

# Transport (Scotland) Bill

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## Delegated Powers Memorandum

### Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Transport (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

### Outline of Bill Provisions

2. The Bill confers powers on the Scottish Ministers to make regulations in relation to a range of matters dealt with in the Bill. The powers conferred by the Bill are, for the most part, either of a technical and procedural nature or relate to matters which because of their character require a flexible approach and thus are more appropriate to be dealt with by subordinate legislation.

3. Many of the provisions within the Bill amend existing Transport Acts. There are 75 sections in six Parts as follows:

- Part 1 – Low emission zones: makes provision in relation to the creation and enforcement of low emission zones in Scotland.
- Part 2 – Bus services: ensures that local transport authorities have viable and flexible options to improve bus services in their areas.
- Part 3 – Ticketing arrangements and schemes (“smart ticketing”): makes provision enabling the Scottish Ministers to specify a national technological standard for the implementation and operation of smart ticketing arrangements and providing local transport authorities with additional powers to develop and deliver effective smart ticketing arrangements and schemes.
- Part 4 – Pavement parking and double parking: introduces prohibitions on parking on pavements and double parking.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

- Part 5 – Road works: enhances the role of the Scottish Road Works Commissioner (SRWC) and the wider regulation of road works.
- Part 6 – Miscellaneous and General, includes providing Regional Transport Partnerships (Transport Partnerships) with more financial flexibility and improves the governance of Scotland’s canals.

## Rationale for Delegated Powers

4. The Scottish Government has had regard to, when deciding where and how provisions should be set out in subordinate legislation rather than on the face of the Bill, the need to:

- strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- make proper use of valuable parliamentary time;
- take account of the likely frequency of amendment;
- allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation; and
- anticipate unexpected issues arising which might otherwise frustrate the purpose of provisions in primary legislation approved by the Parliament.

5. In particular, powers to provide detail such as the form and content of implementing regimes in regulations have been included to allow them to take advantage of future developments in technology.

6. Low emission zones, bus services, smart ticketing, pavement parking and double parking, and road works all include a number of delegated powers by which administrative and technical detail is provided, allowing the detail to be updated as circumstances change.

7. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power was taken in the Bill and, where relevant, why the selected form of parliamentary procedure has been considered appropriate.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Delegated Powers

### Low Emission Zones

#### Section 1(4) – Restriction on Driving Within a Zone

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative for provision made under section 1(4)(a) and (c), affirmative for provision made under section 1(4)(b)

## Provision

8. Section 1 provides for restrictions within a low emission zone. Subsection (4)(a) allows the Scottish Ministers to specify the emission standard for the purpose of subsection (1)(a) whereby a person may not drive a vehicle on a road within a low emission zone unless the vehicle meets the specified standard.

9. Subsection (4)(b) allows the Scottish Ministers to specify vehicles or types of vehicle which are exempt for the purpose of subsection (1)(b) whereby a person may not drive a non-compliant vehicle on a road within a low emission zone when the zone is operational unless the vehicle is exempt.

10. Subsection (4)(c) allows the Scottish Ministers to make provision for or in connection with the amount that may be imposed as a penalty charge under subsection (2) whereby a person drives a vehicle on a road in contravention of subsection (1) and a penalty charge is payable.

## Reason for taking power

11. Emission standard – the regulations enable the Scottish Ministers to change the standard in the future to take account of new vehicle emission technologies and to account for the composition of vehicles on the road changing over time, noting that a larger proportion of the fleet will emit fewer emissions. This approach also takes account of the fact that there is no safe human health limit for air pollution, so offers the ability to tighten national emission standards over time. Vehicles failing to comply with the standard will be subject to the enforcement measures once the low emission zone grace periods have passed. As such, the national emission standards will be set by regulations and are not defined in the Bill. It may

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

be a reasonable assumption that the standard will be consistent with the general leading emission standards for low emission zones established across Europe – presently Euro VI/6 for diesel vehicles and Euro IV/4 for petrol vehicles which are consistent with the standards proposed for the London Ultra Low Emission Zone and the UK Government’s Clean Air Zone framework.

12. Exemptions – the regulations enable the Scottish Ministers to apply exemptions consistently across Scotland. Local authorities will have no ability to vary or choose at their discretion from the exemptions listed in the regulations. It is considered appropriate to specify exemptions through regulations as the types of vehicles (but not necessarily the use of some vehicles) which impact to a measurable degree on local emission standards may change over time.

13. Penalty charge – the regulations enable the Scottish Ministers to set penalty charges based on the size of the vehicle (e.g. car versus heavy goods vehicle), set the level of penalty charge, and set out the circumstances in which penalty charges can be subject to a discount or escalate over time. The level of detail for the charge regime is such that it is more suited to secondary legislation than primary legislation. In addition, the Scottish Ministers need to be able to amend the levels of penalty charge, surcharge and discount which may be applied: matters such as inflation or effectiveness as a deterrent may result in the need to vary the penalty charge.

## **Choice of procedure**

14. The regulations for the national emission standard are technical in nature and likely to remain consistent with general leading emission standards across Europe. In relation to penalties, the Bill establishes the principle that contravention of the prohibition should be punishable by civil penalty. This secondary legislation power will supplement that provision of principle by setting out the detailed level of the penalty and the level of discount or surcharge that may apply. In respect of both of these matters it is considered that sufficient parliamentary scrutiny is available through the negative procedure. As regards which vehicles are exempt, affirmative procedure is appropriate as it allows for greater parliamentary scrutiny in relation to this important issue which will have a direct impact on the effectiveness of proposed low emission zones.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Section 2(4)(B) – Issue of a Penalty Charge Notice**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

### **Provision**

15. Section 2(4)(a) states that a penalty charge for a contravention of section 1(2) is payable to the local authority which issued the penalty charge notice by the registered keeper of the vehicle. Section 2(4)(b) provides a power to the Scottish Ministers to specify a person other than the registered keeper of a vehicle to whom a local authority may issue a penalty charge.

### **Reason for taking power**

16. The power in section 2(4)(b) allows for the Scottish Ministers to ensure that local authorities can issue the penalty charge to the appropriate person, where that person is not the registered keeper of the vehicle. It may include different situations, including persons driving hire vehicles or car club vehicles or persons driving a vehicle for which they are insured but are not the registered keeper at the time of the contravention.

### **Choice of procedure**

17. The regulations will contain provision relating to the identification of the party responsible for the operation of a vehicle in particular circumstances, and therefore who should be liable for any resulting penalty charge. This is a matter of technical detail and as such negative procedure is considered to provide an appropriate level of parliamentary scrutiny.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Section 3(1) – Enforcement

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative, except in relation to the creation of criminal offences (section 3(1) and (3)(a)) which are subject to affirmative procedure.

### Provision

18. Section 3(1) enables the Scottish Ministers, by regulations, to make provision for or in connection with the enforcement of low emission zone schemes about: the issue of penalty charge notices; the timing and manner of payment of a penalty charge; reviews; appeals; the manner in which a penalty charge notice may be enforced; issuing of a further penalty charge notice following cancellation of a penalty charge notice; and enabling local authorities to enter into arrangements with any person in connection with the exercise of a function conferred on a local authority. In addition, provision may be made for creating offences and about the records to be produced by or in connection with approved devices. The maximum penalty that may be provided for in regulations for creating offences is, on summary conviction, a fine not exceeding level 5 on the standard scale.

### Reason for taking power

19. The Scottish Ministers believe that the enforcement regime for low emission zones is something which is best placed in subordinate legislation in order to enable it to be adaptive to the needs of the schemes and respond quickly to changes in behaviour or practice. Further, much of the detail of the enforcement regime is likely to be technical and procedural and therefore better suited to subordinate legislation.

### Choice of procedure

20. Most of the regulations to be made under this power are of a procedural and technical nature prescribing the process of enforcement, and the negative procedure is considered to provide an appropriate level of parliamentary scrutiny. The exception is regulations made under section 3(1) of the type mentioned in subsection (3)(a) which are subject to affirmative procedure as such regulations can create criminal offences. The greater parliamentary scrutiny afforded by affirmative procedure is appropriate for regulations creating criminal offences.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Section 6(E) – Prior Consultation

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

### Provision

21. Section 6(e) provides the power for the Scottish Ministers, by way of regulations, to make provision to specify other persons whom local authorities must consult before a local authority asks the Scottish Ministers to approve the making, amendment or revocation of a low emission zone.

### Reason for taking power

22. Low emission zones will impact on a wide variety of vehicle users but will also seek to achieve environmental betterment with gains to be sought across health, natural and physical environments. As persons with whom a local authority may be expected to consult may change over time as road transport evolves, it is considered appropriate to specify such persons in regulations.

### Choice of procedure

23. As the addition of further consultees is likely to be uncontroversial it is considered to be a matter of detail not significant enough to warrant affirmative procedure: negative procedure is considered to allow for sufficient parliamentary scrutiny

## Section 8 – The Scottish Ministers’ Power to Regulate Process

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

### Provision

24. Section 8 provides a power to the Scottish Ministers, by way of regulations, to require a local authority to specify the form of a scheme or any amendment or revocation of it; to make provision about consultation on proposals (including the publication of scheme proposals and consideration

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

of representations in relation to a low emission zone scheme); and, about the publication of notice of the making, amendment or revocation of a scheme and of their effect.

## **Reason for taking power**

25. Low emission zones are a new regime and as such flexibility is required for the Scottish Ministers to be able to amend the form, consultation and publication requirements in relation to the procedures for creating a low emission zone scheme.

## **Choice of procedure**

26. The regulations made under this power will set out the procedural requirements relating to the establishment, amendment or revocation of a low emission zone scheme. As such the regulations will deal with matters of a formal, technical nature only. It may be necessary for those formal procedural requirements to change over time as experience is developed in relation to the practical realities of establishing low emission zones. In light of these factors it is considered that the negative procedure allows for sufficient parliamentary scrutiny.

## **Section 14 – The Scottish Ministers’ Power to Specify Additional Content**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** negative

## **Provision**

27. Section 14 provides a power to the Scottish Ministers, by way of regulations, to prescribe further information that may or must be included in a low emission zone scheme. The power in section 14 is intended to allow further information for inclusion in low emission zone schemes to be prescribed once feedback has been received from local authorities as to how the schemes are operating in practice. This power could be used, for example, to provide in regulations that local authorities must include in a low emission zone scheme their policy as to the use of the power in section 18 regarding temporary suspension for events.



This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Reason for taking power**

28. Low emission zones are a new regime and as such flexibility is required for the Scottish Ministers to be able to amend provisions relating to content which are expected to be too detailed and technical for primary legislation.

## **Choice of procedure**

29. The regulations to be made under this power are procedural, regarding matters of an operational nature, and so the negative procedure allows for sufficient parliamentary scrutiny.

## **Section 16(1) – Approved Devices**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

## **Provision**

30. Section 16(1) provides a power to the Scottish Ministers to specify the approved devices to be used for or in connection with the operation and enforcement of a low emission zone scheme. The Scottish Ministers will provide for the use of automatic number plate recognition (ANPR) cameras as the default enforcement approved device approach. This will enable the enforcement regime to stand up to scrutiny, legal challenge and appeals as any penalty charge notice would be expected to be underpinned by a record of a contravention produced by an approved device. This is standard practice for moving traffic offences.

## **Reason for taking power**

31. This approach accommodates the fast pace of technology renewal and enables the approved device to be changed in future to take into account technological developments and provide for the most suitable approved device at that time. This approach also enables scope for technology within the sphere of monitoring emissions, such as remote sensing technology, to be utilised in the future to some degree.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Choice of procedure**

32. The regulations are technical in nature relating to the practical issue of which devices are approved for the purposes of enforcement of low emission zones. As such, the negative procedure is considered to provide an appropriate level of parliamentary scrutiny.

## **Section 22(1) – Accounts**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

## **Provision**

33. Section 22(1) provides the power for the Scottish Ministers, by way of regulations, to make provision about the keeping of accounts by local authorities relating to low emission zones, particularly to specify the form of the accounts; require the publication of a statement of account, and specify the manner in which it must be published; and make provision about what may, or must, be done jointly where a low emission zone scheme is made jointly.

## **Reason for taking power**

34. The requirements specified for the form of an annual account and the manner in which a statement of account is published must be flexible enough to be amended through time.

## **Choice of procedure**

35. The detail in the regulations relating to the keeping of accounts is technical in nature. It is considered appropriate for these regulations to be subject to the negative procedure to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Section 24(1) – Direction to Carry Out a Review

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** direction

**Parliamentary procedure:** none

### Provision

36. Section 24(1) provides the power for the Scottish Ministers to direct a local authority requiring it to carry out a review of the operation and effectiveness of a low emission zone scheme operated by it. The direction must be in writing and published, and the Scottish Ministers may amend or revoke a direction. The review must make an assessment of whether the objectives of the scheme are being achieved. on completion, the local authority must prepare a report and give a copy to the Scottish Ministers.

