

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

# Transport (Scotland) Bill

[As Amended at Stage 2]

---

## Supplementary Delegated Powers Memorandum

### Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with rule 9.7.10 of the Parliament's Standing Orders to assist the Delegated Powers and Law Reform Committee in its consideration of the Transport (Scotland) Bill. This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament. This supplementary memorandum should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.

### Revised and new delegated powers

3. The amended or new delegated powers in the Bill at Stage 2 are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## Low emission zones

### **Section 1(4)(a) – Restriction on driving within a zone**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: revised**

**Parliamentary procedure: affirmative**

### **Provision**

4. 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.

### **Reason for taking power**

5. The regulations enable the Scottish Ministers to change the emission 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 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.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Choice of procedure**

6. The national emissions standard will be an issue of significant importance to those who drive in an area where an LEZ is implemented, and therefore the additional scrutiny afforded by affirmative procedure has been deemed appropriate. This reflects recommendations put forward by Parliament during Stage 1 committee scrutiny. At Stage 2, an amendment to section 72(2) of the Bill was made to ensure that regulations made under section 1(4)(a) which make provision for or in connection with the specification of the national LEZ emission standard will be subject to affirmative procedure.

7. For 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 to national emission standards, however, and which vehicles are exempt, affirmative procedure is appropriate as it allows for greater parliamentary scrutiny in relation to these important issues which will have a direct impact on the effectiveness of proposed low emission zones.

## **Section 2(2) – Record of emission standards**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: affirmative**

## **Provision**

8. Section 2(2) provides a power for the Scottish Ministers to prescribe, by way of regulations, a source (or sources) other than the Secretary of State from which records that are determinative of whether a vehicle meets the specified emission standard can be obtained.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

### **Reason for taking power**

9. The power in Section 2(2) allows Scottish Ministers to have flexibility in which database(s) can be used to determine whether a vehicle meets the specified emission standard, where the Secretary of State does not hold this information. Such databases may not currently exist and so regulations offer the necessary future adaptability. This also helps to future-proof the legislation with regards to the application of new scientific data and processes in relation to the LEZ emission standards.

### **Choice of procedure**

10. The regulations to be made under this power are procedural, regarding specifying the source from which records can be obtained, and so the negative procedure is considered to allow for sufficient parliamentary scrutiny.

## **Bus services**

### **Section 28(8)(3) – amending section 79(1) of the 2001 Act – further provision**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: guidance**

**Revised or new power: new**

**Parliamentary procedure: no procedure**

### **Provision**

11. Section 28A(3) amends section 79(1) of the Transport (Scotland) Act 2001 (2001 Act) which sets out matters in that Act that the Scottish Ministers may issue guidance in relation to and requires authorities to have regard to any such guidance. Section 28A(3) adds to section 79(1) the exercise of the functions of local transport authorities under section 2A of the 2001. Section 2A, which is inserted by section 28A of the Bill, enables local transport authorities to control a company for the purpose of providing local services.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

### **Reason for taking power**

12. Before establishing, acquiring or using a company already controlled by them for the purposes of section 2A of the 2001 Act, a local transport authority is to be satisfied that to do so would contribute to the implementation of their relevant general policies (as defined in section 48 of the 2001 Act). There will be a wide range of matters that local transport authorities may require to consider in determining whether and how to exercise the functions under section 2A and guidance issued by the Scottish Ministers is intended to provide support to local transport authorities and highlight particular matters. Any guidance will be developed in discussion with local transport authorities, and may require updating over time, primarily to reflect newly emerging best practice and experience of local transport authorities exercising the new function.

### **Choice of procedure**

13. The provision of guidance to local transport authorities in relation to the new function of controlling a company for the purpose of providing local services is intended only to provide support to local transport authorities but is not intended to have any prescriptive effect on local decision making and the use of the section 2A function remains ultimately a matter for local transport authorities. Accordingly, no parliamentary procedure is attached to the exercise of this power.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Section 29(2) – new sections 3G(4) and 3H(7) of the Transport (Scotland) Act 2001 (“the 2001 Act”) – further provision**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: affirmative**

### **Provision**

14. Section 29(2) was amended at Stage 2 so as to insert new section 3G(4) and 3H(7) into the 2001 Act. Inserted section 3G(2) of that Act allows the coming into operation of a bus services improvement partnership scheme to be postponed by a period or periods of up to 12 months, and new section 3G(4) provides that the Scottish Ministers may by regulations amend section 3G(2) of that Act to specify a different total postponement period. Similarly, inserted section 3H(5) of the 2001 Act allows the coming into operation of a variation of a partnership scheme to be postponed by a period or periods of up to 12 months and new section 3H(7) provides that the Scottish Ministers may by regulations amend section 3H(5) to specify a different total postponement period.

