

TRANSPORT (SCOTLAND) BILL

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The Transport (Scotland) Bill was introduced into the Scottish Parliament on 27 October 2004 by the Minister for Transport, Nicol Stephen MSP.

This Briefing describes the provisions outlined in the Bill, examines how these proposals were developed, looks at what these changes will mean in practice and summarises the views of key organisations on the Bill's provisions.

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KEY POINTS

PART 1

- the Bill requires Scottish Ministers to establish a network of Regional Transport Partnerships (RTPs) covering the whole of Scotland
- RTPs will be managed by councillors and external members; each local authority within the boundary of a RTP will be represented by one councillor who will have a vote weighted by the population of that authority
- external members will initially be appointed by Scottish Ministers and thereafter by the RTP itself; external members will control no more than 33% of the voting power of a RTP
- the area, constitution and powers of a RTP will be specified in secondary legislation, however each RTP will at least be required to draft a Regional Transport Strategy
- the Scottish Executive is holding a separate consultation on the boundaries, functions and makeup of RTPs

PART 2

- the Bill covers all roads, including trunk roads
- the Bill creates a statutory single national register for planning and coordinating roadworks, called the Scottish Road Works Register
- the Bill creates a Scottish Road Works Commissioner to improve and monitor national performance on roadworks
- the Bill strengthens requirements for directing the timing of works, reinstating (putting back) roads, and create new provisions for resurfacing roads
- the Bill changes the enforcement regime of offences under the New Roads and Street Works Act 1991
- the Bill strengthens requirements, and improves training for persons carrying out, supervising or administering road works

PART 3

- this part of the Bill provides mostly for the introduction of national travel concession schemes
- minor amendments to legislation on pedestrian crossings, Harbour Orders, and the Highlands and Islands Shipping Services Act 1960 are proposed
- part 3 also clarifies provisions on bus quality partnerships, road user charging, and the role of local authorities in the Strathclyde Passenger Transport area in developing an integrated transport scheme

INTRODUCTION

[A Partnership for a Better Scotland: Partnership Agreement](#) (Scottish Labour and Scottish Liberal Democrats 2003) contained the following commitments:

- *Extending concessionary fare schemes on public transport, including a national free off-peak bus scheme for older people and people with disabilities*
- *Bringing forward proposals for a Strategic Transport Authority, as an agency within the Executive directly accountable to Ministers*

These proposals were fleshed out by the Scottish Executive (2003a) in [Scotland's Transport – Proposals for a new approach to Transport in Scotland](#) which was published during September 2003. This consultation document proposed the formation of a national transport agency, Transport Scotland, and the creation of a series of regional transport partnerships and posed a series of seven questions on the shape and nature of these proposed institutions. In addition the Scottish Executive (2003b) launched a consultation on [The Regulation of Utility of Company Roadworks](#) during October 2003. This set out two scenarios, the first based on informal partnership working to reduce delays caused by road works, the second proposed new road works legislation.

The proposals in these two consultations were refined, based in part on the responses received by the Scottish Executive, in the transport White Paper [Scotland's Transport Future](#) (Scottish Executive 2004a), which was published during June 2004. The proposals in the White Paper that need new legislation formed the basis of the [Transport \(Scotland\) Bill](#) (Scottish Parliament 2004) which was introduced in the Parliament on 27 October 2004.

This briefing explains what is in the Bill, examines how these proposals were developed, what these changes will mean on the ground and summarises the view of key organisations on the Bill's provisions.

HOW IS REGIONAL TRANSPORT CURRENTLY ADMINISTERED?

Since local government reorganisation in 1996 local and regional transport administration has been the responsibility of Scotland's 32 local authorities and, in the former Strathclyde Region, Strathclyde Passenger Transport Authority and Executive.

Currently there is no statutory requirement for local authorities to draft either local or regional transport plans. However, most local authorities have drafted local transport plans and, in the past few years, have come together to form four voluntary regional transport partnerships with a view to developing coherent regional transport plans. Such plans are not restricted by the boundaries of individual local authorities which often do not reflect the travel patterns of local residents.

The four voluntary transport partnerships are:

[HITRANS](#) (Highlands and Islands Strategic Transport Partnership): HITRANS was established as a sub-group of the Highlands and Islands Convention in 1997 as the Highlands and Islands Integrated Transport Forum. HITRANS aims to provide cost effective regional transport services which enhance regional development opportunities, combat social exclusion and which are safe and sustainable. To this end HITRANS published a [Regional Transport Strategy](#) (HITRANS 2003) for the Highlands and Islands Area during 2003.