### Reason for taking power

37. This direction-making power will allow the Scottish Ministers to require local authorities to carry out reviews as to the operation and effectiveness of low emission zones. The reviews carried out in response to directions will inform any necessity for a possible amendment to, or revocation of, a low emission zone scheme.

### Choice of procedure

38. These directions are largely technical in nature and will provide practical detail about reviews that local authorities are likely to conduct as a matter of good practice anyway, and therefore parliamentary scrutiny is not considered appropriate. Accordingly, no parliamentary procedure is attached to the exercise of this power.

## Section 25(1) – Action Following a Review

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** direction

**Parliamentary procedure:** none

### Provision

39. Section 25(1) provides the Scottish Ministers with a power to direct a local authority to require it to take such steps as are specified after receiving the report on completion of a review of the low emission zone.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

Directions under this power can be issued where the Scottish Ministers consider that: the scheme's objectives are not being achieved, and are not likely to be achieved within a reasonable period; the local authority has failed to discharge any duty imposed on it; the actions, or proposed actions, of the local authority in purported compliance with provision made under or by virtue of this Part are inappropriate in all the circumstances of the case; or developments in science or technology, or material changes in circumstances, have rendered inappropriate the actions or proposed actions of a local authority in pursuance of the provision made. The direction must be in writing and published and the Scottish Ministers may amend or revoke a direction.

### **Reason for taking power**

40. Following any review into a low emission zone under section 24, it may be necessary for the Scottish Ministers to intervene in some way. Taking the power to give a direction to the local authority enables the Scottish Ministers to take a flexible and proportionate action relative to any issues that have arisen.

### **Choice of procedure**

41. These directions are largely technical in nature and will be addressing practical matters in a circumstance-specific way based on engagement with local authorities, and therefore parliamentary scrutiny is not considered to be necessary or appropriate. Accordingly, no parliamentary procedure is attached to the exercise of this power.

### **Section 26 – Guidance**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** guidance

**Parliamentary procedure:** none

### **Provision**

42. Section 26 gives the Scottish Ministers the power to issue guidance about low emission zones to which local authorities must have regard when exercising their functions under Part 1 of the Bill.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Reason for taking power**

43. Low emission zones are a new regime and as such it is appropriate that the Scottish Ministers should have the power to issue guidance about low emission zones for the assistance of local authorities.

## **Choice of procedure**

44. This guidance is largely technical and practical in nature and therefore parliamentary scrutiny is not appropriate. Accordingly, no parliamentary procedure is attached to the exercise of this power.

## **Bus Services**

**Section 29(2) - New Section 3c of the Transport (Scotland) Act 2001 (2001 Act) – Partnership Schemes: Service Standards**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

## **Provision**

45. Section 29(2) inserts new section 3C into the 2001 Act. Section 3C provides that a partnership scheme may impose two forms of service standard, a “route service standard” or an “operational service standard.” Subsection 3C(3)(d) specifies that among other things an operational service standard may impose requirements about the pricing of multi-operator travel cards.

46. Subsection 3C(6) provides that the Scottish Ministers may, by regulations, define the expression “multi-operator travel cards” for the purposes of this section.

## **Reason for taking power**

47. The agreement of a common price for multi-operator travel cards is permitted under the Competition Act 1998 Public Transport Ticketing Schemes Block Exemption Order 2001 (SI 2001/319 at Article 13(2)) Article 3 of that order (as amended by the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) (Amendment) Order 2016) defines

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

the expression “multi-operator travel cards” and the intention is to use this definition for the purposes of section 3C. As this may change from time to time, taking a power to set the definition in regulations allows it to keep pace without the need for amendments to primary legislation. Taking a power to define “multi-operator travel cards” for the purposes of this section will allow for the definition to attract or keep up with the position in the Block Exemption Order without the need for amendments to primary legislation.

## **Choice of procedure**

48. This power will address a technical issue and is required to maintain alignment with the relevant UK legislation. It is not considered significant enough so as to warrant affirmative procedure; negative procedure is thought to afford sufficient parliamentary scrutiny.

## **Section 29(2) – New Section 3d of the 2001 Act – Route Service Standards: Modification for Overprovision**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

## **Provision**

49. Section 29(2) inserts new section 3D into the 2001 Act. This deals with the scenario in which, due to an increase in the number of operators in the area to which the scheme relates, it may become impossible for a route service standard which imposes a maximum frequency standard, to be complied with. As such, section 3D requires that where a partnership is in operation and a route service standard is in place the local transport authority must modify the route service standard if they are satisfied that due to an increase (or expected increase) in the number of operators registered in respect of the area of the scheme, the service cannot be provided in accordance with the route service standard.

50. Subsection 3D(4) provides that the Scottish Ministers may, by regulations, make further provision about the modification of route service standards, including:-

- The process that a local transport authority must comply with before making a modification;

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

- The circumstances in which a modification may be postponed and the process to be followed to postpone a modification;
- Specifying the circumstances in which the section is not to apply.

## **Reason for taking power**

51. Regulations relating to modification for overprovision may require going into detailed matters such as procedure, requirements of notices and other incidental matters. The nature and form of this regulation will be determined in part by prior consultation with the relevant parties including the traffic commissioner, local transport authorities and bus operators. The Scottish Ministers require powers to ensure that further provision for appropriate detailed arrangements, which may well require change over time, can be made in connection with this aspect of BSIPs. It would not be appropriate to prescribe such detailed arrangements in primary legislation as this would not represent a good use of scarce parliamentary resources.

## **Choice of procedure**

52. This power relates to a technical and detailed issue about how this specific aspect of a BSIP will operate in practice. The regulations are also likely to be procedural in nature. Therefore negative procedure is thought to afford sufficient parliamentary scrutiny.

## **Section 29(2) – New Section 3l of the 2001 Act – Further Provision**

**Power conferred on:           the Scottish Ministers**

**Power exercisable by:       regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

## **Provision**

53. Section 29(2) also inserts new section 3L into the 2001 Act. Section 3L(1) provides that the Scottish Ministers may make further provision about partnership plans and schemes, the procedures to be followed to prepare and make, postpone, vary and revoke a plan or scheme, and reviewing and reporting on the operation of a plan and scheme. Section 3L(2) provides that the regulations may make provision about:-

- the form and content of a plan or scheme;

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

- descriptions of local services or types of local services which may or must be exempted from a scheme;
- what may constitute a facility or measure;
- the conditions that may be specified in a scheme for its variation or revocation; and
- the form and content of any notice to be given in connection with a plan or scheme.

## **Reason for taking power**

54. The regulations will provide further detailed structure on matters relevant to BSIPs which will support the wider provision contained in the Bill. This includes the ability for the Scottish Ministers to supplement the comprehensive procedures for establishing, varying and revoking plans and schemes with those aspects of process which are expected to be too detailed and technical to be suited for primary legislation.

55. This power will also allow Scottish Ministers to address a number of issues which will need to be developed in discussion with bus operators and local transport authorities in secondary legislation, such as descriptions of local services that may or must be exempted. In particular detailed technical work is required with local transport authorities and operators to determine what constitutes a facility or measure to ensure that they are both realistic and appropriate to adopt.

56. Some regulations are likely to require to be updated over time to reflect changes in technology and the evolution of the bus market. It is also expected that there may be a need for amendments to regulations in light of experience using new BSIPs plan and scheme provisions.

57. It is necessary that the Scottish Ministers should have the powers to ensure that appropriate detailed arrangements, which may well require change over time, can be made in connection with the introduction of this new form of partnerships. It would not be appropriate to prescribe such detailed arrangements in primary legislation.

## **Choice of procedure**

58. This power relates to the technical and detailed issues of how BSIPs will operate in practice. The regulations are also likely to be procedural in



This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

nature. Therefore negative procedure is thought to afford sufficient parliamentary scrutiny.

## Section 30(2) – New Part 4 of Schedule 1a of the 2001 Act – Procedures for Partnership Plans and Schemes

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** affirmative

### Provision

59. Section 30(2), paragraph 26 of Part 4 of schedule 1A provides a power of the Scottish Ministers to specify certain expressions used in the schedule. This in particular provides definitions around the arrangements for a voting mechanism to allow operators to object to a plan or scheme. Paragraph 26 provides that under these regulations the Scottish Ministers may specify:-

- The descriptions of local services that are qualifying local services for the purposes of the schedule;
- What constitutes a sufficient number of persons for the purposes of paragraphs 5(1), 7(4), 15(1), 17(4) and 24 of the schedule;
- How the qualifying time is to be determined for the purposes of paragraphs 13(a), 14(1), 17(2) and (4), 23(1) and 24 of the schedule.

60. In particular the regulations may require that the sufficient number of persons is all persons providing qualifying local services in the area, or such number of persons as, together, provide at least such proportion of the qualifying local services in the area as are specified, in addition to being at least such a proportion of all persons providing those services as specified.

61. They may also make provision about determining the proportion of qualifying local services provided by an operator, including provision about the time by reference to which the proportion is to be determined.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Reason for taking power**

62. The Bill contains detailed provisions about how a local transport authority should prepare and make a BSIP plan and/ or scheme. This includes a requirement to allow operators the opportunity to object to the plan and/ or scheme and the requirement for consultation. Regulations will provide further detailed specification as to who is able to object, and the scale and proportion of objections needed, to prevent a plan and/or scheme being progressed further.

63. The regulations will be developed in discussion with bus operators and local transport authorities, and it is anticipated that they may require to be updated over time to reflect the evolution of the bus market. It is also expected that there may be a need for amendments to the regulations in light of experience using new BSIPs plan and scheme provisions.

64. When considering the number of operators who would need to object to the making (or variation or revocation) of a proposed plan or scheme, the Scottish Ministers' intention is to strike a fair balance between the views of larger and smaller operators. Regulations will specify who can disagree and the scale of objections needed to prevent the plan and/ or scheme from being taken further, but these may need to be revisited and updated over time as more BSIPs are established and evolve, in order to ensure that they work effectively in practice for both bus operators and local transport authorities.

65. It is necessary that the Scottish Ministers should have the powers to ensure that an appropriate, detailed, voting mechanism which may well require change over time, can be made in connection with the introduction of this new form of partnerships. It would not be appropriate to prescribe such detailed arrangements in primary legislation.

## **Choice of procedure**

66. The regulations made under this power could have a significant influence on the overall effect of a BSIP plan or scheme. Given this and the potential for effects on operators, particularly smaller ones, it is considered that affirmative procedure is warranted to afford sufficient parliamentary scrutiny.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Section 31(3) – New Section 6m of the Transport Act 1985 (1985 Act) – Appeals Against Decisions Relating to Service Standards

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** negative

### Provision

67. Section 31(3) inserts new section 6M into the 1985 Act. Section 6M provides that the Scottish Ministers may, by regulations, make provision for or about appeals relating to any:-

- decision to record a service standard as a prescribed particular under section 6(2ZA)
- refusal of an application under section 6K(2) or,
- cancellation of a registration by virtue of section 6L(2)
- decision to register a service that has a stopping place within the scheme area, or
- decision not to record a service standard in relation to such a service under section 6(2ZA).

### Reason for taking power

68. Taking a power to make provision about appeals in relation to BSIP plans and schemes will ensure provision of a robust appeals mechanism, and provide the Scottish Ministers with flexibility to establish an appropriate appeals mechanism against the decisions of the traffic commissioner relating to bus registration.

### Choice of procedure

69. Regulations relating to appeals from decisions of the traffic commissioner will be of a technical and detailed nature, and will specify procedures for appealing and the body to which appeals can be made. They are also likely to be procedural in nature, and therefore, negative procedure is thought to afford sufficient parliamentary scrutiny.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Section 32(2) – New Section 13e of the 2001 Act – Assessment of Proposed Franchising Framework (Guidance)

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** guidance

**Parliamentary procedure:** no procedure

### Provision

70. Section 32(2) inserts new section 13E into the 2001 Act. Section 13E provides that a local transport authority which proposes to make a franchising framework must prepare an assessment of the proposed framework and sets out the criteria the assessment must address. Subsection 13E(5) requires the Scottish Ministers to issue guidance in relation to the preparation of an assessment for a franchising framework, and that the guidance may, in particular, include guidance about methods to be used when assessing a proposed framework.