### **Reason for taking power**

15. Once a BSIP scheme is operational all bus service operators within the area will be required to meet the service standards of any scheme. A failure to do so may in certain cases lead to refusal or cancellation of bus registration. As such, it is considered that the period for postponement of the making or the variation of the scheme should be kept under review. This amendment provides flexibility to allow for a longer (or shorter) time period of postponement if this is considered more appropriate in order to minimise adverse impacts of any delay. The time period can be changed by regulations.

16. This is in line with a similar power taken in the Bill provisions at section 13M(5), inserted by section 32 of the Bill, in relation to

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

franchising frameworks. The Bill provisions currently provide Scottish Ministers with a regulation making power to extend or reduce the maximum period of postponement of a franchise framework or variation, which is also currently set at 12 months.

### **Choice of procedure**

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

### **Section 29(2) – new section 3JA of the 2001 Act – further provision**

**Power conferred on: the Scottish Ministers**

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

**New or revised power: revised**

**Parliamentary procedure: negative**

### **Provision**

18. Section 29(2) inserts new section 3JA into the 2001 Act. Section 3JA enables a local transport authority to require relevant information from bus operators when they are exercising their functions in relation to preparing and making a BSIP plan or scheme, reviewing the effectiveness of a plan or scheme or determining whether and how to vary or revoke a plan or scheme.

19. Subsection 3JA(11) provides that the Scottish Ministers may, by regulations, prescribe what constitutes “relevant information” for the purposes of section 3JA and subsection 3JA(12) provides that such regulations may specify circumstances in which relevant information (or types of relevant information) may not be required.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Reason for taking power**

20. In order to carry out their various BSIP functions local transport authorities require to be in possession of a comprehensive understanding of the existing bus network and its local services. What constitutes relevant information for particular BSIP purposes will vary and may include very specific and detailed types of information. Setting this out in regulations allows the different circumstances to be addressed in detail and ensures only the most appropriate information can be obtained at the right point in the process. This will also allow for flexibility over these more detailed aspects of the BSIP process and will enable the Scottish Ministers to consult with local transport authorities and bus operators and react to the knowledge and experience gained as BSIP plans and schemes develop through use.

## **Choice of procedure**

21. This power relates to technical and detailed aspects of how BSIPs will be operated in practice. Therefore, as with other powers in the Bill which relate to the technical detail of the BSIP process, negative procedure is considered 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

**New or revised power:** revised

**Parliamentary procedure:** affirmative in relation to new section 3L(2)(c), otherwise negative

## **Provision**

22. 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



This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

scheme, and reviewing and reporting on the operation of a plan and scheme. When the Bill was introduced, section 3L(2) provided that the regulations may make provision about:-

- the form and content of a plan or scheme;
- 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

23. This list has been amended at Stage 2 to allow the regulations also to make provision about the standards and requirements that a scheme or plan may specify in respect of the accessibility of bus services for disabled persons and persons with limited mobility.

### **Reason for taking power**

24. 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.

25. 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.

26. 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.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

27. 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**

28. 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 nature. Therefore negative procedure is thought to afford sufficient parliamentary scrutiny for most purposes. However, in its Stage 1 Report the Delegated Powers and Law Reform Committee recommended that the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations under new section 3L(2)(c) which make provision about what may constitute a facility or measure for the purposes of BSIP schemes. The Bill was accordingly amended at Stage 2 in response to that recommendation, and regulations under new section 3L(2)(c) will be subject to the affirmative procedure.

### **Section 32(2) – new section 13QA of the 2001 Act – further provision**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

### **Provision**

29. Section 32(2) inserts new section 13QA into the 2001 Act. Section 13QA enables a local transport authority to require relevant information from bus operators when they are exercising their functions in relation to

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

preparing and making a local services franchising framework, reviewing the effectiveness of a franchising framework or determining whether and how to vary or revoke a franchising framework.

30. Subsection 13QA(11) provides that the Scottish Ministers may, by regulations, prescribe what constitutes “relevant information” for the purposes of section 13QA and subsection 13QA(12) provides that such regulations may specify circumstances in which relevant information (or types of relevant information) may not be required.

### **Reason for taking power**

31. In order to carry out their various local services franchising functions local transport authorities require to be in possession of a comprehensive understanding of the existing bus network and its local services. What constitutes relevant information for particular franchising purposes may vary and may include very specific and detailed types of information. Setting this out in regulations allows the different circumstances to be addressed in detail and ensures only the most appropriate information can be obtained at the right point in the process. This will also allow for flexibility over these more detailed aspects of preparing and reviewing franchising frameworks and will enable the Scottish Ministers to consult with local transport authorities and bus operators and react to the knowledge and experience gained when franchising frameworks are in place and the process develops through use.