HITRANS is a partnership of the following organisations:

- [Argyll & Bute Council](#)
- [Orkney Islands Council](#)
- [Comhairle nan Eilean Siar](#)
- [Shetland Islands Council](#)
- [The Highland Council](#)
- [Highlands and Islands Enterprise](#)
- [North Ayrshire Council](#)
- The Highlands and Islands Public Transport Forum
- [Moray Council](#)
- [Scottish Council Development and Industry](#)

HITRANS is managed by a board which consists of one Councillor and one senior officer from each local authority plus one representative from each of the other partners. In addition the Scottish Executive and Highland Council can each nominate one non-voting representative to serve on the Board.

[WESTRANS](#) (West of Scotland Transport Partnership): WESTRANS developed as an informal organisation following a meeting of the 12 former Strathclyde Region local authorities in November 1998. WESTRANS became a formal joint committee during October 2002 with Dumfries and Galloway joining during January 2003.

WESTRANS is a Joint Committee of the following local authorities:

- [Argyll and Bute Council](#)
- [East Ayrshire Council](#)
- [East Dunbartonshire Council](#)
- [East Renfrewshire Council](#)
- [Dumfries and Galloway Council](#)
- [Glasgow City Council](#)
- [Inverclyde Council](#)
- [North Ayrshire Council](#)
- [North Lanarkshire Council](#)
- [Renfrewshire Council](#)
- [South Ayrshire Council](#)
- [South Lanarkshire Council](#)
- [West Dunbartonshire Council](#)

Although not formal members, WESTRANS works closely with SPT, Glasgow and Clyde Valley Structure Plan Joint Committee and the Ayrshire Structure Plan Joint Committee. WESTRANS and SPT (2004) published a consultation draft of [A Joint Transport Strategy for Western Scotland to 2025](#) during May 2004. The main aims of the strategy being the further development of a transport network which is sustainable, combats social exclusion, promotes economic development and enhances the environment of the west of Scotland.

[NESTRANS](#) (North East Scotland Transport Partnership): NESTRANS is the regional transport partnership for north-east Scotland, consisting of representatives from:

- [Aberdeen and Grampian Chamber of Commerce](#)
- [Aberdeen City Council](#)
- [Aberdeenshire Council](#)
- [Scottish Enterprise Grampian](#)

NESTRANS is governed by a Board of representatives from each of the four partner organisations. NESTRANS (2003) published a regional transport strategy, [Helping Deliver a Modern Transport System](#), during which sets out a series of transport improvements for the north east up to 2011.

[SESTRAN](#) (South East Scotland Transport Partnership): SESTRAN was set up by seven Central and South East Scotland local authorities in March 1998. The partnership has since grown to include the following organisations:

- [City of Edinburgh Council](#)
- [Falkirk Council](#)
- [Fife Council](#)
- [Stirling Council](#)
- [Clackmannanshire Council](#)
- [East Lothian Council](#)
- [Midlothian Council](#)
- [Scottish Borders Council](#)
- [West Lothian Council](#)
- [Forth Estuary Transport Authority](#) (FETA)
- [Perth and Kinross Council](#)

SESTRAN is governed by a steering group which consists of two elected members and two officers from each Council plus two representatives from FETA. Day to day management is carried out by a Management Team formed of two Officers from each member council plus two representatives from FETA.

In 2003 SESTRAN produced a [Regional Transport Strategy](#) (SESTRAN 2003) setting out the vision, aims and objectives for strategic transport in the region up to 2028, with a special focus on links to and from Edinburgh.

As can be seen from the brief descriptions above, each voluntary transport partnership has developed unique structures and objectives, e.g. NESTRANS and HITRANS involve private sector partners where SESTRAN and WESTRANS do not and consequently each regional transport plan deals with different issues over different time scales. In addition Angus Council and Dundee Council are not currently members of a voluntary transport partnership, although this does not mean that they do not work with other local authorities on an ad hoc basis.

TRANSPORT (SCOTLAND) BILL PART 1: REGIONAL TRANSPORT PARTNERSHIPS

The main provisions of Part 1 of the Transport (Scotland) Bill can be summarised as follows.

Regional Transport Partnerships: The Bill requires Scottish Ministers to divide Scotland into regions and establish a 'Regional Transport Partnership' (RTP) for each of these regions. Ministers must also, by order, set out the constitution of each RTP.

