reasons set out in paragraphs 17 - 20 above.

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7 See paragraph 17 of that Memorandum.

23. In addition, following events on the European Union (Withdrawal) Bill the Scottish Government does not believe it should currently seek consent from the Scottish Parliament to UK legislation related to withdrawal from the EU. During the passage of that Bill, the UK Government sought consent from the Scottish Parliament, in line with the Sewel Convention. The Scottish Parliament voted overwhelmingly (by 93 votes to 30) to refuse consent. The UK Government then decided, for the first time since devolution, to continue with the Bill and legislate for matters within or affecting the responsibilities of the Scottish Parliament without its agreement.

24. The Scottish Government believes that decisions on legislative consent by the Parliament are as significant as its other legislative decisions, because, as envisaged in the constitutional rules embodied in the Sewel Convention, those decisions involve consenting to legislation for purposes within the legislative competence of the Parliament, or affecting devolved competence, being enacted by the UK Parliament.

25. The UK Government has, however, made clear that it is prepared to proceed with any future legislation relating to the UK’s withdrawal from the EU without the consent of the Scottish Parliament when that consent is required and sought. The UK Government has effectively suspended the established legislative consent process in relation to legislation relating to EU withdrawal. In these circumstances, the Scottish Government will continue to work to develop and to improve UK legislation related to EU withdrawal. The Scottish Government does not, however, believe there is a practical purpose in bringing forward legislative consent motions when the UK Government has made clear any decision of the Scottish Parliament is liable to be set aside. The Scottish Government believes it is unacceptable for the deliberations and decisions of the Parliament to be treated in this way.

26. The Scottish Government is seeking urgent discussions with the UK Government on how to strengthen and protect the Sewel Convention, and has set out proposals for how the Scottish Parliament’s confidence in the operation of the legislative consent convention could be restored. The Scottish Government will consider progress in those discussions in deciding its position on seeking legislative consent for this Bill as its Parliamentary consideration proceeds.

Conclusion

27. It remains a matter of regret to the Scottish Government that the UK plans to withdraw from the EU. The Scottish Government considers this will have widespread detrimental effects on the UK and Scotland. However, the Scottish Government accepts that proper, responsible preparations should be made for withdrawal, including provisions to deliver support to agriculture and the wider rural economy to provide much needed continuity for rural businesses, employees and consumers.

28. The approach taken to this Bill is not consistent with devolved responsibilities and accordingly the Scottish Government cannot recommend that the Parliament gives its consent to the Bill at this time. In addition, the UK Government has made clear that it will not accord the views of the Parliament on consent their proper status in relation to EU withdrawal related legislation. The Scottish Government does not therefore believe it should seek legislative consent until there has been progress in discussions to strengthen the convention.
29. Whilst the Scottish Government can accept the main purpose of the Agriculture Bill, given this fundamental difference of view the Scottish Government cannot recommend that the Parliament consents to the Bill in its current form or in current circumstances.

Scottish Government
October 2018
PART 1 - NEW FINANCIAL ASSISTANCE POWERS

Clauses 1 to 3:

These clauses give the Secretary of State powers to make payments to farmers and other rural businesses for a variety of purposes in several areas, including:

- improving and supporting access to the environment;
- restoring and enhancing cultural and natural heritage;
- increasing productivity in agriculture, horticulture and forestry;
- improving or protecting animal health and welfare;
- improving or protecting plant health;
- mitigating and adapting to climate change;

These powers, which relate to England only, are intended to cover both the short-term transition period and long-term future policy, and include rules on the forms and conditions for granting support (including publication of specific information about the support), and on monitoring and enforcing compliance with these rules.

PART 2 - FINANCIAL SUPPORT AFTER EXITING THE EU

CHAPTER 1

DIRECT PAYMENTS

Clauses 4-8:

This chapter relates to CAP direct payments (including greening and the young farmers payment) for England, and includes powers for the Secretary of State to allow for the rolling over and continuation of the current basic payment scheme after exiting the EU, termination of the scheme at the end of its last full scheme year, and a transition period (lasting seven years, from 2021 – 2028) during which direct payments would be phased out and replaced. Specific provision has been made for greening payments in England to be terminated before the end of the transition period.

This fits with Defra’s policy intention of rolling over the direct payment scheme on exit from the EU and phasing out and replacing direct payments during a transition period. These clauses allow the Secretary of State to amend or revoke any legislation relating to direct payments at the end of the transition period in order to facilitate a new policy or during the transition period to make changes to simplify or improve the scheme. Future support payments beyond the end of the transition period would be covered under the financial assistance powers in Part 1.

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9 An overview of the CAP is set out at pages 7 to 11 of the Explanatory Notes to the Bill.
CHAPTER 2

OTHER FINANCIAL SUPPORT: MODIFICATION OF LEGISLATION IN RELATION TO ENGLAND

Clauses 9-11: General provisions, abolition of aid for fruit and vegetable producer organisations in England, and Rural Development Programme.

The general provisions in clause 9 allow the Secretary of State to amend retained EU law relating to the financing, management and monitoring of the CAP.

