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

TRANSPORT (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Part 1

Joint Transport Strategies

Section 1 Joint transport strategies

3. This section gives the Scottish Ministers the power to require specified public bodies to prepare and submit to them a joint transport strategy addressing a named transport issue.

4. Subsection (2) places a statutory obligation on the Scottish Ministers to consult those bodies which would be covered by an order, and enables them to consult other interested parties.

5. Subsection (3) sets out details of the provisions, which may be included in an order requiring a joint strategy. This includes the form of the joint strategy, the environmental, social and economic impact of the strategy, other matters to which the public bodies are to have regard, the procedures relating to the preparation and making of the strategy and the timeframe within which a joint strategy is to be submitted.

6. Subsection (4) provides that an order requiring a joint strategy shall contain provision on consultation.

7. In addition subsection (5) provides that public bodies specified in an order have the discretion to consult such other persons, as they consider appropriate in preparing a joint strategy.

8. An order made by the Scottish Ministers under the powers conferred by subsection (1) will be subject to negative resolution procedure.

Section 2 Directions

9. This section sets out the circumstances in which the Scottish Ministers may give directions to specified public bodies in connection with the preparation of a joint transport strategy. The Scottish Ministers will have the power to issue directions in three separate sets of cases, namely:

   - where no strategy is prepared;
   - where no strategy is submitted; or
   - in any other case where, in the opinion of the Scottish Ministers there are exceptional circumstances.

10. Where the Scottish Ministers are of the opinion that there are other exceptional circumstances subsection 2 requires them to consult the public body in question and other appropriate persons before giving a direction under subsection (1). Section 2 is without prejudice to section 211 of the Local Government (Scotland) Act 1973 (c.65).

This provides for the Scottish Ministers to order a local inquiry if they believe that a local authority may have failed to do what is statutorily required of them.

Part 2

Bus Services

Quality Partnership Schemes

Section 3 Quality partnership schemes

11. This section empowers local transport authorities, either alone or jointly, to set up quality partnership ("QP") schemes if this will to any extent implement their relevant general policies (as defined in section 48(1)) and either improve the quality of local services and facilities specified provided in a particular area, or reduce or limit traffic congestion, noise or air pollution. The expression "local transport authority" is defined in section 82(1) as meaning a local authority or the Strathclyde Passenger Transport Authority ("SPTA").

12. A QP scheme entails the authority providing specified facilities (as defined in subsection (3)(a)), and setting quality standards to be observed by bus operators as a condition for using those facilities. The specified facilities under a scheme (such as bus lanes and shelters) must be provided at specific locations along bus routes (or where appropriate prospective bus routes) which bus operators can use. Authorities may also include other ancillary facilities.

13. Information facilities may not be included if the authority have determined that these must be provided throughout their area under sections 33 and 34 of the Act. Standards that may be imposed on operators under a statutory QP scheme may include minimum frequency of services, but do not extend to maximum frequency or timing of services. The Scottish Ministers or the Secretary of State must be party to a QP scheme if any of the facilities requires the making of a traffic regulation order in respect of a road for which they are, or she, is the traffic authority.

Section 4 Regulations as respects specifying existing facilities in quality partnership schemes

14. The Scottish Ministers may make regulations under this section as respects the specification of existing facilities in a QP scheme. They might be used to impose more onerous consultation or consent requirements; to limit the period of time within which pre-existing facilities can be specified; to allow for particular facilities or classes of facility to be specified only in certain circumstances; and to allow appropriate modifications to be made to the QP scheme procedures where those QP schemes specify existing facilities.

Section 5 Consultation as to proposed quality partnership schemes

15. This section sets out requirements as to consultation. Authorities must give notice of proposed schemes in at least one local newspaper circulating in the area, and that notice must either set out the authority's proposals for facilities and standards of services to be provided, or state where, in what form and at what times such details can be inspected. A scheme may not be made without prior consultation with bodies specified in section 5(4). This includes bus operators and representatives of bus users and, if the scheme affects a trunk road, the Scottish Ministers or the Secretary of State.