Membership of a Regional Transport Partnership: Each RTP must contain one councillor from each constituent local authority, i.e. an authority which is within or partially within the RTP area. RTPs will also include external non-councillor members, initially appointed by Scottish Ministers and thereafter by the RTP itself, subject to the approval of Scottish Ministers. In addition non-voting observers may be appointed to the RTP by either Scottish Ministers or the RTP itself.

Voting Rights: Where RTPs are required to vote on an issue the weight attached to each councillor members' vote will be weighted to broadly reflect the population of their local authority, with a weight of between 1 and 4. In addition councillors will always command a minimum of two third of the votes on a RTP and certain RTP posts, defined in the order establishing the RTPs constitution, may only be open to councillor members.

Dissolution: Scottish Ministers will have the power, by order, to dissolve a Transport Partnership.

Finance: A RTP will be able to receive direct funding from the Scottish Executive and other organisations and will, if suitable powers are devolved by local authorities, be able to operate revenue generating services. The majority of the revenue expenditure incurred by a RTP will be met by each of its constituent local authorities, the contribution to be met by each authority can either be decided by agreement or, where agreement has not proven possible, as decided by Scottish Ministers. A RTP may borrow money for capital investment under the same conditions as a local authority.

Regional Transport Strategies: A major function of each RTP is the requirement to draw up a Regional Transport Strategy (RTS). A RTS will set out a case for investment in transport in the region and will guide the transport activities and investment of the constituent local authorities. A RTP will be required to consult with constituent councils, public bodies and other stakeholders when drafting a RTS. Certain public bodies will be placed under a duty to perform their functions in a manner that is consistent with the RTS, as far as reasonably possible.

Each RTP will be required to keep its RTS under review and can modify the current strategy or issue an entirely new strategy at any time. The Scottish Ministers will have the power to direct RTPs to issue new RTSs.

Scottish Ministers intend to issue guidance on the content and development of RTSs and all RTSs will be subject to ministerial approval. In addition Scottish Ministers will have the power, by order, to transfer any transport function to a RTP where it is required for the fulfilment of the RTS, if Ministers consider such a transfer to be appropriate.

Scottish Ministers Transport Functions: Scottish Ministers will be able to assume, by order, any of the transport functions carried out by Strathclyde Passenger Transport.

Transfer of Staff, Property and Liabilities: Any staff that transfer employment as a result of the provision of the Bill will do so under TUPE regulations

WHAT WILL HAPPEN TO STRATHCLYDE PASSENGER TRANSPORT?

Strathclyde Passenger Transport (SPT) is made up of two linked bodies:

- Strathclyde Passenger Transport Authority (SPTA)
- Strathclyde Passenger Transport Executive (SPTE)

SPTA is one of seven passenger transport authorities in the UK set up under the provisions of the Transport Act 1968 and is the only passenger transport authority in Scotland. It has 34 members from the 12 local authorities that made up the former Strathclyde Region and is responsible for forming Strathclyde's public transport policy.

SPTE advises the SPTA and implements its policies. It employs some 686 staff, over half of whom work on the Glasgow Subway, the only service actually owned by SPT.

As described above Section 12 of the Bill allows Scottish Ministers to assume, by order, any of the transport functions carried out by SPTA or SPTE. The Executive set out its intentions for SPT in the White Paper (Scottish Executive, 2004a) which stated:

We are therefore determined to see a strong regional transport partnership in the west of Scotland to which SPT's powers would transfer, with the exception of relevant rail powers which we have already indicated will transfer to the national agency. These powers could be supplemented by any other local authority powers that the constituent councils chose to transfer.

Rail services in the SPT area are currently specified and paid for by SPT (from Scottish Executive rail grant), which also decides on timetables and fares for journeys that begin and end in its area, and on certain routes extending outwith this area. The services are operated by First ScotRail, the holder of the Scottish passenger rail franchise, to which SPT is a co-signatory. As indicated above, the Scottish Executive intends to assume these powers, with the intention that they will be exercised by Transport Scotland.

SCOTTISH EXECUTIVE CONSULTATION ON "PROPOSALS FOR STATUTORY REGIONAL TRANSPORT PARTNERSHIPS"

The Scottish Executive launched a consultation, [Scotland's Transport Future – Proposals for Statutory Regional Transport Partnerships](#), along with the publication of the Bill on 27 October 2004. The consultation closes on Wednesday 19 January 2005.

The consultation document (Scottish Executive 2004b) sets out the Executive's thinking on the boundaries, constitution, functions and funding of the proposed statutory Regional Transport Partnerships (RTPs). It also poses a series of 16 questions on these topics.