### **Choice of procedure**

32. This power relates to technical and detailed aspects of the process of preparation for, review, and variation or revocation of, franchising frameworks. Therefore, as with other powers in the Bill which relate to the technical detail of local services franchising, negative procedure is considered to afford sufficient parliamentary scrutiny.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **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**

**Revised or new power: revised**

**Parliamentary procedure: negative**

### **Provision**

33. Section 13S provides that the Scottish Ministers may make further provision for or in connection with local service franchises. When the Bill was introduced, section 3S(2) provided 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).

34. This list has been amended at Stage 2 to allow the regulations also to make provision about the standards and requirements that a

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

franchising framework may specify in respect of the accessibility of local services for disabled persons and persons with limited mobility.

35. 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).

### **Reason for taking power**

36. 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.

37. 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.

38. 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.

39. 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.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Choice of procedure**

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

41. 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.

## **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**

**Revised or new power: revised**

**Parliamentary procedure: affirmative**

## **Provision**

42. 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.

43. 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

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

vehicles and the times at which they stop and information about the operation of services in the past.

44. 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. When the Bill was introduced, new section 35A(5) provided that the regulations could 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. This provision has been amended at Stage 2 to allow the regulations also to require the information to be provided to the Secretary of State.

45. 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.

### **Reason for taking power**

46. 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.

47. The Scottish Ministers intend that regulations should be brought in in several phases to ensure that an appropriate lead in period is provided for each information type. The precise definition of the

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

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.

48. 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 subordinate legislation.

### **Choice of procedure**

49. 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.

## **Smart ticketing**

### **Section 39 - new section 32A(1) of the 2001 Act – directions about ticketing schemes**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: direction**

**Revised or new power: revised**

**Parliamentary procedure: none**

### **Provision**

50. Section 39 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.



This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

51. The direction must be in writing, be published and must set out the Scottish Ministers' reasons for making it.

### **Reason for taking power**

52. 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.

53. The requirement to set out the reasons for issuing the direction was made plain on the face of the Bill by way of an amendment at Stage 2 of the Bill process, following a commitment made by the Scottish Government to the Delegated Powers and Law Reform Committee

54. 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;
- where a 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**

55. 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

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

level, and as such does not warrant parliamentary scrutiny on every single occasion a direction is given.

## Parking

### **Section 49(1) – Enforcement of parking prohibitions**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: revised**

**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**

56. 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 the double parking prohibition. An amendment at stage 2 introduced a new dropped footway parking prohibition and section 49(1) has been amended to include this new prohibition.

57. 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))).

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Reason for taking power**

58. The regulations will primarily set out the procedural detail associated with the implementation in relation to the enforcement of all three parking prohibitions. 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.

59. 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**

60. 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**

**Revised or new power: revised**

**Parliamentary procedure: negative**

## **Provision**

61. 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 33A) as amended at Stage 2

road when those vehicles are parked in contravention of the pavement parking and double parking prohibitions. An amendment at stage 2 added the pavement parking prohibition to these parking prohibitions. 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**

62. The regulations relate to operational enforcement of the parking 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**

63. 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 regulations themselves will set out the detailed processes for removing vehicles, storing vehicles, the associated charges, and the procedures for appealing against actions taken under the regulations. Given that the regulations are of a procedural and technical nature setting out how the removal of vehicles is to operate, it is considered that the negative procedure provides sufficient parliamentary scrutiny.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **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

**Revised or new power:** revised

**Parliamentary procedure:** negative

### **Provision**

64. 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, a motor vehicle which is parked in contravention of the pavement parking or the double parking prohibitions. An amendment introduced at stage 2 revised this power to include vehicles parked in contravention of the dropped footway parking 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**

65. 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**

66. It is appropriate to set out the powers on the face of the Bill, however the particulars of such powers will be set out in regulations as this allows the provisions to be sufficiently detailed, ensuring they are carried out as desired by Scottish Ministers. As the regulations are

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

primarily of a technical and procedural nature, we consider the negative procedure provides the appropriate level of parliamentary scrutiny.

## Workplace parking

### **Section 58B – Workplace parking places**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: affirmative**

### **Provision**

67. Section 58B(1) to (4) sets out the circumstances in which a workplace parking place is provided at premises for the purposes of the provisions in Part 4A on workplace parking licensing. Section 58B(5) allows the Scottish Ministers to vary or amend sections 58B(1) to (4) to add, vary or remove the circumstances in which a workplace parking place is provided.

### **Reason for taking power**

68. This power is necessary to ensure that there is a mechanism to flexibly and expediently address any loopholes that may become evident in the framing of workplace parking places as a result of practical experience.

