

TRANSPORT (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Part 3

Road User Charging

Road user charging schemes

Section 49 Charging schemes

78. This section sets out the meaning of a road user charging scheme. A road user charging scheme may only be introduced by local authorities as the local traffic authorities, acting either singly or jointly. It will be for local authorities to decide whether or not they wish to bring forward a scheme. Subsection (2) provides that a charging scheme made by a local authority or authorities acting jointly may apply only to roads for which the charging authority or charging authorities are the traffic authority. This means that the charging authority have no powers to charge for the use of trunk roads, even where they fall within the area of a local charging scheme.
79. Subsection (3) provides that charging schemes should be introduced only where the charging authority have a local transport strategy (as defined in section 82(1)) setting out the authority's agreed policies for transport in their area. Section 79 provides that the Scottish Ministers may issue guidance relating to the preparation of strategies.
80. A charging scheme is defined in subsection (5) as a scheme for imposing charges on the use or keeping of motor vehicles on specified local roads. The term "keeping" is required to allow for the inspection of stationary vehicles in a paper-based area-licensing scheme. The keeper of the vehicle will usually be liable for the charge incurred, although there may be cases where the Scottish Ministers specify that other persons (e.g. the driver or the signatory of a hire agreement) are liable.

Section 50 Charging schemes to be made, varied and revoked by order

81. This section sets out the means by which a road user-charging scheme must be made. It states that a local authority or authorities acting jointly wanting to introduce a charging scheme must do it by making an order. If an authority want to change or revoke a scheme, this must also be done by order.
82. The Scottish Ministers are given power to make regulations as to the form and publication of orders and the consultation procedures relating to them.

Section 51 Confirmation of orders

83. This section sets out the means by which a road user-charging scheme must be confirmed. A charging scheme order cannot come into force without the approval of the Scottish Ministers. If a charging authority or authorities wish to vary or revoke a

scheme by order, it too cannot come into force without the approval of the Scottish Ministers (subsection (1)).

84. The Scottish Ministers can define by means of regulations circumstances where subsection (1) will not apply. This will allow specified minor variations to a scheme, for example making slight alterations to the length of the charged period, to be made without ministerial confirmation.
85. The Scottish Ministers will be able to make modifications to the charging scheme order before they confirm it.

Section 52 Charging schemes: consultation and inquiries

86. This section defines the roles of charging authorities and the Scottish Ministers in relation to consulting on orders setting up, varying and revoking charging schemes.
87. Authorities will be able to consult others before deciding to introduce, vary or revoke an order. The Scottish Ministers will similarly be able to consult others or to require authorities to consult others about a proposed charging scheme or the variation or revocation of an existing charging scheme.
88. Subsections (3) and (4) enable the Scottish Ministers or authorities to hold an inquiry on the making, variation or revocation of a scheme themselves and to appoint a person or persons to adjudicate on such an inquiry. Subsection (5) provides that the Scottish Ministers may set out in regulations particular circumstances in which an inquiry will be required.

Section 53 Matters to be dealt with in charging schemes

89. This section sets out the basic elements that must be included in the order establishing the charging scheme. It allows the authority to make detailed provision on how exactly a scheme will operate in their area. It is for the charging authority to determine what is included in the order under each of the basic elements.
90. In summary, an order will set out the roads which are to be charged, how the charges are to be defined, the classes of motor vehicle which will be charged (and those which are exempt or eligible for reduced rates of charge), the levels of charge, the duration of the scheme, and matters relating to the collection, payment and recording of charges. It is for the charging authority to determine these matters.
91. Subsection (3) ensures that charging powers cannot be used purely as a charge on parked vehicles.
92. Some of the factors by reference to which different charges might be imposed are described in subsection (4), but this is not an exhaustive list. This gives local authorities a degree of flexibility as to how they may raise a charge so that the scheme might best meet their local policy aspirations. Thus they might, for example, decide to vary the charge to reflect the most congested times of the day. Alternatively, they might view the charging scheme as a device to reduce peak time commuting to work and simply not charge in the evenings or at the weekend.
93. Subsection (5) allows authorities to increase charges in line with inflation (as defined by the retail prices index) on specified dates, if they so wish. An authority must make it clear during consultation if they wish to increase charges in this way over the lifetime of the scheme.
94. Authorities will be required to set the level of the charge with regard to the purposes for which they intend to use the net proceeds. The Scottish Ministers do not intend to approve any charging scheme designed simply to be a revenue raiser and will expect authorities to have an estimate before introducing a scheme of how much the scheme