The Executive's draft proposals can be summarised as follows:

BOUNDARIES

The Executive proposes the creation of five statutory RTPs. The following table indicates the broad areas to be covered by the partnerships based on the local authorities to be included in each.

Transport Partnership	Constituent Councils
West & South-West	Argyll & Bute (Helensburgh), Dumfries & Galloway, East Ayrshire, East Dunbartonshire, East Renfrewshire, Glasgow City, Inverclyde, North Ayrshire (less Arran & Cumbraes), North Lanarkshire, Renfrewshire, South Ayrshire, South Lanarkshire, West Dunbartonshire
South-East	City of Edinburgh, Clackmannanshire, East Lothian, Falkirk, Fife, Midlothian, Scottish Borders, West Lothian
Central & Tay	Angus, Dundee City, Perth & Kinross, Stirling
North-East	Aberdeen City, Aberdeenshire
Highlands & Islands	Argyll & Bute (less Helensburgh), Comhairle nan Eilean Siar, Highland, Moray, North Ayrshire (Arran & Cumbraes), Orkney, Shetland

The Executive (2004b) has used the following criteria in deciding where to draw the boundaries of the statutory RTPs:

- *Reflecting travel to work patterns and other user needs*
- *Following the existing boundaries of local authorities and other public bodies*
- *Avoiding the division of a local authority area between more than one partnership other than where there were compelling transport reasons*
- *Capturing a regional boundary that would make sense to its inhabitants*
- *Bringing together local authorities with common interests and issues*
- *Ensuring partnerships with sufficient critical mass to deliver services effectively but without including so many members so as to become unwieldy*

CONSTITUTION

Each statutory RTP will be made up of ‘councillor members’ and ‘external members’ who will account for approximately 30% of the voting membership. In addition non-voting external members may also be appointed to the RTP. The criteria for appointment will be as follows:

- **Councillor member:** Each constituent council of an RTP will be represented by a single serving councillor, who can send a substitute, (who must be a serving member of the same council) in case of unavoidable absence from meetings. Local authorities will have the power to terminate, at any time, the tenure of the councillor representing them on an RTP.
- **External member:** External members will be key players in the transport field, from service providers to users, and will initially be appointed by Scottish Ministers. It is the Executive’s intention that once RTPs are fully established that they will appoint their own external members. It is anticipated that external members will be appointed for a period of four years.

- **Non-voting external member:** RTPs will also be able to appoint external members who do not have voting rights.

The Executive considers that most RTP decisions will be made by consensus, although where consensus cannot be reached there will be a vote decided by a simple majority. The vote of each councillor member will be weighted, based on the population of the local authority that they represent. In exceptional circumstances, e.g. a vote to change the constitution of the RTP, a vote may need a greater majority, e.g. 2 to1, to be carried.

FUNCTIONS

The functions of a RTP will be set out by ministerial order. The Executive states that the functions to be exercised by each partnership will be based on the wishes of the organisations involved. However, the Executive identifies three distinct types of RTP.

1. Regional strategy and limited transport powers: Each RTP must develop and implement a RTS. However, under this scenario all of the powers required to implement the RTS will be retained by individual local authorities

2. Regional strategy and some transport powers transferred: This is effectively a development of the model described above. The RTP would develop its RTS in which it would identify what additional powers it needed to implement the strategy. The Scottish Ministers would then decide, in consultation with the RTP, what powers to devolve to the Partnership which would be done by order.

3. Regional strategy and significant public transport powers transferred: Again a development of model 2 which would see further powers devolved from local authorities to the RTP, as is currently the case in the west of Scotland with SPT. This model could go even further than current passenger transport executives by incorporating local authority road functions into the remit of the RTP.

FUNDING

Revenue Funding: RTPs' revenue expenditure will be covered through requisition of funds from the constituent local authorities. This would include funds to cover costs incurred in the delivery of services and functions devolved to the RTP from those local authorities. The proportion of funds to be paid by each individual local authority will normally be agreed by negotiation between local authorities, if no agreement can be reached then the Scottish Ministers will impose a settlement on the relevant local authorities.