### **Choice of procedure**

69. As this provision could result in significant changes to workplace parking levy licenses, it is prudent to have significant Parliamentary scrutiny of the details of the regulations, and therefore the affirmative procedure will be used to implement these regulations.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Section 58E – Scottish Ministers’ power to regulate process**

**Power conferred on:** the Scottish Ministers

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

**Revised or new power:** new

**Parliamentary procedure:** negative

### **Provision**

70. Section 58E gives the Scottish Ministers the power to make regulations regarding the procedures for making, amending and revoking a workplace parking licensing scheme. While this is a general power, it allows the Scottish Ministers to specify in particular the form and content of schemes and procedural requirements in relation to how the consultation process should operate, the publication of the notice of making a scheme, and reviews of, and appeals against, decisions relating to workplace parking licensing schemes.

### **Reason for taking power**

71. This power is required to allow the Scottish Ministers to make detailed provision in relation to the content of, and procedures associated with, workplace parking licensing schemes. The flexibility afforded by a regulation-making power is considered necessary since workplace parking licensing schemes are new to Scotland and because the kind of provision envisaged is likely to be of a technical nature.

### **Choice of procedure**

72. These regulations will make provision of a technical and procedural nature only, and may be required to change over time in the light of experience of the implementation of workplace parking licensing schemes. These regulations will make provision of a technical and procedural nature only. The regulations cover the operation of the scheme rather than the principles underpinning the scheme which are on the face of the Bill. The detail may be required to be changed in the light

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

of the experience of the workplace parking licensing schemes but given the technical and procedural nature of such changes, it is considered that the negative procedure affords sufficient Parliamentary scrutiny.

## **Section 58G – Licence applications and processes**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

### **Provision**

73. Section 58G makes provision about the content of workplace parking licensing schemes. It permits local authorities to make provision in schemes about applications, granting, issuing and renewing licences (including short-term licences, not exceeding 12 months, to deal with special circumstances), imposing conditions on a licence, the standard duration of a licence; how a licence may be varied or revoked and suspending the requirement to hold a licence for a period with a power to refund any payment made. Section 58G(5) gives Scottish Ministers the power to make regulations to make provision about, or require or permit schemes to include provision about, reviews of, and appeals against, decisions in relation to workplace parking licences.

### **Reason for taking power**

74. The power to review and appeal decisions in relation to workplace parking licences, such as decisions to grant or refuse licences, or to impose particular conditions on licences, is important to ensure that the local authority decision-making in relation to licences is robust and transparent. Provisions on this matter will be procedural in nature.



This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Choice of procedure**

75. The provision envisaged in relation to reviews and appeals is likely to be technical and procedural in nature. Any regulations made under this power will relate to the technical operation and review of the licence scheme as opposed to the nature of the scheme itself. Because of the technical and procedural focus of the provisions, the level of parliamentary scrutiny afforded by the negative procedure is considered appropriate.

## **Section 58I – Exemptions etc.**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: affirmative**

## **Provision**

76. Section 58I makes provision about exemptions in relation to workplace parking licensing schemes, requiring schemes to provide for the national exemptions set out in section 58J, and allowing schemes to provide for other exemptions. Section 58I(4) gives the Scottish Ministers the power to set out further national exemptions in addition to those in section 58J, as well as giving them the power to prohibit exemptions of certain premises, person or vehicles as may be specified.

## **Reason for taking power**

77. The power to set and alter national exemptions is a necessary component of the legislative framework. The flexibility afforded by regulations in this area allows for provision about further exemptions, or limitations on exemptions, to be developed in light of the experience of the operation of schemes in practice or to account for technological change.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Choice of procedure**

78. National exemptions are fundamental in determining the permissible scope of workplace parking licensing schemes and the charging requirements associated with those schemes. Given the significance of national exemptions in setting the parameters of schemes, these regulations are to be subject to the affirmative procedure to allow for the enhanced level of parliamentary scrutiny which this affords. This is appropriate given the potential for such exemptions to be controversial.

## **Section 58K(1)(b) – Charges**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

## **Provision**

79. Section 58K details who must pay the charges imposed by a workplace parking licensing scheme. Section 58K(1)(a) sets out the general rule that the occupier of the premises is liable for any charges under a scheme. Section 58K(1)(b) gives powers to the Scottish Ministers to specify in regulations that other persons can be liable for those charges in such circumstances as may be specified. For example, if an occupier of premises is providing parking places to another party for use by that other party's employees, then the Scottish Ministers may by regulations determine that charges are to be paid by the person providing the parking places, rather than by the occupier.

