

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 1, page 2, line 2, after <regulations> insert <following consultation with such persons as they consider appropriate>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders when making regulations in relation to vehicles being driven in low emission zones.

Reason

Consultation will provide an additional layer of scrutiny when considering specification of the low emission standard and the vehicles that are to be affected. A requirement for Scottish Ministers to consult will help to ensure openness and transparency given the importance of these regulations in fulfilling Scottish Ministers' environmental aims regarding the Bill.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 2, page 2, line 24, after <circumstances> insert <following consultation with such persons as they consider appropriate>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders when making regulations in relation to changing the circumstances from the registered keeper of the vehicle being responsible for payment of any penalty charge.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency given the importance of these regulations in fulfilling Scottish Ministers' environmental aims regarding the Bill.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 3, page 2, line 27, after <may> insert <following consultation with such persons as they consider appropriate>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders when making regulations in relation to enforcement of low emission zones.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency in relation to enforcement given the importance of these regulations in fulfilling Scottish Ministers' environmental aims regarding the Bill.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 3, page 3, line 2, leave out <(a) creating offences,>

Effect

This is a paving amendment.

Reason

This is a paving amendment.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 3, page 3, line 4, add at end –

<(4) A person who drives a vehicle on a road within a low emission zone in contravention of the terms of a low emission zone scheme commits an offence unless any of the following apply:

- (a) the vehicle meets the specified emission standard, or
- (b) the vehicle is exempt by virtue of section 1(4)(b) or section 12, or
- (c) the vehicle is being used for the purpose mentioned in section (*Exemption for erecting or dismantling funfairs*).

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.>

Effect

This amendment makes it a criminal offence to drive a vehicle on a road within a low emission zone unless it falls into one of the exceptions.

Reason

The Scottish Government has committed to responding to climate change. The Bill is currently framed on the basis that there may be criminal offences associated with driving in a low emission zone. This amendment creates clarity on the provisions and the applicable penalty. It is important that criminal offences are clear, and therefore it is appropriate that offences are specified on the face of the Bill. The public must be aware of what actions will amount to an offence.

The maximum penalty is in line the powers currently specified under section 3(4) of the Bill.

TRANSPORT (SCOTLAND) BILL
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In section 3, page 3, line 5, leave out subsection (4).

Effect

This is a consequential amendment.

Reason

This is a consequential amendment.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 26, page 11, line 27, before subsection (1) insert –

<() The Scottish Ministers may, following consultation with such persons as they consider appropriate, issue written guidance in relation to the exercise of functions conferred on a local authority (whether as a local authority or as a traffic authority) by virtue of this Part.>

Effect

This amendment would specify a power for the Scottish Ministers to issue guidance and impose a duty on Scottish Ministers to consult with relevant stakeholders in advance of producing any such guidance in relation to low emission zones.

Reason

Guidance will help to ensure that there is consistency in approach in relation to the exercise of functions across local authorities. Consultation will provide an additional layer of scrutiny when developing the provisions regarding low emission zones. A requirement for Scottish Ministers to consult will help to ensure openness and transparency given the importance of these regulations in fulfilling Scottish Ministers' environmental aims regarding the Bill to provide restrictions on driving vehicles that do not comply with these standards.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 48, page 67, line 10, after <circumstances> insert <following consultation with such persons as they consider appropriate>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders when making regulations as specified in relation to changing the circumstances from the registered keeper of the vehicle being responsible for payment of any penalty charge.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency in relation to the enforcement of the penalty charge provisions of the Bill.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 48, page 67, line 12, after <regulations> insert <following consultation with such persons as they consider appropriate>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders when making regulations as specified in relation to the amount that may be imposed as a penalty charge, including provision on discounts and surcharges.

Reason

Consultation will provide an additional layer of scrutiny. A requirement for Scottish Ministers to consult will help to ensure openness and transparency in relation to the charges involved in the enforcement of the penalty charge provisions of the Bill.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 49, page 67, line 32, after <regulations> insert <following consultation with such persons as they consider appropriate>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders in advance of making regulations regarding the enforcement of parking prohibitions.