Capital Expenditure: Investment in infrastructure projects identified in a RTS can be funded in a number of ways:

- the constituent local authorities will be able to put money towards the project, borrowing if required under the prudential borrowing regime (in which case the asset-ownership would rest with the authorities)
- the RTP itself will also be able to borrow money under the prudential regime in the same way. It would have to cover the costs incurred by such borrowing through its budget in future years - this is likely to fall on the constituent authorities to fund
- the Scottish Executive will also be able to contribute to regional projects of strategic significance

- for individual projects, other partners (both commercial and public sector) may contribute funding

VIEWS OF KEY STAKEHOLDERS ON STATUTORY REGIONAL TRANSPORT PARTNERSHIP PROPOSALS

The proposals in the Bill have been broadly welcomed by many involved in the planning and provision of transport in Scotland, e.g. Councillor Alison Magee, COSLA roads and transportation spokesperson, stated (Convention of Scottish Local Authorities, 2004) that:

“The key role that Local Government has to play in the future planning and delivery of transport services at local and regional level is good news for us and, allied to the national strategy, will for the first time allow integrated planning of agreed transport priorities from top to bottom.”

Councillor Alison McInnes, Vice Chair of NESTRANS and Chair of Aberdeenshire Council’s Infrastructure Services Committee, has also welcomed the proposals in the Bill, stating (NESTRANS, 2004):

“The new statutory powers will provide the RTP, working with its constituent Councils with greater opportunities to effectively deliver a Modern Transport System for the north east.”

However, although the general thrust of the proposals have been greeted in a mainly positive manner some particular concerns have been raised regarding specific details of the Bill, e.g. although Councillor Alistair Watson, Chair of SPTA (SPT, 2004a):

“...cautiously welcomed Transport Minister Nicol Stephen’s commitment to SPT’s core role in the regional transport body proposed for the west of Scotland.”

He has gone on, in recent statements, to highlight concerns about the proposed structure and organisation of the statutory RTPs, stating (SPT, 2004b):

“If we follow the white paper’s proposal for one member per council, there will be political parties left standing on the sidelines with nothing to do but criticise what might be seen as another quango. The RTP must have a politically inclusive, cross-party membership with no block voting.”

In addition, he has also raised concerns about the impact of removing SPTs rail franchise powers (SPT, 2004c), claiming that:

“Without SPT actively managing and promoting the rail network in the west of Scotland, the growth in passenger numbers and income would both have been about half their current figure. Without SPT the taxpayer would have had to foot a far bigger bill for the rail franchise.”

Highlighting another potential area of concern regarding community involvement in RTP decision making, Dr Dan Barlow, Head of Research at Friends of the Earth Scotland, has stated (Friends of the Earth Scotland 2004)

“Despite the Executive’s stated intention to ensure the public get involved there is a real danger the new regional transport partnerships will become dominated by business groups and others who simply want more environmentally-destructive mega projects such as motorways.”

PART 2: ROAD WORKS

INTRODUCTION

This part of the Bill aims to improve the quality and co-ordination of road works across Scotland. In recent years, problems have been exacerbated, partly because of the emergence of utilities companies who dig up the road to install new services such as broadband or cable TV.

In particular, the Bill proposes to create a new single national register for planning and coordinating road works, called the Scottish Road Works Register (SRWR). The Bill creates a Scottish Road Works Commissioner (SRWC) to oversee and regulate the new register. It also strengthens the regulations pertaining to the timing of works, reinstating (putting back) the road, and changes the enforcement regime of offences under the [New Roads and Street Works Act 1991](#) (the 1991 Act) to include fixed penalty notices. Additionally, this part of the Bill strengthens requirements, and improves training for those carrying out, supervising or administering road works.

Convention of Scottish Local Authorities (2004) welcomed the Bill, and stated:

"We see this as a real step forward in allowing better coordination of roadworks and ensuring that the problems we have all experienced are resolved quickly and effectively."

A consultation on [The Regulation of Utility Company Roadworks](#) (Scottish Executive 2003b) focused on the way in which they are currently carried out, and how they could be improved. As previously noted, two proposals for change were mooted; the first option strengthened and provided further guidance on existing legislation, and the second proposed new legislation. [Consultation responses](#) (Scottish Executive 2004c) were predominantly in favour of new primary legislation, however in spite of the emergence of common themes, there was no majority view for many of the issues raised.

The Community Planning Implementation Group (2004) at COSLA was in favour of the first approach, and stated that:

"...the approach that has been taken, utilising where possible, existing legislation (Community Planning and the Power to Advance Well-being) is sensible and gives Local Authorities the ability to use their existing powers to ensure better forward planning of utility company roadworks, as well as better co-ordination between utility companies and councils."

Similarly, BT Scotland (2004) stated:

"...we are not convinced that the problems relating to utilities' roadworks is such that primary legislation is required, and would suggest that more detailed and complete information is required in order to demonstrate that primary legislation would be necessary to effectively deal with the issue of congestion caused by utility companies."