## **Reason for taking power**

80. This power is required to provide flexibility to allow charges to be levied on persons who provide workplace parking places at premises other than in the straightforward case where those persons are also the occupier of those premises. This will minimise the prospects of a person

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

providing workplace parking but not being liable for the charge, or utilising complex third party arrangements to avoid charges. Regulations are considered appropriate to ensure that the legislation can be altered as a reaction to future circumstances or learning from evidence of any practical implementation of workplace parking licensing schemes.

### **Choice of procedure**

81. This is a technical issue related to workplace parking charges, and does not alter the overall functioning of a workplace parking licensing scheme. The negative procedure is considered to allow for a sufficient level of parliamentary scrutiny.

### **Section 58M(1) – Accounts**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

### **Provision**

82. Section 58M(1) allows the Scottish Ministers to make provision in regulations about accounts in relation to workplace parking licensing schemes. While this is a general power, it may cover the keeping of accounts, the form and content of accounts, the publication of accounts and specific requirements in the case of joint workplace parking licensing schemes.

### **Reason for taking power**

83. This ensures that the Scottish Ministers can require local authorities to abide by certain nationally consistent duties and requirements in relation to the accounts for a workplace parking licensing scheme. These will be technical provisions, and may need to

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

be adjusted over time, and so a regulation-making power is considered appropriate.

### **Choice of procedure**

84. Given the likely minor and technical nature of these regulations, the negative procedure is considered to provide for an appropriate use of parliamentary time and resource.

### **Section 58N(1) – Penalty Charges**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

### **Provision**

85. Section 58N(1) allows the Scottish Ministers to make provision about the imposition of penalty charges in respect of acts, omissions, events, or other circumstances relating to workplace parking licensing schemes and about the notification, payment, adjudication and enforcement of such charges. While this is a general power, the regulations may in particular make, or require licensing schemes to make, provision about the imposition of penalty charges in specified circumstances, about the timing and manner of payment of penalty charges, specifying the amount of penalty charges – including any reduced or increased charges and the circumstances in which they are payable – about reviews of, and appeals against, decisions in relation to penalty charges and about the cancellation of charges. The regulations may also require local authorities to serve a notice of a penalty charge on any person it believes to be liable to pay such a charge, about the form and content of such a notice and about the way that compliance with such a notice may be enforced.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

### **Reason for taking power**

86. Much of the detail of an enforcement regime of the kind envisaged here is likely to be technical and procedural and so is better suited to secondary legislation than primary legislation. A regulation-making power in relation to these matters also affords greater scope for enforcement mechanisms to be flexible and responsive to the operation of schemes and to behavioural change.

### **Choice of procedure**

87. Given the procedural and technical nature of the provisions which may be made under regulations under section 58N(1), it is considered that the negative procedure affords an appropriate level of Parliamentary scrutiny.

### **Section 58O – Evidence from approved devices**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

### **Provision**

88. Section 58O gives the Scottish Ministers the power to make provision in regulations for or in connection with permitting facts relevant to proceedings in respect of offences under Part 4A, or proceedings in respect of a failure to comply with the provisions of a workplace parking licensing scheme, to be evidenced by the production of certified records produced by devices specified or approved by virtue of those regulations.

### **Reason for taking power**

89. These regulations will allow the Scottish Ministers to specify the devices, such as mobile electronic devices, that are suitable for

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

monitoring and collecting evidence in respect of contraventions of workplace parking licensing requirements. Having flexibility to approve enforcement devices, and to provide for the probative value of evidence collected by those devices will help to ensure there is no hindrance to collecting evidence, which ensures the enforceability of schemes. The types of devices available are likely to change as technology develops and therefore having this power in regulations allows for the list of approved devices to be updated more easily than if it were in primary legislation.

### **Choice of procedure**

90. The provision envisaged here is likely to be of a highly technical and procedural nature and so the negative procedure is considered to strike the appropriate balance between the use of parliamentary time and resource and the need for parliamentary scrutiny of the exercise of delegated powers.

### **Keeper liability**

#### **Section 58Z(5) – Keeper Liability maximum amounts that can be recovered**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

### **Provision**

91. Amendments at stage 2 introduced provisions that make the keeper of a vehicle liable for unpaid car parking charges. Section 58Z(5) confers power on the Scottish Ministers to, by regulations, prescribe an amount as the maximum that may be recovered from the keeper of a vehicle by virtue of the rights conferred within this section of the Bill.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

### **Reason for taking power**

92. The regulations relate to the maximum amount that can be recovered from the keeper of a vehicle and require a level of detail more suited to secondary legislation. It will allow proposals to be developed and then a consultation conducted into what that maximum level should be. It will also give some degree of flexibility on the raising or lowering of that maximum level in future as necessary.