### Reason for taking power

71. An assessment of a franchising framework will be a highly detailed and technical document which must address a number of key criteria. Guidance issued by the Scottish Ministers will provide further detail to local transport authorities to support the assessment of a proposed franchising framework and inform the consideration of a proposed franchising framework by the franchising approval panel. The guidance will be developed in discussion with bus operators and local transport authorities, and may require updating over time, primarily to reflect newly emerging best practice and experience of using the new franchising provisions, rather than substantive changes to the underlying principles. In view of the complexity, potential for future change and need for consultation it is not felt appropriate to set out this level of detail on the face of the Bill.

### Choice of procedure

72. The provision of technical guidance on the assessment of a franchising framework made under the Bill is considered to be a matter of technical and practical detail not warranting parliamentary scrutiny. Accordingly, no parliamentary procedure is attached to the exercise of this power.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Section 32(2) – New Section 13f of the 2001 Act – Audit of Proposed Franchising Framework (Guidance)

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** guidance

**Parliamentary procedure:** no procedure

### Provision

73. Section 32(2) inserts new section 13F into the 2001 Act. Section 13F provides that if a local transport authority, after preparing an assessment of a proposed franchising framework under section 13E, wishes to proceed with the proposed framework they must obtain a report from an auditor on the analysis of the financial implications contained in the assessment. Subsection 13F(4) requires that the auditor must, when preparing a report under this section, have regard to any guidance issued by the Scottish Ministers in relation to the preparation of such reports.

### Reason for taking power

74. In carrying out an Audit of a proposed franchising framework an auditor will be required to consider, among other things, whether the information relied on by the local transport authority in conducting the analysis is of sufficient quality, the analysis of that information is of sufficient quality and the local transport authority have had regard to guidance when preparing the analysis.

75. An audit of a proposed franchising framework will be a technical document which must address a number of key criteria in relation to the financial implications contained in the local transport authority's assessment. Guidance issued by the Scottish Ministers will provide further detail to the auditor to support their examination of the assessment and inform the consideration of a proposed franchising framework by the franchising approval panel. The guidance will be developed in discussion with stakeholders including financial experts, local transport authorities and bus operators. It may also require updating over time, primarily to reflect newly emerging best practice and experience of using the new franchising provisions, rather than substantive changes to the underlying principles. In view of the complexity, potential for future change and need for consultation it is not felt appropriate to set out this level of detail on the face of the Bill.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Choice of procedure**

76. The provision of technical guidance on the audit of a franchising framework made under the Bill is considered to be a matter of technical and practical detail not warranting parliamentary scrutiny. Accordingly, no parliamentary procedure is attached to the exercise of this power.

## **Section 32(2) – New Section 13h of the 2001 Act – Modification of Proposed Franchising Framework (Guidance)**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** guidance

**Parliamentary procedure:** no procedure

## **Provision**

77. Section 32(2) inserts new section 13H into the 2001 Act. Section 13H sets out that where a local transport authority, following a consultation under section 13G, considers it appropriate to modify the proposed franchising framework they may make such modification as they consider appropriate. Where the local transport authority considers that the modifications materially affect any part of the previous assessment they must prepare a new assessment of a proposed framework. Section 13H(5) requires the Scottish Ministers to issue guidance in relation to the circumstances in which a local transport authority must prepare a new assessment of a proposed framework.

## **Reason for taking power**

78. Guidance issued by the Scottish Ministers will provide further detail to local transport authorities to assist in determining whether new assessment is required following modifications to a proposed franchising framework. The guidance will be developed in discussion with bus operators and local transport authorities, and may require updating over time, primarily to reflect newly emerging best practice and experience of using the new franchising provisions, rather than substantive changes to the underlying principles. In view of the complexity, potential for future change and need for consultation it is not felt appropriate to set out this level of detail on the face of the Bill.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Choice of procedure**

79. The provision of technical guidance on the circumstances when a new assessment of a franchising framework will be required is considered to be a matter of technical and practical detail not warranting parliamentary scrutiny. Accordingly, no parliamentary procedure is attached to the exercise of this power.

## **Section 32(2) – New Section 13m of the 2001 Act – Postponing Commencement of Franchising Frameworks or Variations**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** affirmative

## **Provision**

80. Section 32(2) inserts new section 13M into the 2001 Act which allows for the postponement of the introduction of a franchising framework. It also provides that the maximum period of postponement of a framework is 12 months.

81. Subsection 13M(5) provides that the Scottish Ministers may, by regulations, make provision in relation to postponements including reducing or extending the maximum period of postponement as it appears in subsection (2).

## **Reason for taking power**

82. Postponement of a franchising agreement could create considerable uncertainty for operators and limiting the period of postponement is intended to address this. However in light of experience it may be that an alternative period is considered more appropriate and the power to make regulations will enable amendment to be made in these circumstances.

## **Choice of procedure**

83. While these regulations deal with procedural details, the changes made under 13M(5) would result in modification of primary legislation and

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

as such it is considered that affirmative procedure is warranted to afford sufficient parliamentary scrutiny.

## Section 32(2) – New Section 13q of the 2001 Act – Local Services Franchises – Non-Implementation of Franchising Frameworks

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** affirmative

### Provision

84. Section 32(2) inserts new section 13Q(1) into the 2001 Act which provides that a franchising framework will cease to have effect 12 months after the making of the framework unless, the local transport authority have entered into a franchise agreement in respect of each local service in the framework or, have applied for variation of the framework within that period. Section 13Q(3) provides that after the end of the 12 month period, but where variation has been applied for within that time, a framework will cease to have effect on the date an independent panel refuses to approve variation or, 6 months after approval of a variation.

85. Subsection 13Q(4) provides that the Scottish Ministers may, by regulations, amend subsections (1) and (3) to provide a different period for those specified in relation to non-implementation.

### Reason for taking power

86. The non-implementation of a franchising agreement could create considerable uncertainty for operators and limiting the period of which this can apply for is intended to address this. However in light of experience it may be that an alternative period is considered more appropriate and the power to make regulations will enable amendment to be made in these circumstances.

### Choice of procedure

87. While these regulations deal with procedural details, the changes made under 13Q(4) will result in amendments to primary legislation and as



This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

such it is considered that affirmative procedure is warranted to afford sufficient parliamentary scrutiny.

## Section 32(2) – New Section 13s of the 2001 Act – Further Provision about Franchising Arrangements

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

### Provision

88. Section 13S provides that the Scottish Ministers may make further provision for or in connection with local service franchises. Section 3S(2) provides that the regulations may, in particular, make provision about regulations may make provision with respect to:-

- the process to be followed when making, varying or revoking a franchising framework (including: the form and content of notices, prescribing time periods for carrying out aspects of the process, the assessment and audit of proposed franchising frameworks, the consultation process to be followed, the holding of inquiries or hearings in connection with objections or representations and the approval making process for proposed franchising frameworks or proposals to vary or revoke franchising frameworks);
- the local services which may or must be exempted from franchising frameworks and the conditions attached to such exclusions;
- the approval panels which may be convened, the functions of the panel and terms and conditions of members (including: provision about appointment removal and replacement of members, the remuneration of panel members and the process to be followed by the panel in making decisions).

89. Regulations may also make transitional provision in connection with: the coming into operation of franchising frameworks; the variation of frameworks and the ending of frameworks. In particular, such provision may be made for the application, disapplication or modification of any provision of section 6 to 9 of the Transport Act 1985 (bus registration).

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Reason for taking power**

90. The regulations will provide a detailed structure on matters relevant to local service franchising which will support the wider provisions of the Bill. This includes the ability for the Scottish Ministers to supplement the comprehensive procedures for establishing, varying and revoking franchising frameworks by dealing with those aspects which are expected to be too detailed and technical to be suited to primary legislation.

91. This power will also allow the Scottish Ministers to address a number of issues which will need to be developed in discussion with bus operators and local transport authorities in secondary legislation, such as consultation and approval processes, descriptions of local services which may be exempted and the operation and approval processes of the panel.

92. Some regulations are expected to require updating over time to reflect changes in technology and the evolution of the bus market. It is also expected that there may be a need for amendments to regulations in light of experience using the new franchising process to ensure that they work effectively in practice for both bus operators and local transport authorities.

93. It is necessary that the Scottish Ministers should have the powers to ensure that appropriate detailed arrangements, which may well require change over time, can be made in connection with the introduction of this new form of franchising quickly and flexibly. Further, it would not be appropriate use of parliamentary time to have to make changes to such detailed arrangements through primary legislation.

## **Choice of procedure**

94. This power relates to the technical and detailed issues of how franchises will operate in practice. It is not considered to be so significant to warrant affirmative procedure; negative procedure is thought to afford sufficient parliamentary scrutiny.

95. The new provision replicates the precedent in the current legislation for quality contracts, where regulations under negative procedure may be made under section 23(1) of the 2001 Act, parliament previously considered that it was appropriate for those powers to follow negative procedure.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Section 33(1) (Inserting New Section 6za(2) of the 1985 Act) – Provision of Service Information when Varying or Cancelling Registration

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** negative

### Provision

96. Section 33(1) inserts new section 6ZA(2) into the Transport Act 1985 (“the 1985 Act”). Section 6ZA(2) provides Scottish Ministers with the power, by way of regulations, to make provision about the time period in which an “affected authority” (defined as a local authority or regional transport partnership which has functions under section 9A of the 1968 Act or s63 of the 1985 Act and which has within their area or region a stopping place affected by the application to vary or cancel the registration of a local service) may intimate a requirement for an operator to provide information about the matters set out in section 6ZA(3). Section 6ZA(2) also provides the Scottish Ministers with the power to make more detailed provision about the specific types of information to be provided in relation to those matters referred to in section 6ZA(3).

### Reason for taking power

97. The detail of the provision required in this connection will be the subject of consultation with relevant stakeholders to ensure that the types of information which may be required and the period within which an authority may intimate a requirement for such information to be provided are appropriate. These detailed provisions will require to be kept under review and potentially revised, in light of experience of how the provisions are working in practice. In addition the Scottish Ministers wish to maintain alignment, where suitable, with the notification period prescribed in regulations made under section 6 of the 1985 Act (which attract negative procedure). For all of these reasons it is considered appropriate that these matters should be provided for in subordinate legislation rather than on the face of the Bill.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Choice of procedure**

98. This power will make provision in relation to detailed practical and operational issues arising from the operation of the Bill provisions. It is possible that provision made under this power will require to be reviewed and revised in light of experience of the operation of the provisions in the Bill, and the relationship with other regulations. In light of these factors and the fact that the exercise of the power is subject to a consultation requirement, it is considered that negative procedure strikes the right balance between ensuring appropriate parliamentary scrutiny of any regulations made and making the best use of valuable parliamentary time. Similar provision is made in section 6 of the 1985 Act and we note that regulations made under that power also attract negative procedure.

### **Section 33(1) (Inserting New Section 6za(5)(A) of the 1985 Act) – Provision of Service Information When Varying or Cancelling Registration**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

## **Provision**

99. Section 33(1) inserts new section 6ZA(5) into the Transport Act 1985 (“the 1985 Act”). Subsection 6ZA(5)(a) provides the Scottish Ministers with the power, by way of regulations, to make provision about the time period in which an operator must provide any information required under section 6ZA(2).

## **Reason for taking power**

100. The detail of the provision required in this connection will be the subject of consultation with relevant stakeholders to ensure that an appropriate time period is prescribed. These detailed provisions will require to be kept under review and potentially revised, in light of experience of how the provisions are working in practice. In addition the Scottish Ministers wish to maintain alignment, where suitable, with the notification period prescribed in regulations made under section 6 of the 1985 Act (which attract negative procedure). For all of these reasons it is considered

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

appropriate that these matters should be provided for in subordinate legislation rather than on the face of the Bill.

## **Choice of procedure**

101. This power will make provision in relation to detailed practical and operational issues arising from the operation of the Bill provisions. It is possible that provision made under this power will require to be reviewed and revised in light of experience of the operation of the provisions in the Bill, and the relationship with other regulations. In light of these factors and the fact that the exercise of the power is subject to a consultation requirement, it is considered that negative procedure strikes the right balance between ensuring appropriate parliamentary scrutiny of any regulations made and making the best use of valuable parliamentary time. Similar provision is made in section 6 of the 1985 Act and we note that regulations made under that power also attract negative procedure.

## **Section 33(1) (Inserting New Section 6zb(2)(C) of the 1985 Act) – Provision of Service Information: Extent of Permissible Disclosure**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

## **Provision**

102. Section 33(1) inserts new section 6ZB into the Transport Act 1985 (“the 1985 Act”). Section 6ZB(2)(c) provides the Scottish Ministers with the power, by way of regulations, to make provision for affected authorities to disclose information received from an operator described in section 6ZA(3)(a) to persons other than those specified in section 6ZB(2)(a) and (b).