Conversely, Highland Council (2004) would:

"...welcome new primary legislation, which gives the roads authority greater control over its own roads. However such powers would need to generate sufficient revenue in order

to operate them effectively. The Council has difficulty in identifying adequate resources to properly implement its current powers.”

Strathclyde Police (2004) state:

“New concise legislation which clearly and simply defines both the role of the Local Authority and duties of the undertaker, combines with the relevant statutory penalties would hopefully ensure a higher degree of compliance by the utility companies.”

A broad [analysis](#) (Scottish Executive 2004c) of the responses has shown that the issues mostly affecting the public are:

- inconvenience caused by congestion and delays
- environmental issues
- the cost of congestion to business
- safety of the general public
- poor quality reinstatement (putting back) of the road
- overstay of roadworks
- roads being excavated more than once
- unplanned emergency works

The Scottish Road Works Register

[Moleseye](#)¹, the **current** Scottish Road Works Register, is an electronic notification system that monitors and coordinates roadworking activity throughout the country. Under the 1991 Act, individual roads authorities are obliged to maintain one or more single registers at a regional level; however they have, by administrative arrangement, agreed to pool their resources and operate a national system. A number of problems have been highlighted with the current system. These include (Scottish Executive 2004c):

- inaccurate, incomplete or out of date records
- lack of notification/use of the register
- lack of compatibility with utility company systems

The Scottish Executive (Transport (Scotland) Bill: Policy Memorandum 2004) recognises this when it states:

“There are two principal problems with the current regime which the Bill addresses. Firstly, not all undertakers participate in maintaining the [current] SRWR, and of those which do, not all comply with their obligation to regularly provide information to it. This makes it difficult for road works authorities to fulfil their coordination role, because the information held on SRWR can be incomplete or inaccurate. Secondly, it is clear that the quality and level of information held on SRWR could be enhanced to make it a much more useful planning tool.”

Part 2 of the Bill therefore proposes the creation of a new unitary Scottish Road Works Register (SRWR). This single national register is created by Section 17 of the Bill. Section 16 places a statutory requirement on road works authorities, and those undertaking work to provide the Commissioner with information. In Section 17, amendments are proposed to the 1991 Act which tighten and modify current requirements to inform the register of relevant proposals.

¹ Both the current and proposed systems are called the Scottish Road Works Register.
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These will establish the SRWR as a statutory register and place *new duties on undertakers and road works authorities to maintain and use the SRWR as the central tool for daily and longer term planning* (Transport (Scotland) Bill: Policy Memorandum 2004).

Glasgow City Council (2004) support changes to the SRWR, and note that *the biggest single problem with the system is the quality of the information inputted by utilities. Until this is addressed the full potential of the system will not be realised.* Furthermore, National Grid Transco (2004) state:

“To be effective, all works, including road authority works, must be recorded and efficiently coordinated by the road authority with emphasis put on works causing potential conflict and disruption.”

If undertakers do not provide adequate information to the register, then penalties for failure to comply can be imposed under [section 119](#) (*General duty of undertakers to cooperate*) of the 1991 Act. Failure to comply with published codes of practice under this section may engender a fine of up to £1000 (level 3).

The Scottish Road Works Commissioner

Section 14 of the Bill creates a new public position entitled *The Scottish Roadworks Commissioner* and Section 15 sets out the functions of the Commissioner, with the overall aim to improve and monitor national performance on roadworks by promoting good practice, and ensuring that all parties comply with relevant legislation. More specifically, the incumbent will be able to implement ad hoc inspections of the above Scottish Road Works Register, and will carry out and publish an annual national level audit of the Register.

The Society of Chief Officers of Transportation in Scotland (SCOTS) stated (Scottish Parliament Local Government and Transport Committee 2004a):

“The Commissioner does not appear to have significantly different powers than Roads Authorities currently have and would thus appear have the same difficulties in getting New Roads and Street Works Act 1999 offences prosecuted.”

East Renfrewshire Council (2004) however think that:

“An arbitrator would be very useful as someone who could draw to a conclusion disputes over matters of disagreement/conflict without reverting to the courts.”

Similarly, National Grid Transco (2004):

“...welcomes the provision of an independent arbitrator role, but to be effective, they must apply the same criteria to both utility and road authority works. The arbitrator must be fair and knowledgeable and understand the balance between the provision of essential services and disruption to traffic.”