Clause 10 grants the Secretary of State the power to modify retained EU Law in relation to aid for fruit and vegetable producer organisations (POs) with the aim of ending of such financial aid in England. The Scottish Government understands that Defra plans to continue to provide support to fruit and vegetable POs, but once the already-approved programmes have finished this will be done under the financial assistance powers in Part 1 of the Bill.

This clause only relates to financial support for POs, which under the CAP is limited to the fruit and vegetable sector. It does not cover other issues relating to POs, including their status under competition law – this is dealt with elsewhere in the Bill.

Clause 11 allows the Secretary of State to modify retained EU law relating to support for Rural Development, to ensure it no longer has effect or to simplify or improve its operation pending this. Defra plans to provide support for Rural Development in future, and this will be done through the financial assistance powers in Part 1.

PART 3 - COLLECTION AND SHARING OF DATA

Clauses 12-16:

These clauses give the Secretary of State power to require information from persons in, or closely connected to, an agri-food supply chain, for such purposes as helping increase productivity, encouraging fairness and transparency, promoting plant and animal health, etc., and to impose penalties on those failing to provide such information. These powers relate to agri-food supply chain activities in relation to England only, and cover both the initial transition period and long term policy.

PART 4 – INTERVENTION IN AGRICULTURAL MARKETS

EXCEPTIONAL MARKET CONDITIONS, PUBLIC MARKET INTERVENTION AND PRIVATE STORAGE AID: MODIFICATION OF EU LEGISLATION

Clauses 17-19:

These clauses allow the Secretary of State to make a declaration that there are exceptional market conditions (if there is a severe disturbance in agricultural markets, or a serious threat of disturbance), and to give financial assistance to agricultural
producers in England should their incomes be affected. They also allow the Secretary of State to modify retained EU law for England in relation to public market intervention and private storage aid.

PART 5 – MARKETING STANDARDS AND CARCASS CLASSIFICATION

Clauses 20 – 21:

These clauses relate to England only, and grant the Secretary of State the power to amend, or revoke, the retained EU law on marketing standards, and to introduce new marketing standards and tailor these to suit the domestic agricultural market in England. These powers are wider and more flexible than those currently in EU law, so that the Secretary of State can make changes either to keep pace with changes in EU standards made after exiting the EU, or for internal policy reasons.

PART 6 – PRODUCER ORGANISATIONS AND FAIRNESS IN THE SUPPLY CHAIN

Clauses 22 - 24: official recognition of producer organisations etc. and associated exemptions from competition law

The CAP currently makes provision for the official recognition of producer organisations and interbranch organisations, which gives them certain benefits, and the rules governing the operation of these organisations. An interbranch organisation is similar to a producer organisation but, in addition to farmers, it includes other parts of the supply chain (e.g. farmers plus abattoirs). The benefits of official recognition are: exemption from some elements of competition law; and the ability in certain circumstances to make rules which apply not just to their members but to other producers in the same sector.

These clauses give the Secretary of State power to amend or revoke retained EU law in relation to producer and interbranch organisations, and to introduce new legislation regarding the recognition of and rules governing such organisations, including exemption from competition law.

The UK Government takes the view that this is a reserved provision. The Scottish Government disagrees with this view.

Clause 25: Fair dealing obligations with agricultural producers (‘statutory industry codes’)

This clause gives the Secretary of State regulation-making powers to promote fair contractual dealing by the first purchasers of agricultural products. It is intended for the whole of the UK, and covers both the transition period and longer term policy. It allows obligations to be imposed on first purchasers of agricultural products, including in relation to the need for written contracts, and the terms of such contracts which may relate to matters such as the quantity and quality of the product, pricing mechanisms and payment, and variation of the contract, as well as the enforcement of compliance with such obligations through a complaints procedure and/or imposition of penalties.
The UK Government takes the view that this is a reserved provision. The Scottish Government disagrees with this view.

PART 7 - WTO AGREEMENT ON AGRICULTURE

Clause 26: WTO Agreement on Agriculture: regulations

This clause grants the Secretary of State powers to gather information to allow for the classification and reporting of agricultural support to the WTO. The powers also allow the Secretary of State to set out the total amount of domestic support for agriculture for the whole of the UK, and for England, Scotland, Wales and Northern Ireland separately. The powers allow the Secretary of State to define a process for how farm support should be classified for WTO purposes, including dispute resolution with the Secretary of State as final arbiter.

The UK Government takes the view that this is a reserved provision. The Scottish Government disagrees with this view. In addition, there are already mechanisms in the in the Scotland Act 1998 to ensure compliance with international obligations\(^{10}\). The Scottish Government is also concerned that the clause is very broad, and would allow the Secretary of State unilaterally to set limits on all agricultural support, not just the classes which are limited by the WTO.

PART 8 and SCHEDULES 3 & 4 – WALES AND NORTHERN IRELAND

Clauses 27 – 28

These clauses specify that Schedule 3 makes provision in relation to Wales and Schedule 4 makes provision in relation to Northern Ireland.