## **Reason for taking power**

103. The Scottish Ministers consider that there may be circumstances when an affected authority may wish to share the information described in section 6ZA(3)(a) with other persons beyond those provided for in sections 6ZB(2)(a) and (b) (such as community service providers), in order to ensure that there is a sufficient service provision within the area. The detail

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

of the provision required in this connection will be the subject of consultation with relevant stakeholders. These detailed provisions will also require to be kept under review and potentially revised, in light of experience of how the provisions are working in practice. For all of these reasons it is considered appropriate that these matters should be provided for in subordinate legislation rather than on the face of the Bill.

## **Choice of procedure**

104. This power will make provision in relation to detailed practical and operational issues arising from the operation of the Bill provisions. It is possible that provision made under this power will require to be reviewed and revised in light of experience of the operation of the provisions in the Bill. In light of these factors and the fact that the exercise of the power is subject to a consultation requirement, it is considered that negative procedure strikes the right balance between ensuring appropriate parliamentary scrutiny of any regulations made and making the best use of valuable parliamentary time. Similar provision is made in section 6 of the 1985 Act and we note that regulations made under that power also attract negative procedure.

## **Section 33(1) (Inserting New Section 6zc of the 1985 Act) – Provision of Service Information When Varying or Cancelling Registration - Power to Make Further Provision**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative except for provision made under subsection (1)(d) which is affirmative

## **Provision**

105. Section 33(1) inserts new section 6ZC into the Transport Act 1985 (“the 1985 Act”). Section 6ZC provides the Scottish Ministers with the power, by way of regulations, to make provision necessary to give full effect to the previous sections 6ZA and 6ZB. This includes, without limit to that generality, provision: excluding or modifying the application of section 6ZA in specified circumstances; the procedures to be followed by affected authorities in requesting and providing information under section 6ZA and 6ZB; requiring operators to retain such information as may be specified in

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

the regulations; and about the form and content of the information operators are required to provide.

## **Reason for taking power**

106. It is considered likely that provision about the detailed practical and operational matters set out in subsections (1)(a)–(c) and (e) will require to be made in order to ensure that the power to request information and the duty to provide it (in sections 6ZA and 6ZB) function well. The detail of the provision required in this connection will be the subject of consultation with relevant stakeholders. These detailed provisions will also require to be kept under review and potentially revised, in light of experience of how the provisions are working in practice. For all of these reasons it is considered appropriate that these matters should be provided for in subordinate legislation rather than on the face of the Bill.

107. The period specified in subsection 6ZA(4)(a) (currently 12 months) is based on recommendations made by the Competition Commission. The Scottish Ministers consider that this is the appropriate period to be covered by a request for information under section 6ZA. However they consider that it may be necessary to amend this period, in light of experience of how the provisions operate in practice, and consider that it is appropriate for such a change to be made by way of secondary legislation, using the power in subsection (1)(d), following consultation with relevant stakeholders.

## **Choice of procedure**

108. This power will make provision in relation to detailed practical and operational issues arising from the operation of the Bill provisions. It is possible that provision made under this power will require to be reviewed and revised in light of experience of the operation of the provisions in the Bill. In light of these factors and the fact that the exercise of the power is subject to a consultation requirement, it is considered that negative procedure strikes the right balance between ensuring appropriate parliamentary scrutiny of any regulations made and making the best use of valuable parliamentary time. Similar provision is made in section 6 of the 1985 Act and we note that regulations made under that power also attract negative procedure.

109. Regulations making provision under subsection (1)(d) relate to the technical issue of the period to be covered by an information request made under section 6ZA. However, as the exercise of this power will involve an

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

amendment to primary legislation, it is considered that affirmative procedure is warranted to afford sufficient parliamentary scrutiny.

## Section 34(2) – New Section 35a of the 2001 Act – Power to Require Information about Local Services

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** affirmative

### Provision

110. Section 34(2) inserts a new section 35A into the 2001 Act. Section 35A provides that the Scottish Ministers may, by regulations, require: persons who are applying for the registration of a local service (or applying to vary or cancel such a service); operators of a registered local service; local transport authorities and the Scottish traffic commissioner to provide prescribed information in order to make information about local services available for disclosure to users or prospective users of those services.

111. Information may be required if it is information about: routes, stopping places, timetables, fares and tickets; changes or proposed changes to routes, stopping places, timetables, fares and tickets and the operation of services including real time information about the location of vehicles and the times at which they stop and information about the operation of services in the past.

112. The regulations may make provision about: the person to whom the information is to be provided; the time when it is to be provided and the manner and form in which it is to be provided including in particular provision requiring it to be provided electronically. The regulations may not require the information to be provided to a person other than: the Scottish Ministers; a local transport authority or a person specified in the regulations who provides or facilitates the provision of information about local services to users and prospective users of those services.

113. The regulations may require the information to be provided to a particular standard and may make provision as to the use and disclosure of the information, including in particular, provision for the information to be made available free of charge and without restrictions on its use and disclosure.



This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Reason for taking power**

114. Ensuring a standard approach to publication of information across Scotland will make it easier for the public to access information on bus services in a consistent format. Regulations in relation to information about local services are expected to be highly technical and creating the requirement by way of regulations offers the Scottish Ministers the ability to adapt the requirements to advances in technology and to ensure that the level of technical specification is appropriate. In addition, technological developments could make significant differences to the ease and cost of providing information and the dates on which it would be appropriate for Government to mandate new requirements. The format in which information is to be provided may also change quickly as new standards and technologies emerge. It is considered appropriate that detailed provision about the information required and how it should be provided is made by regulations.

115. The Scottish Ministers intend that regulation should be brought in in several phases to ensure that appropriate an appropriate lead in period is provided for each information type. The precise definition of the information to be provided in each case and the date by which it will be provided will be developed in close consultation with bus operators and users representatives.

## **Choice of procedure**

116. Given the importance of these powers to passengers and operators (in particular those smaller operators who may find it less easy to participate) it is considered that this warrants affirmative procedure to afford sufficient parliamentary scrutiny

117. Precedent for the use of secondary legislation in this way has been set by section 6 of the 1985 Act which provides that various detailed information related requirements are set out in legislation.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Smart Ticketing

### Section 35 - New Section 27a of the 2001 Act – Additional Classes of Service Participating in Ticketing Arrangements

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** affirmative

## Provision

118. Section 35 inserts a new section 27A into the 2001 Act. It sets out the meaning of “ticketing arrangements” under which persons may become entitled to make journeys in various ways. Section 27A(5) provides that the Scottish Ministers may, by regulations, amend the definition of “ticketing arrangements” in subsection (1) so that it includes arrangements under which persons may become entitled to make a journey on one or more local services (whether or not operated by the same person) and by means of such other service or class of service as may be specified in the regulations. Regulations under subsection (5) may also amend sections 28 to 31 in their application to services specified in the regulations as the Scottish Ministers consider appropriate.

## Reason for taking power

119. The definition of “ticketing arrangements” includes various types of arrangements involving local bus services and a combination of local bus services and connecting rail and ferry services.

120. It is considered that new and emerging modes of public transport (e.g. cycle hire and demand responsive taxi services) may in the future require to be included in the definition of “ticketing arrangements” in order that the provisions relating to such arrangements (and ticketing schemes) in sections 28 to 32B of the 2001 Act can cover these modes and keep pace with developments in public transport provision in Scotland. It is therefore considered appropriate to take a power to amend the definition of “ticketing arrangements” by way of secondary legislation in order that such changes can be made swiftly enough to accommodate such developments.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Choice of procedure**

121. This power will be used to expand the application of the Bill's provisions to other modes of transport, and in doing so will amend primary legislation. Affirmative procedure is therefore considered to afford an appropriate level of Parliamentary scrutiny.

## **Section 37 – New Section 27c(3) of the 2001 Act – National Smart Ticketing Advisory Board**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** negative

## **Provision**

122. Section 37 inserts new section 27C into the 2001 Act. Section 27C(1) provides that the Scottish Ministers must establish an advisory committee to be known as the National Smart Ticketing Advisory Board ('the Board'). Section 27C(3) provides a power for the Scottish Ministers to, by regulations, make detailed provision about that Board, including provision about: the appointment, removal and replacement of the Board's members; their remuneration; and the process by which the Board makes decisions.

## **Reason for taking power**

123. The Board's functions are set out on the face of the Bill. However it is considered appropriate for the more detailed provision about the composition and operation of the Board to be made in secondary legislation, following consultation with relevant stakeholders. The provision made in relation to those matters will require to be reviewed and possibly revised in light of experience. Any such changes would be informed by consultation with relevant stakeholders.

## **Choice of procedure**

124. As noted above, the exercise of the power here will relate to detailed practical and operational matters required in order for the Board to function effectively. These arrangements will likely require to be refined and revised from time to time, in light of experience and developments in public transport provision in Scotland. The power will be exercised following

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

consultation with relevant stakeholders. It is therefore considered that negative procedure strikes the right balance between ensuring appropriate parliamentary scrutiny of any regulations made and making the best use of valuable parliamentary time. Similar provision is made in section 41 of the Transport (Scotland) Act 2005 and orders made under that section are subject to negative procedure.

## Section 39 - New Section 32a(1) of the 2001 Act – Directions about Ticketing Schemes

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** direction

**Parliamentary procedure:** none

### Provision

125. Section 37 inserts new section 32A into the 2001 Act. Section 32A(1) enables the Scottish Ministers to direct a local transport authority, or two or more local transport authorities to exercise their powers under sections 29(1) or 31(5) to make (or vary) a ticketing scheme. Such a direction may specify: the ticketing arrangements or types of ticketing arrangements local transport authorities are required to make and implement under the ticketing scheme; the characteristics the ticketing arrangements should have; and the class of local service to which the scheme is to apply.

126. The direction must be set out in writing and be published.

### Reason for taking power

127. It is considered appropriate that local transport authorities should remain responsible for the provision of ticketing arrangements and schemes in their area. However, it is also considered that the Scottish Ministers should be able to direct the local transport authority to use their powers to make a scheme in appropriate cases. The reasons for issuing the direction will be clearly set out in the direction itself.

128. Examples of the types of situation in which the Scottish Ministers may decide to exercise their power include:

- where there is evidence of unmet demand for smart ticketing in a local transport authority area and the local transport authority has not put in place a scheme to deliver those arrangements;

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

- where an local transport authority has failed to comply with their duty to ensure that a ticketing scheme requires the provision of smart ticketing arrangements complying with the national standard;
- where there is evidence that an existing ticketing scheme has failed or broken down;
- where the national standard changes, to direct local transport authorities to vary a scheme to adopt the new standard

## **Choice of procedure**

129. The decision as to when a direction of this kind should be made will depend on the facts and circumstances of each case and as such, it is not possible to predict or specify precisely the kinds of situation in which a direction might be issued on the face of the Bill. The procedure to trigger a direction by the Scottish Ministers would arise from circumstances which are unique to each ticketing scheme on a local level, and as such does not warrant parliamentary scrutiny. Accordingly, no parliamentary procedure is attached to the exercise of this power.

## **Section 41 – Adjusting Section 79(1) Guidance Powers**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** guidance

**Parliamentary procedure:** none

## **Provision**

130. Section 41 amends section 79 of the 2001 Act to repeal in paragraph (c), the words “ticketing schemes”, and to provide that the Scottish Ministers may issue guidance to local transport authorities in relation to their functions their functions under section 28; ticketing schemes, and, the preparation of reports under section 32A.

## **Reason for taking power**

131. It is appropriate that the Scottish Ministers should have the power to issue guidance in relation to local transport authority functions under section 28, ticketing schemes and preparation of reports for the assistance of local transport authorities in carrying out these functions.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Choice of procedure**

132. The purpose of such reports is to help inform Scottish Ministers how ticketing schemes are developing and operating in local transport authority areas. The guidance noted in section 28 will set out what information is to be included in the report, so that reports are consistent and relevant. The reports will be considered by the Scottish Ministers and the Board and as such no parliamentary procedure applies.

## **Pavement Parking and Double Parking**

### **Section 43 – Exemption Orders**

**Power conferred on: Local authorities**

**Power exercisable by: order**

**Parliamentary procedure: none**

## **Provision**

133. Section 43 confers power on local authorities to make provision for exemption orders whereby the pavement parking prohibition does not apply to a footway within their areas. Local authorities will be required to comply with directions given by the Scottish Ministers regarding the characteristics which a footway must possess before it can be considered for exemption under these provisions.

134. Such exemption orders may apply to all or part of the footway but must apply at all times and to all motor vehicles and may not be subject to any further conditions.

135. Where the local authority is not the traffic authority for the road (which is to be exempted) the local authority can only exempt that footway if the traffic authority for the road consents to its exemption.