With reference to the previous statement by National Grid Transco, a key role of the Commissioner will be direction-making power under sections 118 (*General duty of road works authority to co-ordinate works*) and 119 (*General duty of undertakers to cooperate*) of the 1991 Act. This means that utility companies can be fined for flouting the legislation, and roads authorities can be directed to carry out improvements to their practices e.g. the Commissioner can require an authority to carry out a more rigorous audit of their actions, or specify certain training schemes for staff.

It should be noted that this Commissioner differs from the Traffic Commissioners who work with the UK [Vehicle and Operator Services Agency](#).

Timing of Works, Reinstatements, Enforcement and Training

In addition to the above, the Bill also makes provision to improve the timing of works, reinstatements, enforcement of road works offences, and training of those involved in road working.

Sections 18, 19 and 20 amend, clarify and strengthen the power of road works authorities to specify on what days, and at what time works may be carried out. Also, to minimise disruption, authorities may designate where apparatus in a road should be placed, and may also restrict further substantial works at that site within 3 years.

Similarly, to ensure a high quality of reinstatement and resurfacing, sections 27 - 30 amend the 1991 Act to strengthen the obligation on undertakers to satisfactorily finish the job, and provide *new powers for road works authorities to require full or half-width resurfacing of the road when this is necessary to protect the road surface quality* (Transport (Scotland) Bill: Policy Memorandum 2004).

Sections 19, 23, 29, and 31 to 33 contain subsections pertaining to enforcement and increasing penalties for road works offences. Works in contravention of section 19 (*Directions as to placing of apparatus in roads*) are liable on summary conviction to a maximum fine on level 5 (£5k) of the standard scale. Section 23 allows Ministers to create regulations whereby the Commissioner can impose penalties on undertakers who fail to comply with section 119 of the 1991 Act. Section 29 allows Scottish Ministers to make regulations in respect of a breach of requirements imposed by a resurfacing notice (which specifies timing, materials, workmanship and standard of resurfacing). These offences are liable to a fine not exceeding level 4 (£2.5k) on the standard scale, or in more serious cases, level 5 (£5k).

On the subject of financial penalties, Aberdeen City Council (2004) notes that:

“The utility companies must be encouraged to plan and finish their works in the shortest possible timeframe, and the only way to make this work is by a financial penalty for excess time spent working on the road. This action alone would reduce disruption considerably. However, it is essential that these costs are not passed on to the consumer by way of increased charges from utility operators.”

Section 31 introduces an increase in penalties (up to levels 4 and 5) for offences listed in Schedule 3 of the Bill, for example, these include failure to comply with notification duties, carrying out works in contravention of a restriction, and interference with safety measures. Section 32 introduces a new section to the 1991 Act which makes provision for the introduction of fixed penalties for offences such as failure to give notice of emergency works, and failure to give notice of completion of reinstatement. Section 33 also introduces a new section to the 1991 Act that allows road works authorities (via the Scottish Ministers) to impose penalty charges for breaching the 1991 Act under civil law.

“The Bill requires people involved in carrying out road works (both supervisors and operatives) to have the right qualifications to do the job safely and to the required quality standards.” (Transport (Scotland) Bill: Policy Memorandum 2004)

Therefore, sections 24 and 25 require those undertaking road works to supply the names, and evidence of the qualifications of supervisors and workers to the roads authority. This information can be requested whilst the works are being carried out, or within a prescribed period following completion. This period is to be detailed in secondary legislation, as is a requirement that documentary evidence of qualifications must be accredited by an approved body. Similarly, the Bill requires that roadworks authorities and undertakers ensure the competence of employees involved in the administration of the SRWR.

PART 3: MISCELLANEOUS

INTRODUCTION

Part 3 of the Transport (Scotland) Bill 2004 provides mostly for the introduction of national travel concession schemes. It also makes minor amendments to legislation on pedestrian crossings, Harbour Orders, and the Highlands and Islands Shipping Services Act 1960. The clarification of provisions on bus quality partnerships, and road user charging also feature in the Bill.

Concessionary Travel

As previously noted, the Partnership Agreement (Scottish Labour and Scottish Liberal Democrats 2003) undertakes to:

“Extending concessionary fare schemes on public transport, including a national free off-peak bus scheme for older people and people with disabilities”

And:

“Progressively introducing a scheme of national bus, rail and ferry concessionary travel for young people, initially for all in full time education or training”

Section 37 of the Bill allows Scottish Ministers discretionary power to create national concessionary travel schemes. These powers are additional to local authorities' current powers to run schemes in their area under the Transport Act 1985 and compliment the, as yet unused, powers allowing Scottish Ministers to direct local authorities to operate a concessionary fares scheme which were introduced under the [Transport \(Scotland\) Act 2001](#).