### **Choice of procedure**

93. This level of detail is best suited for secondary legislation, and is of a technical nature relating to the recovery of the parking charge. The negative procedure provides sufficient parliamentary scrutiny of this type of detail.

### **Section 58Z3(2) – Content of a notice to the driver**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

### **Provision**

94. Section 58Z3(2) confers power on the Scottish Ministers to, by regulations, set out the content of the notice given to drivers under Section 58Z2(1)(a). The notice must relate to a single period of parking and given before the vehicle is removed from the premises after the parking period has expired and whilst stationary.

### **Reason for taking power**

95. The regulations relate to the content of the notice to the driver for the purpose of the recovery from the keeper of the vehicle of unpaid parking charges. In order for these unpaid charges to be successfully recovered, the content of those notices must ensure that adequate and

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

fair notice was given to the driver of the vehicle. The required level of detail of the makeup of these notices is more suited to secondary legislation. They will include such matters as details of the vehicle, the land in which it was parked, details about the charges, timescales for payment and methods for doing so. This will allow proposals to be developed and consultations conducted to ensure the correct details are included in these notices. It will also give some degree of flexibility on the content of those notices in future should it be deemed necessary, after appropriate consultation, to amend them, for example to update payment methods in light of changes in technology.

### **Choice of procedure**

96. The regulations will set out the specifics of the content of the notice to the driver, to ensure the power is used as intended. Given the detailed nature of these regulations, it is considered appropriate that the negative procedure is used as this provides sufficient parliamentary scrutiny.

### **Section 58Z4(2) and (4) – Content of a notice to the Keeper following giving notice to driver**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

### **Provision**

97. Section 58Z4(2) and (4) confers power on the Scottish Ministers to, by regulations, set out the content of the notice given to the keeper of a vehicle following the giving of notice to a driver under section 58Z2(1)(a). The notice must relate to a single period of parking and given before the vehicle is removed after the parking period and whilst stationary and must be given to the keeper within the period of 28 days beginning with the day after that on which the notice to driver was given.



This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Reason for taking power**

98. The regulations relate to the content of the notice to the keeper for the purpose of the recovery from the keeper of the vehicle of unpaid parking charges. In order for these unpaid charges to be successfully recovered the content of those notices must ensure that adequate and fair notice was given to the driver of the vehicle and the keeper, or to the keeper directly. The required level of detail of these notices is more suited to secondary legislation. They will include such matters as details of the vehicle, the land on which it was parked, details about the charges and the timescales and methods for payment. The notice will also make it clear that the driver is required to pay parking charges in respect of the specified period of parking and that they have not been paid in full. It will state that a notice to the driver has been given but has not been paid in full and will warn the keeper that they will be liable for the outstanding amount due if it is not paid. Setting this detail out in regulations will allow proposals to be developed and consultations conducted to ensure the correct details are included in these notices. It will also give some degree of flexibility on the content of those notices in future should it be deemed necessary, after appropriate consultation, to amend them.

## **Choice of procedure**

99. The principle of the conferring of such powers by the Scottish Ministers should be clearly set out on the face of the Bill, however the detail of the content of the notice to the keeper following a notice to the driver is detailed and it is more appropriate for this information to be set out in regulations. Given the technical nature of these regulations and the fact that the notice is to be served is contained on the face of the legislation, meaning that Parliament has already considered the principle, it is considered that the negative procedure provides sufficient parliamentary scrutiny.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Section 58Z5(2) and (4) – Content of a notice to the Keeper without giving notice to driver**

**Power conferred on:** the Scottish Ministers

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

**Revised or new power:** new

**Parliamentary procedure:** negative

### **Provision**

100. Section 58Z5(2) and (4) confers power on the Scottish Ministers to, by regulations, set out the content of the notice given to the keeper of a vehicle when no notice has been given to the driver. The notice must relate to a single period of parking and given before the vehicle is removed after the parking period and whilst stationary and must be given to the keeper within the period of 14 days beginning with the day after that on which the period of parking to which the notice relates ended.

### **Reason for taking power**

101. The regulations relate to the content of the notice to the keeper for the purpose of the recovery from the keeper of the vehicle of unpaid parking charges. In order for these unpaid charges to be successfully recovered the content of those notices must ensure that where the name of the driver or an address for service of the notice are unknown, adequate and fair notice is given to the keeper directly. The required level of detail of the makeup of these notices is more suited to secondary legislation. This will allow proposals to be developed and consultations conducted to ensure the correct details are included in these notices. It will also give some degree of flexibility on the content of those notices in future should it be deemed necessary, after appropriate consultation, to amend them.