## **Reason for taking power**

136. The provisions of the Bill result in a national prohibition of parking on footways in Scotland. This replaces the need for each local authority to introduce pavement parking restrictions via Traffic Regulation Orders. The new duties will require local roads authorities to assess what footways, if necessary, will be exempt from the national prohibition imposed by the Bill. The Bill itself does not prescribe the technical specifications for exempting roads. However, a separate set of standards will be produced, which will

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

detail the circumstances in which footways could be considered for exemption. The order making power does not allow local authorities to make exemptions subject to further conditions nor provides the power for exemptions to apply only at specified times, days or periods or only when signs restricting parking are shown.

## **Choice of procedure**

137. This is a power which will allow the local authority to make very specific and local provision in order to exempt clearly defined areas from the national prohibition on parking on a footway. As this is not a Scottish statutory instrument, no parliamentary procedure applies (but see the entry on section 44 below).

## **Section 44(1) – Exemption Orders**

**Power conferred on:**            **the Scottish Ministers**

**Power exercisable by:**        **regulations made by Scottish statutory instrument**

**Parliamentary procedure:** **negative**

## **Provision**

138. Section 44(1) confers power on the Scottish Ministers to make provision in connection with the making, amendment and revocation of an exemption order made by local authorities under section 43. Examples of the kind of provisions that may be made in these regulations are set out in subsection (2) and include provision about the form of an exemption order, procedures associated with the making, amendment or revocation of an exemption order including publication and consultation requirements.

## **Reason for taking power**

139. The Scottish Ministers consider that it is important to put in place appropriate procedures for the making of exemptions orders by local authorities. Once in place, it will be necessary to be able to amend the form of, and procedures associated with the making, amendment or revocation of exemption orders made by local authorities. These regulations may need to be updated from time to time to take account of on-going changes as the enforcement regime develops and to reflect operational experience. The regulations will provide the technical detail relating to the form of, and procedures associated with the making, amendment or revocation of exemption orders. These matters are best addressed in secondary

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

legislation as they will be essentially administrative and procedural in nature.

## **Choice of procedure**

140. The regulations to be made under this power will contain procedures for the making of exemption orders by local authorities. These are procedural and technical in nature and as such negative procedure is considered to provide an appropriate level of parliamentary scrutiny.

## **Section 47(11) – Exceptions to Parking Prohibitions**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: affirmative**

## **Provision**

141. Section 47(11) provides the Scottish Ministers the power to modify the exceptions to the pavement parking and double parking prohibitions. This power allows the Scottish Ministers to prescribe new exceptions including the circumstances in which a motor vehicle can be excepted and to alter or remove any existing exceptions and circumstances.

## **Reason for taking power**

142. The Scottish Ministers should have reasonable powers to modify the provision associated with the vehicles excepted to the parking prohibition. These matters are best addressed in secondary legislation as changes to the exceptions may be required from time to time to reflect operational experience.



This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Choice of procedure**

143. As regards which vehicles are exempt, affirmative procedure is appropriate as it allows for greater parliamentary scrutiny in relation to this important issue which will have a direct impact on the effectiveness of proposed parking prohibitions.

## **Section 48(4)(B) – Imposition of Penalty Charges on Individuals**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

## **Provision**

144. Section 48 provides that a penalty charge is payable where a person parks a motor vehicle in contravention of the pavement parking prohibition or the double parking prohibition.

145. Subsection (4) provides that the penalty charge will be payable by (a) the registered keeper (defined in subsection (6) as the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994 at the time of the contravention to which the penalty charge relates) or (b) in such circumstances as may be specified in the regulations by such other persons as the Scottish Ministers may specify in those regulations. This confers power on the Scottish Ministers to specify circumstances in which a person other than the registered keeper will be liable for the payment of the penalty charge and to specify the person who will in those specified circumstances be so liable. This power is likely to be used to make provision in connection with liability in relation to hire cars.

## **Reason for taking power**

146. While the Bill provides that in most cases the liability for payment of the penalty charge will rest on the registered keeper of a vehicle, section 48(4)(b) provides the Scottish Ministers with flexibility to adjust this principle to reflect the various ways in which a vehicle may in fact be used to ensure that liability rests with the party having responsibility for the operation of the vehicle at the relevant time, such as under vehicle hire or leasing arrangements. As there are many ways in which people may own, lease, hire or otherwise use vehicles and these may develop further over time it is

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

considered that making detailed provision to capture these relationships is best suited to secondary legislation.

147. The Scottish Ministers should have reasonable powers to amend the provision associated with imposing a penalty charge on someone who is not the registered keeper of the vehicle. The level of detail and potential for the procedure to change are more suited to secondary legislation than primary legislation.

### **Choice of procedure**

148. It is considered that provisions relating to identifying the party responsible for the operation of a vehicle in particular circumstances and therefore who should be liable for any resulting penalty charge is a matter of technical detail. As such negative procedure is considered to provide an appropriate level of parliamentary scrutiny.

### **Section 48(5) – Imposition of Penalty Charges and the Level of Charge**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** negative

### **Provision**

149. As stated in paragraph 144, section 48 provides that a penalty charge is payable where a person parks a motor vehicle in contravention of the pavement parking prohibition or the double parking prohibition.

150. Subsection (5) confers powers on the Scottish Ministers to make provision for or in connection with the amount that maybe imposed as a penalty charge, including provision for discounts or surcharges.

### **Reason for taking power**

151. The Scottish Ministers should have reasonable powers to amend the provision associated with the levels of penalty charge, surcharge and discount which may be applied. Flexibility to consider inflation, effectiveness as a deterrent and changes to other charging regimes may result in the need to vary the penalty charge.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Choice of procedure

152. The Bill establishes both the principle that contravention of the prohibitions should be punishable by civil penalty and who should, in the majority of instances be responsible for meeting that liability. These secondary legislation powers will supplement those provisions of principle by setting out the detailed level of the penalty and the level of discount or surcharge that may apply. It is considered that negative procedure therefore provides sufficient parliamentary scrutiny.

### Section 49(1) – Enforcement of Parking Prohibitions

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative except in relation to the creation of criminal offences (section 49(1) and (4)(a)) which are subject to affirmative procedure**

## Provision

153. Section 49(1) confers powers on the Scottish Ministers, to make regulations, for or in connection with the enforcement of the pavement parking prohibition and double parking prohibition.

154. Subsection (2) sets out examples of the kind of provision that may be made. In particular the regulations may make provision about: the approval of devices to be used in connection with the detection of a contravention of a prohibition; penalty charge notices; the timing and manner of payment; reviews of the imposition of a penalty charge by a local authority; appeals; the manner in which a penalty charge may be enforced and, steps which may be taken by a local authority following the cancellation of a penalty charge. The regulations may not confer power to stop vehicles (see subsection (3)) but may create criminal offences (triable summarily punishable by a fine of not more than level 5 on the standard scale (subsection (4)(a))).

155. The regulations may also provide that the penalty charge is not payable or has to be refunded where the conduct in respect of which the penalty charge notice has been issued is conduct that is subject to criminal proceedings, a fixed penalty notice (within the meaning of section 25 of the Road Traffic offenders Act 1988) or a penalty charge is issued under

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

section 66 of the Road Traffic Act 1991 under the decriminalised parking regime (subsection (4)(b)). The regulations may also provide that a record produced by an approved device is sufficient evidence of the fact that is recorded in that record in the circumstances specified in the regulations (subsection (4)(c)).

## **Reason for taking power**

156. The regulations will primarily set out the procedural detail associated with the implementation in relation to the enforcement of the pavement parking prohibition and double parking prohibition. Some of this procedural detail will require keeping pace with technological developments in areas such as the approval of devices used to issue and record penalty charges. This detail is better suited to being set out in subordinate legislation rather than on the face of the Bill.

157. The regulations result in new duties being placed on local authorities and the Scottish Government and flexibility to respond to changing circumstances and to make changes quickly in the light of operational experience without the need for primary legislation is needed.

## **Choice of procedure**

158. The regulations to be made under this power are of a procedural and technical nature prescribing the process of enforcement, and the negative procedure is considered to provide an appropriate level of parliamentary scrutiny. The exception is regulations made under section 49(1) which create criminal offences: those are subject to the affirmative procedure. The greater parliamentary scrutiny afforded by affirmative procedure is appropriate for regulations creating criminal offences.

## **Section 51(1) – Removal of Vehicles**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

## **Provision**

159. Section 51(1), confers power on the Scottish Ministers to, by regulations, make provision for or about the removal of vehicles from a

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

road which are parked in contravention of the pavement parking or double parking prohibition. The regulations will confer power on the local authority to remove such vehicles. Subsection (2) sets out examples of the further kind of provision that may be made in the regulations. Such provision includes provision for or about notification of the removal of a vehicle, storage of removed vehicles, circumstances in which the local authority is to return a removed vehicle, charges that may be imposed in connection with the removal and storage of a vehicle, reviews in connection with the removal or charges in connection with the removal or storage of a vehicle and appeals in relation to removal.

### **Reason for taking power**

160. The regulations relate to operational enforcement of the prohibitions and require a level of detail more suited to secondary legislation. It will allow proposals to be developed and then a focussed, detailed and bespoke consultation conducted.

### **Choice of procedure**

161. While it is considered appropriate that the principle of the conferring of such powers by the Scottish Ministers should be clearly set out on the face of the Bill the powers themselves will set out the detailed processes for removing vehicles, storing vehicles, and the associated charges, and the procedures for appealing against actions taken under the regulations. Given the detailed nature of the regulations it is considered that the negative procedure provides sufficient parliamentary scrutiny.

## **Section 52(1) – Moving Motor Vehicles Parked Contrary to Parking Prohibitions**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** negative

### **Provision**

162. Section 52(1), confers power on the Scottish Ministers to, by regulations, make provision for or about moving, from a position on a road to another position on the road or on another road, of a motor vehicle which is parked in contravention of the pavement parking or double parking

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

prohibition. The regulations will confer power on the local authority to move such vehicles. Subsection (2) sets out examples of the further kind of provision that may be made in the regulations. Such provision includes provision for or about notification of the moving of a motor vehicle, charges that may be imposed in connection with the moving of a motor vehicle, and reviews and appeals (including grounds of review or appeal) in connection with the moving of a motor vehicle.

## **Reason for taking power**

163. The regulations relate to operational enforcement of the prohibitions and require a level of detail more suited to secondary legislation. It will allow proposals to be developed and then a consultation conducted.

## **Choice of procedure**

164. While it is considered appropriate that the principle of the conferring of such powers by the Scottish Ministers should be clearly set out on the face of the Bill the powers themselves will set out the detailed processes for moving vehicles and the associated charges, and the procedures for appealing against actions taken under the regulations. Given the detailed nature of the regulations it is considered that the negative procedure provides sufficient parliamentary scrutiny.

## **Section 53(1) – Disposal of Removed Vehicles**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

## **Provision**

165. Section 53(1), confers power on the Scottish Ministers to, by regulations, make provision for about the disposal of a motor vehicle which has been removed from a road pursuant to regulations under section 51(1). The regulations will confer power on the local authority to dispose of such vehicles. Subsection (2) sets out examples of the further kind of provision that may be made in the regulations. Such provision includes provision for or about notification of the procedure to be followed before a motor vehicle may be disposed of, the manner in which a motor vehicle may be disposed of, charges that may be imposed in connection with the disposal of a motor vehicle, the application of any proceeds of a disposal, including any

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

deductions from such proceeds, reviews and appeals (including grounds of review or appeal) in connection with a disposal of a motor vehicle, and the effect of a disposal of a motor vehicle on any right of the Crown (based on the Crown's right of ownership in lost or abandoned property) in such a vehicle.

### **Reason for taking power**

166. The regulations relate to operational enforcement of the prohibitions and require a level of detail more suited to secondary legislation. It will allow proposals to be developed and then a consultation conducted.

### **Choice of procedure**

167. While it is considered appropriate that the principle of the conferring of such powers by the Scottish Ministers should be clearly set out on the face of the Bill the powers themselves will set out the detailed processes for disposing of vehicles and the associated charges, and the procedures for appealing against actions taken under the regulations. Given the detailed nature of the regulations it is considered that the negative procedure provides sufficient parliamentary scrutiny.

### **Section 55 – Accounts**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** negative

168. Section 54 confers power on the Scottish Ministers to, make provision about the keeping of accounts by local authorities in connections with their functions under this part of the Bill and the purposes for which any surplus in an account by a local authority may be applied.