will raise and what local transport improvements they intend to fund with the net proceeds.

95. A charging scheme may require documents or equipment to be carried in or fitted to a vehicle when it is on a charged road. This gives charging authorities power to ensure that everyone who enters a scheme must have a permit or electronic payment unit in their vehicle, or be liable to pay a penalty charge.

Section 54 Charging schemes: exemptions etc.

96. This section enables the Scottish Ministers to make regulations to set national exemptions from charges or apply reduced rates of charges. Subsection (2) ensures that no road will be subject to double charging because it is covered by more than one charging scheme.

Section 55 Penalties and liabilities for charges

97. **Sections 55** and **56** allow the Scottish Ministers to make regulations to provide for the fair and effective enforcement of road user charging schemes. This includes arrangements for adjudication. The Act provides that non-payment of a road user charge will be a civil matter rather than a criminal offence, and outstanding charges will be recoverable as a civil debt. Removing a charging scheme penalty notice without good reason will however be a criminal offence. Deliberate tampering with any in-vehicle or roadside equipment with intent to avoid payment is identified as being of a more serious nature and will therefore be subject to greater maximum criminal penalties. The various subsections set out the power to make regulations covering each element.
98. Subsection (2) sets out the powers to make regulations covering penalties, including surcharges or discounts. This would allow the charging authority, for example, to increase the level of fines for persistent offenders or late payment, or offer a discount for the prompt payment of a fine.
99. Subsection (3) makes it clear that the registered keeper of the vehicle will generally be liable to pay any road user charge and any penalty notice. However, there will be instances where the keeper of the vehicle is not responsible, including where the vehicle has been stolen or where the vehicle in question is owned by a hire company. Regulations will set out the detail.
100. The level of fines is in line with standard criminal offences and penalties.

Section 56 Examination, immobilisation and removal of vehicles etc.

101. This section provides powers for the Scottish Ministers to make regulations to allow enforcement actions such as the examination or entering of vehicles in order to establish whether the correct documentation is displayed, and whether the specified equipment is fitted in a correct manner, is in good working order or has been unlawfully tampered with. Subsection (2) allows the charging authority to authorise individuals to act as enforcement officers. Anyone who obstructs an authorised person acting in the exercise of these powers commits a criminal offence and is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine. The Scottish Ministers may also by regulations allow for the immobilisation of vehicles and the fixing of notices to such vehicles, the removal and storage of vehicles and the release, sale or destruction of vehicles. Subsection (8) provides that these powers shall only be used if a vehicle is on a road.

Section 57 Equipment etc.

102. This section allows charging authorities to install and maintain any equipment or building in connection with the effective operation of a charging scheme. The Scottish

*These notes relate to the Transport (Scotland) Act 2001
(asp 2) which received Royal Assent on 25 January 2001*

Ministers are given powers to make regulations setting out the standards for equipment installed or authorised to be installed.

Section 58 Traffic signs

103. This section allows the Scottish Ministers to direct a charging authority to put up traffic signs on land in relation to a charging scheme.

Section 59 Non-domestic rating exemption

104. This section amends the Valuation and Rating (Scotland) Act 1956 to ensure that roads which are part of a charging scheme do not become liable for non-domestic rates. Further, it provides that buildings (apart from office buildings) that are solely used in connection with a charging scheme are exempt from non-domestic rates. This is required to exclude the necessary road side equipment structures associated with a charging scheme, such as gantries, booths or buildings housing electronic equipment.