



Law Society  
of Scotland

**70**  
Years  
1949-2019

## Stage 3 Briefing

### Transport (Scotland) Bill

September 2019



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We have previously provided briefing at stage 1<sup>1</sup> in relation to the Transport (Scotland) Bill (the Bill). We have the following comments to put forward for consideration at the Stage 3 debate which is scheduled for Wednesday 9 October 2019.

We support the Bill's policy objectives regarding the protection of the environment and supporting bus transport service. Our comments focus on three specific aspects of the Bill:

1. The introduction of low emission zones
2. Lack of specific details on the face of the Bill
3. Publicity

Please do get in touch if you would like to discuss the paper, or if you would like more information on the points we have raised. Contact details can be found at the end of the paper.

## The introduction of low emission zones

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Section 1 of the Bill provides for the introduction of a restriction from driving a vehicle that fails to meet the specific emission standards under the low emissions schemes that are to be set up under section 1(4)(a) of the Bill.

Air quality is fundamental to our environment and it is in the public interest to protect this by creating and maintaining low emissions zones. This is a very important provision which has increased in public prominence recently with the twinned effect of:

- the publication of the Scottish Government's Programme for Government 2019-2020<sup>2</sup> which committed to tackling climate change. That Programme sets out the next steps on Scotland's

<sup>1</sup> <https://www.lawscot.org.uk/media/362405/19-04-04-transport-s-bill-stage-1-briefing.pdf>

<sup>2</sup> Protecting Scotland's Future <https://www.gov.scot/publications/protecting-scotlands-future-governments-programme-scotland-2019-20/pages/5/>

journey towards net zero emissions under “Ending Scotland's Contribution to Climate Change” where it recognised that:

“Scotland is facing a climate emergency. Like the rest of the world, we must act to mitigate the worst impacts of climate change on our people and our planet”<sup>3</sup> and

- the climate change emergency debates that took place at the recent UN Climate Change Summit 2019<sup>4</sup>.

The Bill provides an opportunity to achieve lower emissions and for Scotland to be the world leader on tackling climate change<sup>5</sup> by improving the air quality that lies “at the centre of the Scottish Government’s action on transport ...to ensure the real and tangible health benefits associated with cleaner air are maximised.”<sup>6</sup>

By introducing low emission zones, these will seek to help reduce air pollution in Scotland and improve poor air quality that is significantly caused by road transport<sup>7</sup>. The urban cities will be expected to have low emissions zones as that will assist in well know hotspots in Scotland’s towns and cities such as Hope Street, Glasgow<sup>8</sup>.

The Bill, as presently drafted, does not outline if breaches of section 1 are to be treated as criminal or civil, or what the penalty charges are to be imposed. Section 3(3) of the Bill includes power to create offences. If it is intended that a breach of section 1 is to be a criminal offence, we recommend that this should be set out on the face of the Bill. There are advantages to such an approach.

Creating an offence on the face of the Bill impresses on the public how seriously the Scottish Parliament is prepared to commit towards addressing the climate change as this would provide more impetus towards the public ensuring they comply. We agree that a fine would be an appropriate penalty and that such an offence should be subject to summary proceedings as currently outlined under section 3(4) of the Bill.

Additionally, the law should be clear and capable of being understood. Rather than leave decisions as to enforcement to be taken using regulation making powers, clearly setting out the approach in the Bill would make it clear from the outset that driving a vehicle that did not comply with the specified emission standard would be treated as a criminal offence. Where new offences are created, it is important that they are well publicised so that the public can monitor their conduct in the light of a clear understanding of the relevant law.

Many of these cases can be dealt with by way of police or Fiscal fine so are unlikely to result in an increase in court time.

<sup>3</sup> <https://www.gov.scot/publications/protecting-scotlands-future-governments-programme-scotland-2019-20/pages/5/>

<sup>4</sup> <https://www.un.org/en/climatechange/>

<sup>5</sup> Paragraph 9 of the Bill’s Policy Memorandum

<sup>6</sup> Paragraph 10 of the Policy Memorandum

<sup>7</sup> Cleaner Air for Scotland Strategy – An Independent Review; Final report to the Scottish Government, August 2019

<sup>8</sup> See research from Friends of the Earth Scotland, <https://foe.scot/scotlands-most-polluted-streets-in-2018/> and <http://www.scottishairquality.scot/data/data-selector>

## Lack of detail

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We continue to have concerns with the lack of detail regarding particular aspects of the Bill. We appreciate fully that many aspects may best be left to secondary regulation making powers as provided for in section 72 of the Bill. Given the importance of the Bill as it seeks to legislate on a raft of changes to transport, we consider it preferable that details relating to a number of the Bill's aspects including emission standards, penalty charges, offences and appeals be provided in substantially more detail.

If these matters are to be left to secondary regulations, we would propose that regulations should be subject to consultation and where not already provided, these should be subject to affirmative procedure to allow for full and robust scrutiny.

This is especially relevant when considering if enforcement of provisions should be subject to criminal offences. The public need to be aware of any actions that are potentially criminal and amount to an offence. Any offences that are to be imposed must be proportionate and seek to balance the rights of the individual and the regulation and enforcement by the State. This is equally relevant to the imposition of any civil penalty.

## Publicity

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At Paragraph 148 of the Bill's Policy Memorandum, it is highlighted that the Scottish Government has committed to undertaking a nationwide campaign before any changes outlined in the Bill are introduced. That campaign needs to cover Scotland as widely as possible. As referred to above, we are specifically concerned regarding those who may be affected by any criminal offences to ensue that they are aware of any changes so that they can comply with the law.

Any campaign must have clearly directed messages and be inclusive having due regard to all those who have vulnerabilities and those for whom English is not their first language. There is a need to avoid frustration, inequalities and unfairness.

**For further information, please contact:**

Gillian Mawdsley

Policy Team

Law Society of Scotland

DD: 0131 476 8206

[GillianMawdsley@lawscot.org.uk](mailto:GillianMawdsley@lawscot.org.uk)