### **Reason for taking power**

169. The requirements specified for the form of an annual account and the manner in which a statement of account is published must be flexible enough to be amended through time. The Scottish Ministers should have reasonable powers to set out and amend the provision associated with the keeping and reporting of accounts associated with this legislation. It is proposed that any surplus would be “ring-fenced” as per other surpluses

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

which arise as a result Decriminalised Parking Enforcement. The power to set these purposes out in secondary legislation and to change these will enable the purposes to reflect and to continue to reflect funding priorities for both local authorities and the Scottish Ministers as these may alter over time.

## **Choice of procedure**

170. The detail within the regulations with reference to the keeping of accounts is technical in nature. It is considered appropriate for these regulations to be subject to the negative procedure to achieve the best balance of parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

## **Section 56 – Ministerial Directions**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: direction**

**Parliamentary procedure: none**

## **Provision**

171. Section 56 confers a general power of direction on the Scottish Ministers in relation to the exercise of local authorities' functions under Part 4 of the Bill. Subsection (2) sets out examples of the kind of matters to which directions may relate in particular, specifying assessments to be carried out by local authorities before an exemption order can be made; provision relating to uniforms; the information to be published by local authorities in connection with Part 4 of the Bill. Directions may be general or relate to a particular function or local authority be given to each local authority, a particular local authority in relation to the whole or part of the area of a local authority or local authorities of a particular description. It also enables the Scottish Ministers to revise or revoke the direction and examples of the ways in which a direction may be revised or revoked are provided in subsection (5).

## **Reason for taking power**

172. The provisions allow for directions such as the specific assessments to be carried out by a local authority before making exemption orders; the provisions associated to the uniforms to be worn by enforcement officers and any specific information to be published by local authorities. The Scottish Ministers should have flexibility in issuing directions which are



This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

likely to require amending from time to time and this is best served through secondary legislation.

## **Choice of procedure**

173. These directions relate to areas such as the specific assessments to be carried out by local authorities and will provide practical detail which is technical in nature. The corresponding regulations are subject to negative procedure and as such it is considered that the practical detail in the directions is not subject to any parliamentary procedure.

## **Section 57 – Guidance on Pavement Parking and Double Parking**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** guidance

**Parliamentary procedure:** none

## **Provision**

174. Section 57 confers a power on the Scottish Ministers to issue guidance and confers on local authorities a duty to have regard to any written guidance given by the Scottish Ministers about the exercise by local authorities of their functions under this Part of the Bill.

175. It is intended that any written guidance given by the Scottish Ministers to local authorities will be published in a single document relating to parking standards.

## **Reason for taking power**

176. Guidance for local authorities, issued by the Scottish Ministers, will provide technical information, including qualifying criteria for local authorities to exempt footways from the national prohibition on footway parking, to help determine how and when to exercise powers conferred by the Bill. The guidance will be developed in consultation with interested stakeholders such as local authorities and CoSLA, the Mobility and Access Committee for Scotland, Living Streets Scotland, Cycling Scotland and Strathclyde Partnership for Transport and may require to be updated to continually reflect evolving knowledge, research evidence and best practice.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Choice of procedure**

177. This guidance contains qualifying criteria for local authorities to exempt footways and is technical and practical in nature. The corresponding regulations are subject to negative procedure and as such it is considered that the detailed technical guidance is not subject to any parliamentary procedure.

## **Road Works**

**Section 60(2) – New Section 18f(1) of the Transport (Scotland) Act 2005 (2005 Act) – Inspection Powers**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: affirmative**

## **Provision**

178. Section 60 inserts sections 18A to 18F into the Transport (Scotland) Act (“the 2005 Act”). These provisions relate to the conferral of an inspection function onto the Scottish Road Works Commissioner (“SRWC”), provide for persons to be appointed to assist with the inspection function, and makes provision for associated inspection powers.

179. New section 18F(1) of the 2005 Act provides the power to the Scottish Ministers to, by regulations, make further provision about the functions of persons authorised to carry out inspections. Section 18F(2) makes it clear that such regulations may in particular make provision:-

- Conferring powers on authorised persons;
- Specifying the requirements with which an authorised person may comply.

## **Reason for taking power**

180. Given the technical nature of road works regulation, there is a possibility that situations may arise which were not envisaged when inspection powers were specified on the face of the Bill. It may be necessary therefore to confer a particular enforcement power for authorised persons to deal with a new situation not envisaged during the passage of the Bill.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

181. The SRWC currently has no independent means of establishing the facts in relation to levels of compliance other than matters that are reported to him, or information supplied in response to a request issued under section 18 of the 2005 Act. The Bill will confer an inspection function on the SRWC to be used to help establish the facts in relation to specific instances of suspected non-compliance, and to help monitor levels of compliance by roads authorities and undertakers more generally. This is a completely new area of work, and it is difficult to anticipate what practical difficulties may need to be overcome at a later time.

### **Choice of procedure**

182. Any decision to confer a new enforcement power on an authorised officer is sensitive. There is a need to ensure that there is an element of necessity and proportionality in any decision to grant a new inspection power. As such, we believe that this warrants affirmative procedure to afford sufficient parliamentary scrutiny.

### **Section 61(1) – New Section 153c(3) of the New Roads And Street Works Act 1991 (1991 Act) – Compliance Notices: Form and Content**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

### **Provision**

183. Section 61 inserts sections 153A to 153I into the New Roads and Street Works Act 1991 (“the 1991 Act”) dealing with compliance notices. Compliance notices are a form of improvement/enforcement notice which may be issued to an undertaker or roads authority to deal with poor performance.

184. Section 153C makes provision about the form and content of compliance notices. Section 153C(1) sets out the information a compliance notice must include. Section 153C(3) provides that the Scottish Ministers may, by regulations, make further provision about the form and content of compliance notices including, in particular, provision about the form and content of any of the information required to be included under section

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

153C(1), and provision about other information that must be included in such notices.

## **Reason for taking power**

185. The process governing the issuing of compliance notices will need to be detailed. The notices will need to be sufficiently clear on their legal effect, and the requirements being placed on the recipient will need to be readily understood so that there can be no doubts around the steps that the SRWC requires the recipient to take and so that the consequences of non-compliance are immediately foreseeable. This can be achieved, in part, by ensuring that the form and content of the information to be included in compliance notices is consistent. The power in section 153C(3)(a) will allow the Scottish Ministers to make provision to ensure that consistency of approach.

186. The information required under section 153C(1) represents a reasonable starting point as to the necessary content of compliance notices. But as the new enforcement regime operates in practice, it may be that experience of operating with compliance notices will show or suggest that further information requires to be included in them. Section 153C(3)(b) allows that developing practical experience to be taken into account.

## **Choice of procedure**

187. While it is appropriate for the form and content of compliance notices to be set out in the Bill, having established these broad parameters it may be necessary over time, and in light of the experience gained to amend some of the detail regarding content and processes required around the use of compliance notices. This is considered to be a matter of detail not thought to be significant enough to warrant affirmative procedure; negative procedure is thought to afford sufficient parliamentary scrutiny.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Section 61(2) – New Section 153i of the 1991 Act – Compliance Notices: Power to Make Supplementary Etc. Provision**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** affirmative if amending section 153G or paragraph 6 of schedule 6B of the 1991 Act, otherwise negative

### **Provision**

188. Section 61 inserts section 153I into the 1991 Act which allows the Scottish Ministers to make (by regulations) supplementary, incidental, or consequential provision in connection with compliance notices, and the carrying out of the SRWC functions under sections 153A to 153H of that Act.

189. Section 153I(2)(a) provides that such regulations may, in particular, include provision which facilitates, prohibits, or restricts the issuing of a compliance notice regarding the breach of a duty arising out of particular circumstances where a fixed penalty notice has already been issued in respect of the same act or omission. Section 153I(2)(a) allows similar provision to be made in respect of fixed penalty notices in cases where a compliance notice has already been issued in respect of the breach.

190. Section 153I(3) provides that such regulations may modify section 153H of the 1991 Act which deals with the effect of a compliance notice on criminal proceedings, and paragraph 6 of schedule 6B of the 1991 Act which deals with the effect of paying a fixed penalty notice on such proceedings.

191. Sections 153I(4) and (5) provide that modifications of the provisions mentioned above may not have the effect that a person who has both complied with a compliance notice and paid a fixed penalty in respect of an offence may still be convicted of that offence

### **Reason for taking power**

192. Roads authorities have primary responsibility for the enforcement of offences committed by undertakers under the 1991 Act. The main means

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

of enforcement is through the use of fixed penalty notices. This means that across Scotland there are 33 individual enforcement bodies issuing fixed penalty notices, sometimes in respect of the same act or omission or to the same undertakers in different authority areas.

193. Compliance notices provide the SRWC with a strategic means of dealing with a failure to comply with specific duties which may relate to multiple instances where there have been acts or omissions and offences committed across Scotland. These regulations provide a means of regulating the issuing of fixed penalty notices and compliance notices within the same timeframe. From a practical standpoint, it is likely that the Scottish Ministers will have to devise a process which allows the SRWC to intimate to roads authorities that a compliance notice is about to be issued. To that end, there are practical considerations which need to be considered and agreed between roads authorities and the SRWC.

194. There are essentially two basic circumstances under which a compliance notice may be issued. The first is where the failure in a duty which amounts to an offence occurred in the recent past and is no longer on-going. The second set of circumstances where a compliance notice may be used is to correct an on-going failure in a duty where there are on-going acts or omissions which are of themselves an offence, but the compliance notice requires steps to be taken over time to improve compliance. Dealing with both of these scenarios will require a complex matrix to deal with a number of different sets of circumstances. In view of the anticipated complexity, and the fact that there may be a need for the processes to be refined and changes made based on experience, it was not felt appropriate to set this out on the face of the Bill.

## **Choice of procedure**

195. The making of supplementary, incidental or consequential provision relating to compliance notices which does not modify section 153G or paragraph 6 of Schedule 6B of the 1991 Act (see below), is considered to be technical detail not warranting affirmative procedure; negative procedure is thought to afford sufficient parliamentary scrutiny. Where the provisions modify provisions of the 1991 Act itself, affirmative procedure is considered appropriate.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Section 62(3)(D)(li) – New Paragraph 13a of Schedule 6b of the 1991 Act – Fixed Penalty Notices

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

### Provision

196. Section 62 makes a number of changes to the fixed penalty notice provisions contained in schedules 6A and 6B of the 1991 Act. In particular, these changes allow the SRWC to issue a fixed penalty notice in respect of any fixed penalty offence listed in schedule 6A of that Act, including the offence in new section 153G(1) of that Act of failing to comply with a compliance notice.

197. Section 62(3)(d)(ii) inserts paragraph (1A) into schedule 6B of the 1991 Act to allow the Scottish Ministers to prescribe the penalty which may be set in a fixed penalty notice in relation to the section 153G(1) offence, up to a maximum of £100,000.

### Reason for taking power

198. Fixed penalty notices may be used by the SRWC to deal with poor performance and non-compliance with a range of regulatory provisions under the New Roads and Street Works Act 1991, and Road (Scotland) Act 1984. It will be necessary to set out the tariff of fines for particular circumstances, and different offences. It may be necessary to change these from time to time and therefore was not thought an appropriate level of detail to appear on the face of the Bill.

### Choice of procedure

199. The content and processes required around the use of fixed penalty notices is considered to be a matter of technical and procedural detail. In terms of the level of fixed penalties, the Bill establishes both the principle that failure to comply with a compliance notice should be punishable by fixed penalty as an alternative to prosecution, and the maximum level of that penalty. The power to set a fixed penalty will supplement those provisions of principle by setting out specific penalty levels (which may

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

differ in different circumstances). It is considered that negative procedure therefore provides sufficient parliamentary scrutiny.

## **Section 64(3) – New Section 60a(1) of the 1984 Act) – Safety Measures: Code of Practice**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** code of practice

**Parliamentary procedure:** none

### **Provision**

200. Section 64(3) inserts new section 60A into the Roads (Scotland) Act 1984 (“the 1984 Act”). Section 60A(1) permits the Scottish Ministers to issue codes of practice giving practical guidance as to the duties imposed by section 60 of the 1984 Act (including the new duties in that regard under section 60(3A), as inserted by 64(2)(b) of the Bill) in relation to the fencing and lighting of obstructions and excavations in the road.

201. Section 60A(2) provides that as far as a person complies with a code of practice, the person is taken to fulfil their obligations under section 60 of the 1984 Act.

202. Section 60A(3) provides that failure to comply with the code of practice is evidence of a failure to comply with the obligations imposed under section 60 of the 1984 Act.