Section 6 Making of quality partnership scheme

16. This section provides for the making of a QP scheme (with or without modifications) if an authority have complied with the terms of section 5 of this Act. The scheme must set out the specified facilities, specified standards of local services, the date on which it will

come into operation, the period for which it shall remain in operation and the procedures for determining any dispute. A QP scheme must be in operation for a minimum period of 3 years and no longer than 7 years. In certain circumstances local services may be excluded from a QP scheme, but continue to operate on a specific route. An example might be a community bus service acting as a feeder to a main bus route, on which there are QP facilities.

17. A QP scheme may not be brought into force before the authority consider it is reasonably practicable for the relevant facilities to be provided and for the operators to meet the prescribed standards, although the Act provides for the phasing in of facilities and service standards. In any event, the operative date may not be earlier than 3 months after the scheme is made, or any necessary traffic orders are made, whichever is the later. The making of traffic regulation orders can often take some time, and a scheme should not be brought into force before the specified facilities are in place.

18. No later than 14 days after making a scheme the authority must publish a notice in a local newspaper and notify all operators affected by the scheme, and the traffic commissioner. The notice must set out the scheme, or say where, in what form and at what times the scheme can be inspected, and state if any modifications have been made.

Section 7 *Postponement of quality partnership scheme*

19. This section provides for consultation and publicity in the event that an authority decides to postpone the introduction of a QP scheme (for a maximum of 12 months). Again, this is to ensure that appropriate procedures are available for different circumstances. Authorities must, within 14 days of any postponement of a scheme, give notice in a local newspaper and notify all operators affected by the postponement and the traffic commissioner.

Section 8 *Effect of quality partnership scheme*

20. This section sets out the effect of a QP scheme, once in place. It places obligations on both the local transport authority and the bus operators – the former to provide the relevant scheme facilities, and the latter to operate their services to the relevant standards.

21. Authorities will be under a duty to provide specified facilities, and continue to do so while the scheme remains in operation, unless in the event of circumstances beyond their control – for example a sewer collapse rendering a bus lane unusable. This duty will not apply to the Scottish Ministers or the Secretary of State (if they are, or she is, party to a QP scheme) if they are or she is unable to provide the facilities owing to the variation or revocation of a traffic regulation order.

22. An operator may only use the scheme facilities if a written undertaking is given to the traffic commissioner, who will be responsible for enforcement, confirming that the services specified in the scheme will be provided to the required standard, and that those services are duly provided to that standard (except in circumstances beyond the operator's control). Where local services are excluded from a QP scheme (e.g. a community bus providing a feeder service may be excluded) such services are not to be subject to the quality standard requirements. But any conditions applicable to that exclusion are to be treated as if they were prescribed particulars registered under section 6 of the Transport Act 1985. Thus an excluded operator who fails to comply with these conditions can face enforcement action by the traffic commissioner.

Section 9 *Variation or revocation of quality partnership scheme*

23. This section provides for the variation or revocation of QP schemes. This will give flexibility both for future changes and for any circumstances where it may be necessary to revoke a scheme. The local transport authority may revoke a scheme before its end date, but only if all participating operators consent. Consent cannot be unreasonably

withheld. If a variation requires the making of a traffic regulation order, then the variation will be subject to the procedures set out in section 5 and 6 of the Act. Unless modified by regulations made under section 11 any other variation or revocation is also subject to the procedures set out in sections 5 and 6.

Section 10 *Reports on quality partnership schemes*

24. This section imposes a duty on local transport authorities to prepare a report on the effectiveness of each QP scheme for each successive 12-month period and to submit these reports to the Scottish Ministers. In preparing reports, authorities must have regard to representations received during the relevant period. An authority may require an operator to provide information, and the operator is under an obligation to provide that information in so far as the provision of that information would be reasonable. Reports are to be submitted within 6 months of the end of the period to which they relate. The traffic commissioner must be consulted on the terms of the report before an authority submit it to the Scottish Ministers.

Section 11 *Regulations as respects quality partnership schemes*

25. This section empowers the Scottish Ministers to make regulations for various purposes in connection with QP schemes. This will enable any necessary provision to be made in respect of the detailed implementation of QP schemes. The regulations may deal, in particular, with the procedures for making, varying and revoking QP schemes, specify any case where no procedure requires to be followed, the scope of permitted exclusions under section 6(3), the form and manner of undertakings under section 8(4), the making of traffic regulation orders in connection with schemes and other incidental matters.