The Executive (Transport (Scotland) Bill: Policy Memorandum 2004) states:

“In Scotland there are 16 local concessionary travel schemes run by individual local authorities. These schemes have been developed locally over the years to meet the needs of people in the area served by the particular scheme. As a result, each scheme is different – in terms of the categories of people who qualify for concessionary travel; the transport modes on which travel is available; and the nature of the concession on offer.”

This national mandate for development of local travel schemes means that it might no longer be appropriate for concessionary travel to be exclusively the responsibility of local transport authorities. The Policy Memorandum (2004) therefore outlines three options for future management of concessionary travel:

- local authorities could continue to operate schemes, including nationally directed improvements
- Scottish Ministers could exercise the proposed powers of this Bill, and manage concessionary travel via the new transport agency (Transport Scotland)
- the new Transport Partnerships (proposed in Part 1 of the Bill) could take responsibility

If Ministers chose to establish a scheme, an order will be made to include provision for administration, reimbursement of operators, the right of operators to participate, the right of Ministers to require participation, and appeals about compulsory participation.

The Bill's Policy Memorandum notes that the Executive wants the administration of national concessionary travel schemes to be as flexible as possible so that they can be run by Scottish

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Ministers (via Transport Scotland), local transport authorities, or Transport Partnerships. It further notes that if a national scheme was managed by Transport Partnerships:

“This would enable schemes to continue to include local elements and nationally mandated enhancements thereby significantly reducing the current duplication of effort... However, with the focus now on national entitlements the Scottish Ministers wish to consider whether a national approach to delivery of travel schemes might now be appropriate.”

In evidence to the Local Government and Transport Committee’s [inquiry](#) into the implementation of the [Transport \(Scotland\) Act 2001](#), there was broad support for implementing a national concessionary travel scheme. Strathclyde Buses (Scottish Parliament Local Government and Transport Committee 2004b) stated that they would support:

“One national scheme nationally administered eliminating wasteful administration cost.”

Similarly, Brian Souter of [Stagecoach Group](#) has noted (Scottish Parliament Local Government and Transport Committee 2004c) that current concession schemes had stimulated business growth particularly in rural areas, and that there had been a modal shift from private cars, engendering positive environmental and social impacts. In written evidence to the committee, he further stated that he *“fully supports the provision of concessionary travel”*.

Other Amendments in Part 3

Section 38 of the Bill proposes to amend section 23 of the Road Traffic Regulation Act 1984, and simplify the procedures for a local traffic authority wanting to alter a pedestrian crossing. Put simply, it would allow local traffic authorities to *establish, alter or remove pedestrian crossings* (Policy Memorandum 2004) without (as is currently required) having to inform Ministers.

Section 39 of the Bill proposes to modify the Highlands and Islands Shipping Services Act 1960. This amendment would (Policy Memorandum 2004):

“...terminate the requirement for advance Parliamentary approval before financial assistance can be given to shipping services in the Highlands & Islands.”

If passed, Scottish Ministers will have the power to make loans as well as grants to support and invest in lifeline ferry links such as the CalMac and NorthLink services.

Sections 40 to 42 pertain to a simplification of the Harbour Orders Act 1964. Harbour Orders may be used to make a new harbour authority, or to revise its powers. Currently, even if there is only one objection to a harbour order, a public inquiry **must** be held. The proposed amendment does not mean that the right to make a representation or to raise an objection is to be removed; rather, the choice of procedure is to be decided by Scottish Ministers on a case by case basis. There was unanimous support for this amendment following a consultation entitled *Amendments to Harbours Act 1964 (2004)* (Policy Memorandum 2004).

Section 43 of the Bill allows local authorities in the [Strathclyde Passenger Transport](#) (SPT) area to create partnerships, joint contracts and ticketing schemes. This aims to encourage the development of an integrated transport system. SPT already has these powers; this section clarifies the 2001 Act. This section also clarifies the 2001 Act by ensuring that *the same physical stretch of road should not be subject to charges imposed by more than one road user charging (RUC) scheme at one time* (Policy Memorandum 2004). Similarly, the Bill amends the

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2001 Act to enable Scottish Ministers to appoint independent adjudicators to determine disputes relating to RUC schemes. It also enables charging authorities to distribute the net proceeds from an RUC scheme to local authorities across Scotland, for example to aid the facilitation of a ferry service connecting both authorities.

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