### **Choice of procedure**

102. The regulations will set out in some detail the intricacies of the content of the notice to the keeper without giving notice to the driver.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

Given the technical nature of these regulations and the fact that the notice is to be served is contained on the face of the legislation, meaning that Parliament has already considered the principle, it is considered that the negative procedure provides sufficient parliamentary scrutiny.

## **Section 58Z6(1) – Notice to Keeper: Accompanying Evidence**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

### **Provision**

103. Section 58Z6(1) confers power on the Scottish Ministers to, by regulations, prescribe the evidence which must accompany a notice which is to be relied on as a notice to the driver and the keeper for the purposes of Section 58Z2(1)(a) or section 58Z2(1)(b). Sections 58Z2(1)(a) and (1)(b) stipulate that any notice to the driver or keeper must be accompanied by the evidence prescribed in regulations made under this power.

104. This allows Scottish Ministers to stipulate what evidence must accompany notices to the driver (whether or not following a notice to the keeper). The regulations may make provision as to the means by which the evidence is generated – for example the specification of CCTV or ANPR equipment used for enforcement – and may also provide for equipment of an approved kind to be used as well as setting out the circumstances in which evidence must accompany a notice to the keeper. This allows Scottish Ministers to set out what evidence is required and whether certain approved equipment must be used for the purposes of generating that evidence.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

### **Reason for taking power**

105. The required level of detail of the type of evidence and equipment used to gather that evidence is more suited to secondary legislation. This will allow proposals to be developed and consultations conducted to ensure the correct details are considered. It will also give some degree of flexibility on the types of evidence and equipment required in future as technology develops, after appropriate consultation.

### **Choice of procedure**

106. The regulations are likely to be technical in nature and will outline the specifics of the workings of the provision. Given this, it is considered that the negative procedure strikes the right balance here between providing appropriate scrutiny and the proper use of valuable Parliamentary time.

### **Section 58Z8(2) – Fourth condition: Display of notices on relevant land**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

### **Provision**

107. Section 58Z8(2) confers a power on the Scottish Ministers to prescribe requirements as to the display of notices on relevant land where parking charges may be incurred. This includes the type, content, form and location of any notices. Any requirements set out in regulations regarding the display of notices must be adhered to before the creditor can obtain the right to recover from the keeper of the vehicle.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

### **Reason for taking power**

108. The regulations relate to the form or content, location or the quantity of notices displayed in parking areas for the purpose of the recovery from the keeper of the vehicle of unpaid parking charges. In order for these unpaid charges to be successfully recovered, the content of those displayed notices must ensure that adequate notice of possible parking charges is given. The required level of detail of the type of notice to be displayed used is more suited to secondary legislation. This will allow proposals to be developed and consultations conducted to ensure the correct details are included in these notices. It will also give some degree of flexibility on the types of notice required to be displayed in future should it be deemed necessary to alter this, after appropriate consultation.

### **Choice of procedure**

109. The choice of the negative procedure is based on the fact that these regulations will be technical in nature, as they will set out the detail of the content of the notice to be displayed in parking areas. Further, the fact that the requirement for the display of the notices is set out on the face of the Bill, meaning the principle underpinning them will already have been considered by the Parliament, also suggests that the negative procedure is more appropriate here.

### **Section 58Z9(5) – No right to recover from vehicle-hire firm**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

### **Provision**

110. Section 58Z9(5) confers a power on the Scottish Ministers to prescribe the form of the documents referred to in s.58Z9(2) which a

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

vehicle hire firm must provide to a creditor in order to escape liability for unpaid parking charges. Hire firms are not to be held liable for any unpaid parking charges and this liability will be passed to the hirer of the vehicle if the hire firm provide information proving the car was the subject of a hire agreement at the time of the offence. That information will include a statement to the effect that at the material time the vehicle was hired out to a named person under a hire agreement and a statement of liability signed by the hirer acknowledging responsibility for any parking charges incurred during the period of hire. The regulations may also prescribe how documents must be given to the person/company seeking the unpaid parking charges.

### **Reason for taking power**

111. The regulations relate to the form of the hire firm's statement and the statement of liability of the hirer for the purpose of the recovery of unpaid parking charges from the keeper of the vehicle. It is considered appropriate to take this power so that any government intervention that may be required in order to protect the interests of hirers can be undertaken quickly as it will be necessary to ensure that hirers are made fully aware of their responsibility for car parking charges.

### **Choice of procedure**

112. While it is considered appropriate that the principle of the liability of hirers for parking charges should be clearly set out on the face of the Bill, any detail that should be provided to the hirer to make their liability clear to them should be set out in regulations. Given the technical nature of the matters to be prescribed in any regulations made under this provision, it is considered that the negative procedure provides the appropriate level of parliamentary scrutiny.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Section 58Z10(5) and (6) – Right to recover from hirer**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

### **Provision**

113. Section 58Z10(5) and (6) confers power on the Scottish Ministers to prescribe the form and content of the notice to a vehicle hirer that is to be served by a creditor when seeking to exercise the right to recover from the hirer introduced in section 58Z10(1).