Section 12 *Eligibility for service subsidies*

26. This section amends section 63(5) of the Transport Act 1985 to enable authorities to provide a subsidy to an operator where a service would not otherwise be provided because it did not meet the standard required in a QP scheme. This power will enable authorities to provide a subsidy to an operator to enhance the quality of its buses, perhaps in an area where it would not otherwise be commercially viable to do so.

Quality contract schemes

Section 13 *Quality contract schemes*

27. This section empowers local transport authorities, either alone or jointly, to set up quality contract ("QC") schemes if this is necessary for the purpose of implementing their relevant general policies (as defined in section 48(1)), and the scheme proposed would implement those policies in a way which is economic, efficient and effective.

28. In summary, a QC scheme is one under which a local transport authority can determine what local services should be provided in an area, and to what standards, and can enter into contracts with bus operators giving them exclusive rights to provide services to the authority's specification. A QC scheme cannot be made unless the authority have complied with the notice and consultation requirements set out in section 15 of the Act, and obtained the approval of the Scottish Ministers.

29. A QC scheme allows the local transport authority to determine the necessary level and standard of bus provision for their area, and to secure that provision through a competitive tendering procedure. A QC scheme will grant exclusive rights to a bus operator (or operators) to provide the specified services in the specified area. QC schemes may contain provisions as to payment by the authority to the operator, a payment of a premium by the operator to the authority, or a zero payment or premium bid. Provision is also made for other services or facilities to be included in a QC. The provisions of section 88(1) of the Transport Act 1985 (which relate to tendering for

subsidised services under the present arrangements) are disapplied for the purposes of QC schemes.

Section 14 ***Proposed quality contract scheme***

30. This section sets out what must and what may be included in a proposed QC scheme. A proposed scheme must specify the area to which the scheme relates, and whether the scheme will, in relation to each local service included in the scheme, come into operation either not earlier than six months from the letting of the contract or on an earlier specified date. It must also specify the period (at least 3 years, but not more than 7) during which it is to remain in operation. The Scottish Ministers have the power to amend the minimum and maximum periods by order.

31. The proposed scheme must outline the local services that are to be provided under QCs and the features of the proposed invitation to tender. It may also provide that specified local services are to be excluded from the scheme, and those services may be subject to certain conditions. The proposed scheme may also contain provisions in connection with ancillary matters. If a proposed QC scheme relates to any extent to the same area as an existing QP scheme the QC scheme may contain provision to vary or revoke that QP scheme.

Section 15 ***Consultation as to proposed quality contract schemes***

32. This section sets out requirements as to consultation. A QC scheme may not be put to the Scottish Ministers for approval without prior consultation with the persons specified in section 15(3). These include bus operators, representatives of bus users, holders of public service vehicle operators' licences or community bus permits and the traffic commissioner. Authorities must give notice of proposed schemes in at least one local newspaper circulating in the area, and that notice must describe the proposed scheme or state where, in what form and at what times such details can be inspected. The authority may modify their proposals in the light of consultation prior to seeking approval from the Scottish Ministers.

Section 16 ***Approval of proposed quality contract scheme***

33. This section deals with the process of seeking and obtaining the approval of the Scottish Ministers to the making of a QC scheme. The application to the Scottish Ministers shall include the authority’s reasons for wishing to make the scheme and other information that the Scottish Ministers may require in order to assess whether the test in section 13(1) has been met. Any person consulted during the consultation process may make written representations to the Scottish Ministers (which could either be in support of, or opposition to, the scheme) after the proposed scheme has been passed to them for a decision.

34. The Scottish Ministers may approve the scheme (or approve it with modifications) if they are satisfied that it is in the interests of the public to make the scheme. In considering whether it is in the interests of the public the Scottish Ministers must have regard to the conditions in section 13(1), i.e. that the scheme must be necessary in order to implement the authority's relevant general policies in the area affected; and that the proposed scheme will implement those policies in an economic, efficient and effective way.

35. If modifications to a scheme are proposed by the Scottish Ministers, any such modifications must be brought to the attention of the authority making the scheme, and they must in turn consult any of the previously consulted parties likely to be affected; the authority then must notify the Scottish Ministers of the outcome. The Scottish Ministers may approve the scheme once these procedures have been followed.