Reason

Consultation will provide an additional layer of scrutiny when developing the provisions regarding enforcement of parking prohibitions. A requirement for Scottish Ministers to consult will help to ensure openness and transparency.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 57, page 71, line 17, before subsection (1) insert –

<() The Scottish Ministers may, following consultation with such persons as they consider appropriate, issue written guidance in relation to the exercise of functions conferred on a local authority (whether as a local authority or as a traffic authority) by virtue of this Part.>

Effect

This amendment would specify a power for the Scottish Ministers to issue guidance and impose a duty on Scottish Ministers to consult with relevant stakeholders in advance of producing any such guidance in relation to pavement parking and double parking.

Reason

Guidance will help to ensure that there is consistency in approach in relation to the exercise of functions across local authorities. Consultation will provide an additional layer of scrutiny when developing the provisions regarding pavement parking and double parking. A requirement for Scottish Ministers to consult will help to ensure openness and transparency.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 58E, page 75, line 35, after <regulations> insert <following consultation with such persons as they consider appropriate>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders in advance of making provisions about the procedures in relation to workplace parking licensing schemes.

Reason

Consultation will provide an additional layer of scrutiny when developing the provisions regarding the procedures in relation to workplace parking licensing schemes. A requirement for Scottish Ministers to consult will help to ensure openness and transparency.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 58G, page 76, line 34, after <regulations> insert <following consultation with such persons as they consider appropriate>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders in advance of making provisions about the procedures in relation to workplace parking licensing schemes.

Reason

Consultation will provide an additional layer of scrutiny when developing the provisions regarding the procedures in relation to workplace parking licensing schemes. A requirement for Scottish Ministers to consult will help to ensure openness and transparency.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 58I, page 77, line 28, after <regulations> insert <following consultation with such persons as they consider appropriate>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders in advance of making provisions about the exemptions in relation to workplace parking licensing schemes.

Reason

Consultation will provide an additional layer of scrutiny when developing the provisions regarding the procedures in relation to workplace parking licensing schemes. A requirement for Scottish Ministers to consult will help to ensure openness and transparency.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 58K, page 78, line 32, after <regulations> insert <following consultation with such persons as they consider appropriate>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders in advance of making provisions about the procedures for imposing charges on any person other than the occupier of the premises in relation to workplace parking licensing schemes.

Reason

Consultation will provide an additional layer of scrutiny when developing the provisions regarding the procedures in relation to workplace parking licensing schemes. A requirement for Scottish Ministers to consult will help to ensure openness and transparency.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 58N, page 79, line 28, after <regulations> insert <following consultation with such persons as they consider appropriate>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders in advance of making provisions about the penalty charges in relation to workplace parking licensing schemes.

Reason

Consultation will provide an additional layer of scrutiny when developing the provisions regarding the procedures in relation to workplace parking licensing schemes. A requirement for Scottish Ministers to consult will help to ensure openness and transparency.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

Section 58Q, Page 81, line 13, leave out paragraph (ii)

Effect

Warrants should only be obtained where there has been attempts made to enter the premises which have been unsuccessful.

Reason

Warrants should only be granted when the interests of the State in obtaining entry outweigh the interests of the individual to their privacy. The need to balance the competing interests of the State and citizen is set out by the court in the case of *Lawrie v Muir*¹ as follows:

“From the standpoint of principle it seems to me that the law must strive to reconcile two highly important interests which are liable to come into conflict— (a) the interest of the citizen to be protected from illegal or irregular invasions of his liberties by the authorities, and (b) the interest of the State to secure that evidence bearing upon the commission of crime and necessary to enable justice to be done shall not be withheld from Courts of law on any merely formal or technical ground.”

It is unclear on what basis a warrant would be granted in circumstances that amounted to a refusal being “reasonably expected”. This test is too broad in scope and it is evidentially uncertain as to how this standard would be achieved in practice.

¹ 1950 J.C. 19, Lord Justice General Cooper at 26-27.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In Section 58Q, page 81, line 20, leave out subsection (4) and insert –

<(4) A warrant expires within twenty eight days from the date of the warrant or earlier when any period as is specified in it for that purpose expires.>

Effect

This will limit by statute the period during which a warrant can be executed.