### **Reason for taking power**

114. The regulations relate to the form and content of the notice to a vehicle hirer for the purpose of the recovery of unpaid parking charges. The required detail of the notice is more suited to secondary legislation. This will allow proposals to be developed and consultations conducted to ensure the correct details are included in these notices. It will also give some degree of flexibility on the types of notice required to be served and the manner in which they are to be served in future should it be deemed necessary to alter this, after appropriate consultation.

### **Choice of procedure**

115. While it is considered appropriate that the information that is to be contained in the notice to the hirer should be clearly set out on the face of the Bill, the Scottish Government considers it appropriate to be able to set out in detail the content of the notice and the manner in which it is to be issued to a vehicle hirer. Given the technical nature of any regulations that may be made under this provision, it is considered that the negative procedure provides the appropriate level of parliamentary scrutiny.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Section 58Z12(1) – Power to modify Part**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: affirmative**

### **Provision**

116. Section 58Z12(1) confers power on the Scottish Ministers to amend the definition of ‘relevant land’ in section 58Y and to add to, remove or amend any of the conditions that are to be relied upon in order to exercise the right to recover unpaid parking charges from the keeper of a vehicle.

### **Reason for taking power**

117. The purpose of these powers is to allow room to adjust the keeper liability regime should that be deemed necessary in the future. In an area that is largely governed by the common law, it is difficult to predict precisely how landowners, and their agents for parking purposes, will respond to the changes. They may, for example, develop techniques for enforcing parking which are not immediately envisaged and to which it may, or may not, be appropriate to extend the right to enforce parking charges against a vehicle’s keeper in future.

118. It may be necessary, in particular, to revise the conditions that must be satisfied before the owner or occupier of relevant land can seek to recover unpaid parking charges from a keeper in order to ensure a proper balance is struck between the right of landowners to enforce unpaid parking charges and the rights of vehicle keepers.

119. As the core elements of the scheme are set out in primary legislation, and will not generally be subject to amendment under these provisions, the Scottish Government consider that this is appropriate use of delegated powers.



This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

## **Choice of procedure**

120. The use of the affirmative procedure (section 72(2)) provides an appropriate level of parliamentary scrutiny given that regulations made under these powers enables Ministers to amend certain aspects of the Act. This is consistent with the usual presumption in this respect.

## **Road works**

### **Section 62A – new section 112A(6A) of the New Roads and Street Works Act 1991 – Functions in relation to the Scottish Road Works Register**

**Power conferred on: the Scottish Ministers**

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

**Revised or new power: new**

**Parliamentary procedure: negative**

## **Provision**

121. Section 62A was added to the Bill at Stage 2 and replaces subsection (6) and (7) of section 112A of the New Roads and Street Works Act 1991 with a new subsection (6A). The effect of this is to impose new requirements on the Scottish Road Works Commissioner (“the Commissioner”) in relation to the publication of information contained on the Scottish Road Works Register (“SRWR”). This includes a requirement on the Commissioner to make publicly available information on SRWR about the timing, location, duration and purpose of works in roads, or any other information that Scottish Ministers may prescribe. This will allow the Scottish Ministers to specify further information on the SRWR that is to be made publicly available.

## **Reason for taking power**

122. New section 112A(6A) of the New Roads and Street Works Act 1991 requires the publication of information on the SRWR that is most

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

likely to be of value to the general public. However, flexibility is needed to require the publication of further information should that become necessary or appropriate in the light of practical experience, or if new types of information are stored there. A regulation-making power is considered an appropriate and proportionate means of ensuring that the publication duty on the Commissioner remains relevant and useful.

### **Choice of procedure**

These regulations would make provision of a technical nature, regarding the release of information to the public pertaining to road works. As there is considerable overlap with other access regimes, including how personal data can be processed, the negative procedure affords sufficient parliamentary scrutiny in what is already a fairly restricted data set. Given the technical nature of the information being prescribed, and the fact that there is an existing review process which applies appropriate controls such as redacting personal details, the negative procedure is considered sufficient.

This document relates to the Transport (Scotland) Bill (SP Bill 33A) as amended at Stage 2

# Transport (Scotland) Bill

[As Amended at Stage 2]

## Supplementary Delegated Powers Memorandum

□ Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -  
[www.scottish.parliament.scot](http://www.scottish.parliament.scot)

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:  
[www.scottish.parliament.scot/documents](http://www.scottish.parliament.scot/documents)