### **Reason for taking power**

203. The code of practice will be a highly detailed and technical document. For the purposes of comparison, the current code of practice “Safety at Street Works and Road Works – a Code of Practice”<sup>1</sup>, issued under section 124 of the 1991 Act consists of 108 pages. There is also a need to keep the code of practice up to date, which may require frequent changes. Such changes are likely to be points of detail, for example newly emerging apparatus or good practice, rather than substantive changes to the underlying principles. In view of the complexity and need for fairly frequent

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<http://www.roadworksscotland.gov.uk/nmsruntime/saveasdialog.aspx?IID=1416&sID=80>



This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

change it was not felt appropriate to set out this level of detail on the face of the Bill. The practice has been to develop codes of practice in partnership with the road works community through the Roads Authorities and Utilities Committee for Scotland (RAUCS). This bottom-up approach helps ensure that the practical measures contained in the code reflect operational requirements.

## **Choice of procedure**

204. The provision of technical guidance on road work site safety through a code of practice made under the Bill is considered to be a matter of technical and practical detail not warranting parliamentary scrutiny. Accordingly, no parliamentary procedure is attached to the exercise of this power.

## **Section 65(1) – New Section 61b(2), (3)(B), (4)(B), (5)(B), (6) And (9) And (10) of the 1984 Act – Qualifications of Supervisors and Operatives**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

## **Provision**

205. Section 65 inserts section 61B into the 1984 Act, imposing new duties on persons executing works in a road involving breaking up the road, or any sewer, drain or tunnel under it, or tunnelling under the road, to ensure (1) those works are supervised by appropriately trained supervisors and (2) there are on site an appropriate number of suitably trained operatives. Section 61B also makes provision about notifying and evidencing qualifications to the SRWC.

206. Section 61B(2)(a) permits supervisor qualifications to be prescribed, and similarly section 61B(2)(b) permits operative qualifications to be prescribed.

207. Section 61B(3)(b) provides that the evidence required to establish that an individual has the requisite qualification may be prescribed. Similarly section 61B(4)(b) provides that the evidence that an individual may be

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

required to provide to the Commissioner to establish that they have the requisite qualifications may be prescribed.

208. Section 61B(5)(b) provides that a notice given by the SRWC requiring notification and evidence of the qualifications of supervisors and operatives may be given while the works are being executed, or within a period following completion of the works prescribed in regulations.

209. Section 61B(6) provides that the period within which a response is required to a notice given by the SRWC under section 61B(3), and the manner of response, may be prescribed.

210. Section 61B(9) provides that the Scottish Ministers may, by regulations, make provision for the purposes of section 61B (in addition to the matters that may otherwise be prescribed under the powers mentioned above), including:-

- specifying the circumstances in which the duties in subsection (2) do not apply to a person executing works in the road;
- specifying circumstances in which more than one trained operative must be on site (and, in those cases, the number of such operatives who require to be on site);
- about the approval of bodies conferring qualifications, and the withdrawal of such approval;
- about the circumstances in which a qualification may be conferred;
- about the form of evidence to be issued by an approved body to certify that a qualification has been conferred on an individual.

## **Reason for taking power**

211. The professional qualifications used by operatives and supervisors reflects a common framework used throughout the UK to allow the free movement of road workers across internal borders where this is required.

212. In relation to the provisions about the qualifications themselves (section 61B(2)(a) and (b)), it is likely that the individual qualifications required will change over time. They are kept under review by a sector specific joint-industry working group set up at UK level. Scottish interests on the group are represented by the SRWC. The frequency and pace of

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

change required to the qualification structure may not be suited to primary legislation.

213. Similarly the process for awarding qualifications, and the evidence awarding bodies are required to produce (section 61B(3)(b), (4)(b)) are closely tied to the business processes used by awarding bodies and the Scottish Qualification Authority who run the Street Works Qualification Register on behalf of the Scottish Ministers. This level of administrative detail is not appropriate to appear on the face of the Bill. There is also the need for flexibility to change these administrative details without primary legislation.

214. The period within which, and manner in which, notice is to be given as to qualifications (section 61B(5)(b) and (6)) is something that is likely to change over time as experience of using the provisions develops. This may require a number of refinements to be made before an optimal process is arrived at.

215. Section 61B(9) provides an illustrative list to provide examples of the types of provisions which might be made in regulations. This is a non-exhaustive list as given the technical complexity of the road work qualification structure and the processes and interaction between candidates, training centres, awarding bodies and the Street Works Qualification Register, it is likely that over time something unforeseen may arise, albeit still within the space of technical detail and therefore more appropriate to regulations than to appear on the face of the Bill. For example, through practical experience circumstances may be identified in respect of which the duty to have trained operatives and supervisors on site is unnecessary. Equally, new approval bodies may be created, or old bodies may cease to exist, on an administrative basis, requiring flexibility to respond in a proportionate way.

## **Choice of procedure**

216. The professional qualification framework and associated processes around the approval of bodies conferring qualifications is considered to be a matter of detail not thought to be significant enough to warrant affirmative procedure; negative procedure is thought to afford sufficient parliamentary scrutiny.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Section 65(2) – Amendment to Section 126 of the 1991 Act – Qualifications of Supervisors and Operatives

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

### Provision

217. Section 65(2) amends section 126 of the 1991 Act. Section 126(2) of the 1991 Act provides that, except in such cases as may be prescribed, there must be on site at all times when any works are in progress at least one person having a prescribed qualification as a trained operative.

218. Subsection (2)(c) adds subsection (2ZB) into section 126 of the 1991 Act. This provides that the Scottish Ministers may, by regulations, specify the circumstances in which more than one trained operative must be on site while work is in progress (subsection (2ZB)(a)), and the number of trained operatives that must be on site in those circumstances (subsection (2ZB)(b)).

### Reason for taking power

219. The minimum number of trained operatives who must be on the site of road works is currently only one. The intention is to increase that number in cases where this is feasible.

220. While the policy intention is to provide for an increase, the practicalities are such that the required regime may need to be fairly complex and sophisticated to take account of different types of work, and different squad sizes to avoid imposing unnecessary inflexibility where small works do not require a large squad to execute the required works. Any change will need to be subject to extensive consultation, with a perhaps a joint-industry working group set up to look at the issue.

221. There is an expectation that achieving a workable increase in the minimum number will not be a simple process, and may require a fairly complex matrix to take account of all the necessary circumstances. These will be too complex to set out on the face of the Bill and may require to be adapted based on experience.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Choice of procedure**

222. Setting the minimum number of qualified operatives required on a road work site while work is being carried out is considered to be a matter of detail not thought to be significant enough to warrant affirmative procedure; negative procedure is thought to afford sufficient parliamentary scrutiny.

## **Section 66(2) – Inserted Section 112b of the 1991 Act – Commencement and Completion Notices for Roads**

### **Authorities**

**Power conferred on:**            **the Scottish Ministers**

**Power exercisable by:**       **regulations made by Scottish statutory instrument**

**Parliamentary procedure:** **negative**

### **Provision**

223. Section 66(2) amends section 112B of the 1991 Act. Section 112B of the 1991 Act makes provision for roads authorities to enter details about roads for which they are responsible (section 112B(1)), and information about road works they, and those persons they authorise, propose to execute (section 112B(2)), into the Scottish Road Works Register (“SRWR”).

224. Subsection (2)(a) inserts a new subsection (2A) into section 112B of the 1991 Act. This provides that on the completion of the works specified in section 112B(2), a roads authority must, within a prescribed period, enter on the SRWR prescribed information about their completion.

225. Subsection (2)(b) inserts a new subsection (5A) into section 112B of the 1991 Act. This provides that on the commencement of works previously notified in prescribed terms to the SRWR, a local roads authority, road works authority, or the Scottish Ministers must, within a prescribed period, enter the date on which works started along with any other prescribed information.

226. Subsection (2)(c) of the Bill amends section 112B(6) of the 1991 Act. The effect of the amendment is to allow for the timescale to be prescribed for a roads authority to enter information into the SRWR about the completion of works they undertake under sections 1 and 2 of the 1984 Act.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

227. Subsection (2)(d) inserts subsection (9) into section 112B of the 1991 Act, so that under section 112B(2A), (5A), and (6), different periods of notice can be prescribed for different types of works.

228. Section 163 of the 1991 Act provides that where matters are to be prescribed under Part IV of that Act, they are to be prescribed by regulations.

## **Reason for taking power**

229. The SRWR is primarily used for the planning and coordination of road works. The genesis of the SRWR which was introduced in statutory form through the Transport (Scotland) Act 2005, was through a collaborative effort between Scottish roads authorities and utility companies to develop an electronic database which would help them fulfil their statutory obligations under the 1991 Act. As such, the contents and design of the SRWR have been heavily influenced by user requirements to ensure that it remains fit for purpose. This ethos continues today, with the road works community promoting refinements to the operation of the register based on their day-to-day experiences on the planning and coordination of road works. This means that there may be changes proposed in light of experience gained, to the sort of information prescribed through section 112B(2A), (5A) and (6) of the 1991 Act.

230. The road works community and the SRWC are also looking, including through the use of emerging technology, at ways in which the SRWR can be updated directly from road work sites in real-time. This means that there may be future changes to the timescales under which information is required to be submitted to the SRWR.

231. In view of the likely need for future flexibility on matters of detail, it makes more practical sense for the contents of notices, and the timescales for their submission to be set out through regulations rather than appear on the face of the Bill.

## **Choice of procedure**

232. The content and processes required around the provision of information by roads authorities to the SRWR is considered to be a matter of detail not thought to be significant enough to warrant affirmative

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

procedure; negative procedure is thought to afford sufficient parliamentary scrutiny.

## Section 66(3) – New Section 114a(2) and (4) of the 1991 Act – Notice Confirming the Start of Works

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** negative

### Provision

233. Section 66(3) inserts section 114A into the 1991 Act. Section 114 of the 1991 Act makes provision for undertakers to provide not less than 7 days' working notice (or such other notice as may be prescribed) of any road works they propose to execute. Such notice requires to be entered on the SRWR. New section 114A of the 1991 Act provides that where an undertaker has begun the works notified under section 114, notice of the date on which works started must be placed in the SRWR.

234. Section 114A(2) provides that the timescale for the submission of a notice confirming the date and time of the start of works may be prescribed.

235. Section 114A(3) provides that different periods of notice may be prescribed for different types of works.

236. Section 114A(4) provides that cases may be prescribed where no notice of the date and time of works starting is required.

### Reason for taking power

237. While there is a certain appetite to know sooner than at present if planned road works have actually started, or if those already underway have been completed and the road returned to traffic, there are logistical and other considerations to take into account about the universality of the practical application of measures designed to tighten up on the provision of relevant information relating to road works.

238. There are practical considerations which may vary across Scotland, which will impact on the ability of a roads authority or undertaker to meet too stringent a timescale for the provision of relevant notices under section

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

new section 114A of the 1991 Act. There is emerging technology which will allow smartphone applications to input notices directly into the SRWR. This might allow notices to be directly submitted to the SRWR from the site of works in, or near real-time. However, mobile phone coverage across Scotland is not universal and there may be remote rural areas where there is no mobile phone coverage, let alone adequate data coverage. Without access to modern smart technology, stakeholders are concerned that the only way they might be able to meet more stringent deadlines will be to significantly increase the resource levels devoted to the administration of road work notices. This suggests the need for flexibility to prescribe periods based on experience which may vary over time with emerging technology.

239. Although there is a general desire among road users, including public and commercial transport managers, to have more accurate, up-to-date information about road works, the levels of interest may vary depending on the circumstances. For example, the level of interest in traffic-sensitive roads in urban areas will be higher than that in a less traffic sensitive rural setting. On the other hand, there may be limited options for diversionary routes in some rural areas.

240. The necessary detail, on the required timescales and possible differential treatment for different situations will require to be carefully considered with stakeholders and may be subject to change as experience develops. In view of this it was not thought appropriate to appear on the face of the Bill.

## **Choice of procedure**

241. The content and processes required around the provision of information by roads authorities to the SRWR is considered to be a matter of detail not thought to be significant enough to warrant affirmative procedure; negative procedure is thought to afford sufficient parliamentary scrutiny.

## **Section 66(4) – New Section 129(5b) – Notice of Reinstatement**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** negative



This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Provision**

242. Section 66(4) amends section 129 of the 1991 Act. Section 129 of the 1991 Act confers a duty on undertakers to reinstate the road having carried out road works, and currently (under subsection (3)) requires notice of that reinstatement, and of whether it is temporary or permanent, to be given before the end of the working day following the day on which the reinstatement was completed. Section 66(4) amends section 129(3) of the 1991 Act to provide that the timescale for the submission of the required notice that the road has been reinstated may instead be prescribed in regulations.