Reason

Warrants should only be granted when the interests of the State in obtaining entry outweigh the interests of the individual to their privacy. Warrants should not be granted for open ended periods. Twenty eight days is a reasonable period for a warrant to be valid.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 60, page 91, line 22, after <person> insert <reasonably>

Effect

This will ensure that the rights of the authorised person are not unrestricted.

Reason

The authorised person is provided with certain powers to carry out inspections and where they have rights under subparagraph (c), the powers of the authorised person should be restricted to what is reasonable in the circumstances.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 60, page 91, line 29, after <person> insert <reasonably>

Effect

This will ensure that the rights of the authorised person are not unrestricted.

Reason

The authorised person is provided with certain powers to carry out inspections and where they have rights under subparagraph (e), the powers of the authorised person should be restricted to what is reasonable in the circumstances.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 60, page 92, leave out line 23.

Effect

Warrants should only be obtained where there has been attempts made to enter the premises which have been unsuccessful.

Reason

Warrants should only be granted when the interests of the State in obtaining entry outweigh the interests of the individual to their privacy. The need to balance the competing interests of the State and citizen is set out by the court in the case of *Lawrie v Muir*² as follows:

“From the standpoint of principle it seems to me that the law must strive to reconcile two highly important interests which are liable to come into conflict— (a) the interest of the citizen to be protected from illegal or irregular invasions of his liberties by the authorities, and (b) the interest of the State to secure that evidence bearing upon the commission of crime and necessary to enable justice to be done shall not be withheld from Courts of law on any merely formal or technical ground.”

It is unclear on what basis a warrant would be granted in circumstances that amounted to a refusal being “reasonably expected”. This test is too broad in scope and it is evidentially uncertain as to how this standard would be achieved in practice.

² 1950 J.C. 19, Lord Justice General Cooper at 26-27.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

Section 60, page 92, leave out lines 30 to 32 and insert –

<(4) A warrant expires within twenty eight days from the date of the warrant or earlier when any period as is specified in it for that purposes expires.>

Effect

This will limit by statute the period during which a warrant can be executed.

Reason

Warrants should only be granted when the interests of the State in obtaining entry outweigh the interests of the individual to their privacy. Warrants should not be granted for open ended periods. Twenty-eight days is a reasonable period for a warrant to be valid.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 64, page 101, line 6, after <60> insert <and following consultation with such persons as they consider appropriate>

Effect

This amendment would impose a duty on Scottish Ministers to consult with relevant stakeholders in advance of issuing or approving codes of practice giving practical guidance as to the duties imposed making provisions about the procedures in relation to safety measures in relation to execution of works in a road.

Reason

Consultation will provide an additional layer of scrutiny when issuing or approving such codes of practice. A requirement for Scottish Ministers to consult will help to ensure openness and transparency.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 64, page 101, line 8, add at end –

<() A code of practice under subsection (1) must be published in such manner as the Scottish Ministers consider appropriate as soon as reasonably practicable after it is issued or approved.>

Effect

This amendment inserts a requirement for publication of a code of practice.

Reason

This Bill does not provide for publication of codes of practice issued or approved by Scottish Ministers under this section. By requiring such codes of practices to be published, this introduces increased accountability of the guidance given by Scottish Ministers.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 72, page 111, line 18, after <1(4)(b)> insert <1(4)(c)>

Effect

This amendment will provide that regulations under section 1(4)(c) will be subject to affirmative procedure.

Reason

Regulations for the emission standards and types of vehicles that may be exempt are subject to affirmative procedure. Ensuring that regulations setting penalty charges are also subject to affirmative procedure seems commensurate and ensures a higher standard of scrutiny in the making of these regulations.

TRANSPORT (SCOTLAND) BILL
AMENDMENTS TO BE MOVED AT STAGE 3

In section 72, page 111, line 18, after <1(4)(b)> insert <12(4)(b)>

Effect

This amendment will provide that regulations under section 2(4)(b) will be subject to affirmative procedure.

Reason

Regulations for the emission standards and types of vehicles that may be exempt are subject to affirmative procedure. Ensuring that regulations which provide for persons other than the registered keeper to pay the penalty charge are subject to affirmative procedure seems commensurate and ensures a higher standard of scrutiny in the making of these regulations.