Welsh ministers have chosen to take similar powers to England in terms of new financial assistance powers (but in addition make specific provision to support businesses and communities in rural areas), the agricultural transition period, and phasing out and termination of direct payments. They have also taken similar powers in terms of the collection and sharing of data, intervention in agricultural markets, and marketing standards and carcass classification. The Welsh Government is planning to introduce its own Bill at a future date to cover longer-term agricultural support, after which it will presumably stop relying on the powers in this UK Parliament Bill.

In relation to Northern Ireland, the Bill includes powers to modify the basic payment scheme in order to simplify or improve it, and powers covering the collection and sharing of data, intervention in agricultural markets, and marketing standards and carcass classification.

\(^{10}\) See, for example, the powers in sections 35 and 58 of the Scotland Act 1998.
PART 9 – FINAL PROVISIONS

Clauses 29 – 36

These are general clauses relating to the interpretation of, and legislative procedures for the exercise of regulation-making powers under the Bill. Clause 29 specifies the procedure to be followed for the exercise of different regulation-making powers where they are subject to the negative procedure or the affirmative procedure for parliamentary scrutiny.

SCHEDULE 1 – AGRICULTURAL PRODUCTS: SECTORS

Part 1 – Agricultural sectors relevant to marketing standards provisions

This Part relates to the agricultural sectors that are subject to the power to make regulations in respect of marketing standards and carcass classification as provided for in Part 5, clause 20 of the Bill.

Part 2 – Agricultural sectors relevant to producer organisation and fair dealing provisions

This part relates to the agricultural sectors that are subject to the provisions relating to the application for recognition of producer organisations in Part 6, clause 22, regulations under Part 6, clauses 22 and 23, and the fair dealings obligations of first purchasers of agricultural products in Part 6, clause 25 of the Bill.

Part 3 - Regulations

This part contains the provision to make regulations amending Part 1 or 2 of the Schedule to add or remove a sector or for setting out products that fall within each sector.

SCHEDULE 2 – RECOGNISED ORGANISATIONS: COMPETITION EXCLUSIONS

This relates to Part 6, clause 23 of the Bill in relation to competition exemptions for recognised organisations and amends Schedule 3 to the Competition Act 1998 (general exclusions) in that regard.

SCHEDULES 3 & 4 – POWERS RELATING TO WALES AND NORTHERN IRELAND

See comments under Part 8 above.
SCHEDULE 5 – THE CMO REGULATION: CONSEQUENTIAL AMENDMENTS

This schedule provides for consequential amendments to the CMO Regulation (Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products) contained in Part 9, clause 31 of the Bill as follows:

- Part 4 (intervention in agricultural markets: England);
- Part 4 of Schedule 3 (intervention in agricultural markets: Wales);
- Part 3 of Schedule 4 (intervention in agricultural markets: Northern Ireland);
- Part 5 (marketing standards and carcass classification: England);
- Part 5 of Schedule 3 (marketing standards and carcass classification: Wales);
- Part 4 of Schedule 4 (marketing standards and carcass classification: Northern Ireland).
ANNEX B

CLAUSES FOR WHICH THE SCOTTISH GOVERNMENT CONSIDERS THAT LEGISLATIVE CONSENT IS REQUIRED

<table>
<thead>
<tr>
<th>Provision</th>
<th>Effect</th>
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<tbody>
<tr>
<td>Part 6 (clauses 22 to 24)</td>
<td></td>
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<tr>
<td>Powers relating to the official recognition of producer and interbranch organisations, and associated exemptions from competition law.</td>
<td>Requires the Scottish Parliament’s consent as it is for devolved purposes, namely the promotion of an effective agricultural market.</td>
</tr>
<tr>
<td>Part 6 (clause 25)</td>
<td></td>
</tr>
<tr>
<td>Powers relating to Fair dealing obligations of first purchasers of agricultural products (‘Statutory Industry Codes’).</td>
<td>Requires the Scottish Parliament’s consent as it is for devolved purposes, namely, the regulation of unfair contractual terms in commercial contracts by agricultural producers in Scotland.</td>
</tr>
<tr>
<td>Part 7 (clause 26)</td>
<td></td>
</tr>
<tr>
<td>Powers to introduce regulations in relation to the WTO Agreement on Agriculture.</td>
<td>Requires the Scottish Parliament’s consent as it relates to the implementation of international obligations (namely those arising from the WTO Agreement on Agriculture) as regards matters (agriculture support) which are not reserved, and contains provisions which would affect the executive competence of the Scottish Ministers as regards the exercise of functions concerning agriculture support in Scotland.</td>
</tr>
<tr>
<td>Part 9 (clauses 29 (apart from paragraphs (2), (6)(b) and (c), and (7)(b) and (c)); 30; 32; 34; 35 and 36)</td>
<td>Those require the Scottish Parliament’s consent so far as those relate to provisions in Parts 6 and 7 within the legislative competence of the Scottish Parliament or so far as affecting the executive competence of the Scottish Ministers.</td>
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