243. Section 129(4) of the 1991 Act requires, in cases where a reinstatement is interim, a permanent reinstatement to be carried out within 6 months. Notice is required of that permanent reinstatement and 66(4) amends section 129(4) to allow a period to be prescribed within which that notice is to be given.

244. Section 66(4) also inserts subsection (5B) into section 129 of the 1991 Act allowing different periods to be prescribed under section 129(3) and (4) for different types of works.

## **Reason for taking power**

245. There is increasingly a demand among road users including public and commercial transport managers to have more accurate, up-to-date information about road works. Whilst it is accepted that road works are necessary for the maintenance and repair of utility plant an apparatus, it is expected that there will be no unnecessary delay and that the road has been returned to traffic as soon as this is possible either following a temporary or permanent reinstatement. There have been tremendous advances in mobile communication technology since the 1991 Act. Given such advances in technology, including emerging technology such as the development of smartphone applications which will allow road work notices to be submitted to the SRWR from the site of the works, it should be possible for relevant information to be submitted to a much shorter deadline. The exact requirements need to be developed in consultation with roads authorities and utility companies, and the relevant time periods can be set out in regulations and varied as necessary, from time to time, as new technologies emerge.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Choice of procedure**

246. The specification of periods by which reinstatement notices are to be placed onto the SRWR is considered to be a matter of detail not thought to be significant enough to warrant affirmative procedure; negative procedure is thought to afford sufficient parliamentary scrutiny.

## **Section 67 – New Section 130c(1) of the 1991 Act – Reinstatement Quality Plans: Codes of Practice**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** codes of practice

**Parliamentary procedure:** none

## **Provision**

247. Section 67 inserts sections 130A, 130B, and 130C into the 1991 Act dealing with reinstatement quality plans. Reinstatement quality plans are a means through which an organisation carrying on works in a road involving the reinstatement of the road (“reinstatement works”) can demonstrate that it has the internal quality control processes, and that its staff are sufficiently competent, to execute those works in accordance with the relevant technical specifications. Section 130A of the 1991 Act imposes requirements on persons other than roads authorities to enter in the SRWR a reinstatement quality plan covering any reinstatement works they propose to carry out. The plan may be general; covering works carried out in particular circumstances, or may be specific to particular reinstatement works. But the works may only be commenced if an applicable plan has been entered on the SRWR. Carrying out reinstatement works without a relevant reinstatement quality plan in place will be an offence.

248. Section 130B of the 1991 Act deals with roads authorities proposing to carry out reinstatement works and permits the Commissioner to require those authorities to prepare reinstatement quality plans in relation to those works.

249. Section 130C(1) provides that the Scottish Ministers may issue or approve codes of practice giving practical guidance about reinstatement quality plans.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

**Reason for taking power**

250. It has been the practice within the road works sector to use a combination of statutory and non-statutory codes of practice along with regulations and Acts to guide activity. There are, for example, 8 existing codes of practice and around the same number of relevant Acts and statutory instruments. Separately there are around 30 advice notes written by the Roads Authority and Utilities Committee for Scotland which is the sector-specific umbrella group in Scotland representing all 33 roads authorities and over 200 utility companies which operate in Scotland.

251. Codes of practice are operational documents that can be easily read and understood by an audience that will range from road operatives all the way through to senior officers within an organisation. Part of that audience will not be familiar with legislation and may not be able to easily interpret what is required of them through regulations alone.

**Choice of procedure**

252. Codes of practice to give practical guidance, including on the contents, completion, and submission of reinstatement quality plans will contain mostly technical detail, in response to detailed requirements set out in regulations. Given that the corresponding regulations are subject to negative procedure, it is not thought necessary to make the detailed technical guidance in the codes of practice subject to any parliamentary procedure.

**Section 67 – New Section 130c(2) of the 1991 Act – Reinstatement Quality Plans: Regulations**

**Power conferred on: the Scottish Ministers**  
**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative except in relation to the creation of criminal offences (by virtue of section 130C(4) and 130C(5) which are subject to affirmative procedure**

**Provision**

253. Section 67 inserts section 130C(2) into the 1991 Act which provides that the Scottish Ministers may, by regulations, make further provision

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

about reinstatement quality plans under section 130A or section 130B of the 1991 Act.

254. This is a general power, though section 130C(3) sets out examples of what the regulations may cover, including:-

- The form and content of reinstatement quality plans;
- The form and content of any notice to be placed into the SRWR under new section 130A of the 1991 Act;
- Specifying the circumstances under which the SRWC may (or must) require a person (including a roads authority) to enter a reinstatement quality plan in that Register;
- The process to be followed by the SRWC in order to require a plan to be entered in that register;
- Requiring a reinstatement quality plan which has been placed into that Register to be reviewed;
- About the consequences of complying with, or failing to comply with codes of practice relating to reinstatement quality plans.

255. Section 130C(4) provides that regulations made under section 130C(2) may contain provision for offences relating to failures to comply with the regulations.

256. Section 130C(5) provides that where regulations made under section 130C(2) contain offences, they must provide that these offences are triable summarily only, and that they must provide that the penalty for these offences is a fine not exceeding level 5 on the standard scale.

## **Reason for taking power**

257. Regulations relating to reinstatement quality plans will require to go into technical detail. In view of the complexity and need for fairly frequent change it was not felt appropriate to set out this level of detail on the face of the Bill. The practice has been to develop technical requirements for regulations in partnership with the road works community through the Roads Authorities and Utilities Committee for Scotland. This bottom-up approach helps ensure that the practical measures contained in the code reflect operational requirements.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## **Choice of procedure**

258. The content and processes required around the use of reinstatement quality plans is considered to be a matter of technical/engineering detail not thought to be significant enough to warrant affirmative procedure; negative procedure is thought to afford sufficient parliamentary scrutiny. The exception is regulations made under section 130C(4) and 130C(5) which are subject to affirmative procedure as such regulations can create criminal offences. The greater parliamentary scrutiny afforded by affirmative procedure is appropriate for regulations creating criminal offences.

## **Section 68 – New Section 138a of the 1991 Act – Information about Apparatus**

**Power conferred on:           the Scottish Ministers**

**Power exercisable by:       regulations made by Scottish statutory  
instrument**

**Parliamentary procedure: negative**

## **Provision**

259. Section 68 inserts new section 138A into the 1991 Act in place of section 138 of that Act. New section 138A makes provision requiring the entry of information about apparatus in the SRWR. The intention is that each roads authority and utility company will place information about the location of all their apparatus into the SRWR so that the register will become a single repository for information about all apparatus in Scotland.

260. Subsection (2) of section 138A makes provision for exceptions to be prescribed from the requirement to place information about apparatus in the register, as well as allowing the information which is to be placed in the register may be prescribed.

## **Reason for taking power**

261. The SRWR is delivered through a sophisticated Geographic Information System (“GIS”) database. Essentially users are presented with a map-based interface. Lying behind the user interface are complex datasets which associate each road work in Scotland along with details on apparatus located in the ground with a spatial set of coordinates which allow them to be accurately depicted on the map interface.

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

262. The manner in which information gets recorded onto the register is, in practice, through the electronic transmission of data from host systems in roads authorities and utility companies, presented in a format which the register will accept. We believe that this level of technical detail is best set out in regulations and not on the face of the Bill. There is also a high probability that the technical details will need to change over time as technical changes are made to the systems which host the register.

## **Choice of procedure**

263. The technical requirements to place plant onto the register is considered to be a matter of detail not thought to be significant enough to warrant affirmative procedure; negative procedure is thought to afford sufficient parliamentary scrutiny.

## **Section 73 – Ancillary Provisions**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** affirmative if amending primary legislation, otherwise negative

## **Provision**

264. Section 73 provides the Scottish Ministers with the power to make, by regulations, such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate in connection with or for giving full effect to the Bill.

## **Reason for taking power**

265. This power is necessary to allow flexibility when commencing provisions in the Bill or addressing circumstances that may arise in light of experience of the operation of the Act. This is particularly relevant here where new regimes are being set up and the operation of them has not been tested, such as low emission zones and pavement and double parking prohibition.

266. The power is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate for the purposes of, in connection with, or for giving full effect to the Bill. Several of the Bill's provisions are inserted into or interact with other processes or legislation. While the

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

Scottish Government has given careful consideration to such interaction, there may be unforeseen matters which require the assistance of this ancillary power in order to ensure the proper effect of the Bill is realised.

## **Choice of procedure**

267. Regulations made under this section which contain a provision which adds to, omits or replaces any part of an Act are subject to affirmative procedure. Otherwise, regulations made under this section are subject to negative procedure. This approach is normal for ancillary powers of this type.

## **Section 74 – Commencement**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: laid, no procedure**

## **Provision**

268. Section 74 of the Bill enables the Scottish Ministers to make regulations appointing the days on which the provisions in the Bill come into force (other than section 74 itself, and sections 72, 73 and 75, which come into force on the day after Royal Assent). Regulations made under section 73 may include transitional, transitory or saving provision.

## **Reason for taking power**

269. The Scottish Ministers consider it appropriate for the substantive provisions of the Bill to be commenced at such a date as they consider appropriate. This will allow subordinate legislation and guidance to be put in place and for users of the legislation to have time to prepare before the new arrangements come into effect. It is usual practice for such commencement provisions to be dealt with by subordinate legislation.

## **Choice of procedure**

270. The power is subject to the default laying requirement under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010. This is typical for commencement regulations. The nature of the laying requirement means that the Scottish Government anticipates the use of this

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

power to effect straightforward transitional, transitory or saving provisions only.

## Schedule – Paragraph 3(6) - Amendment of Section 79 of the 2001 Act – Guidance

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** guidance

**Parliamentary procedure:** none

### Provision

271. Paragraph 3(6) of the schedule amends section 79 of the 2001 Act to replace the references to quality partnerships and quality contracts with references to partnerships schemes and local franchise networks. This enables the Scottish Ministers to issue guidance in relation to them and to require local transport authorities to have regard to any such guidance.

### Reason for taking power

272. Guidance issued by the Scottish Ministers will provide further detail to local transport authorities in relation to partnership schemes and franchising frameworks. The exercising of these new powers requires a level of detail which is beyond that which would normally be contained in primary legislation and will be developed in discussion with local transport authorities. Guidance may require updating over time, primarily to reflect newly emerging best practice and experience of using new powers, rather than substantive changes to the underlying principles. In view of the complexity, potential for future change and need for consultation it is not felt appropriate to set out this level of detail on the face of the Bill.

273. Guidance provides a responsive and flexible way allowing it to reflect evolving knowledge, research evidence and best practice as that emerges.

### Choice of procedure

274. The provision of technical guidance on the detailed operation of partnership schemes and franchising frameworks is considered to be a matter of technical and practical detail not warranting parliamentary scrutiny. Accordingly, no parliamentary procedure is attached to the exercise of this power.



This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

## Schedule – Paragraph 6(3) - Amendment of Section 117 of the 1991 Act

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** negative

### Provision

275. Section 117 of the 1991 Act permits roads authorities to restrict, for a specified period, the execution of (non-emergency) utility road works following substantial works being carried out by the roads authority. This is typically the full resurfacing of the carriageway. The 1991 Act envisages that a 12 month period of restriction should apply. The provisions of section 117 of the 1991 Act were amended by section 22 of the 2005 Act, with the intention of permitting a period other than 12 months to be prescribed. But due to a drafting error in that amendment it has never been commenced.

276. The amendment in paragraph 6(3) of the schedule removes the reference in section 117 to the period of 12 months and permits the Scottish Ministers to prescribe the period during which works may be restricted by a roads authority following substantial works for roads purposes.

### Reason for taking power

277. For design purposes a road is expected to last 25 years and the surface around 10 years. The extent to which utility trenches cause long-term damage to a roadway even where they are properly reinstated is a contentious issue, and generally disputed by the utilities. The proposition is that once a utility trench has been excavated and reinstated, the overall structure of the road is considerably weakened and will need to be resurfaced more frequently. Even if a road is resurfaced, weaknesses may remain in the base compacted layer. If further excavations can be prevented during the lifetime of the new road surface then the strength of the road fabric will be prolonged.

278. The process of executing road works is something that continues to be refined over time with new materials becoming available along with techniques which minimise the amount of excavation required or improve

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

the quality of reinstatement. As further changes are likely to be made going forward to both the restricted period and types of works it applies to, it will be helpful to have this essentially technical detail set out in regulations.

### **Choice of procedure**

279. The period of restriction on the carrying out of (non-emergency) utility road works following substantial works and the types of works it applies to is considered to be a matter of detail not thought to be significant enough to warrant affirmative procedure; negative procedure is thought to afford sufficient parliamentary scrutiny.



This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

# Transport (Scotland) Bill

## Delegated Powers Memorandum

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