Section 17 Making of a quality contract scheme

36. This section provides that the local transport authority may make a QC scheme once the Scottish Ministers have approved it, and that it must be made within 6 months of approval. Making a QC scheme enables an authority to move on to the next stage - to seek tenders for its operation. It does not enable an authority to bring a scheme into operation immediately.

37. The authority must give notice of the making of the scheme in a local newspaper circulating in the area, no more than 14 days after its making, and ensure that the traffic commissioner is sent a copy. The notice must state where, in what form and at what times a copy of the scheme can be inspected. If a QC scheme includes provision to vary an existing QP scheme which was made by two or more authorities, those authorities which did not make the QC scheme may vary or revoke that QP scheme subject to specified conditions.

Section 18 Tendering for quality contracts

38. This section provides that tenders have to be sought by general invitation no later than three months after the making of a scheme, unless the Scottish Ministers specify an alternative period. The tender must be issued generally by authorities in order to bring it to the attention of persons who may be interested, and issued individually to all persons who request a copy in writing. Tenders will only be acceptable from licensed operators of public service vehicles or persons holding a community bus permit under section 22 of the Transport Act 1985. The Scottish Ministers may by regulations make provision requiring local transport authorities to publish information in relation to the tenders submitted to them or their reasons for entering into particular QCs.

Section 19 Exceptions from section 18 (1)

39. Section 19(1) enables the Scottish Ministers, by regulations, to provide for cases where normal tender procedures will not apply. Section 18(1) will not apply where it appears to the authority that action is urgently needed to maintain an existing service, to secure the replacement of a service that has ceased to operate or to meet unexpected public transport requirements. If an authority do enter into such an agreement they must invite tenders as soon as possible for the longer-term delivery of the contract. The duration of these "emergency" agreements is limited to 3 months after the end of the period allowed for the submission of tenders so as to ensure that the tender provisions are not improperly circumvented.

40. The section also makes provision for agreements to be entered into in circumstances where no tender, or no acceptable tender, is received. The Scottish Ministers may by regulations require authorities that enter into such agreements to publish a statement that no tender was submitted to them, or a statement of their reasons for considering that no acceptable tender was received.

Section 20 Commencement of quality contract schemes

41. This section provides when approved QC schemes can come into operation. This is either the date, which is specified in the QC scheme, or such date as is determined under the QC. The authority must, within 14 days of entering into a QC, give notice in at least one local newspaper, and separately to all operators of local services likely to be affected by the contract, and to the traffic commissioner. The notice must state the local services to be provided under the QC, the date on which the QC scheme will become operational in respect of those services and the duration of the contract.

Section 21 Postponement of quality contract scheme

42. This section provides for a QC scheme, which would, in relation to a local service included in it, become operational under section 20(1)(b) to be postponed (for a

maximum of 12 months). In such circumstances certain consultation and publicity requirements must be met. Before postponing a scheme an authority must consult all operators of local services who might be affected by the postponement. Authorities must then, within 14 days of any postponement of a scheme, give notice in a local newspaper and notify all operators affected by the postponement, and the traffic commissioner. The Scottish Ministers may make regulations as regards postponements and these regulations may in particular cover the maximum period of postponements and any requirement for authorities to reissue invitations to tender in accordance with section 18 of the Act.

Section 22 Effect of quality contract scheme

43. This section provides that, once a scheme is in operation in relation to a local service included in it, sections 6 to 9 of the Transport Act 1985 (which deal with registration of local bus services) will cease to have effect in relation to that service and no such service may be provided except in accordance with a QC. The role of the traffic commissioner in monitoring services is therefore removed and enforcement becomes a matter of contract management for the local transport authority in accordance with the terms of the QC. However, where a service is excluded from a QC scheme under section 14(3) of the Act, sections 6 to 9 of the 1985 Act continue to apply to it and any conditions made under section 14(3) will be treated as if they were prescribed particulars under section 6 of the 1985 Act. The traffic commissioner may therefore still take action for breach of any conditions under which the excluded service is required to operate.

Section 23 Variation or revocation of quality contract schemes

44. This section makes provision for the variation or revocation of a QC scheme. The Scottish Ministers must approve such variations or revocations. A QC scheme may be varied by increasing or decreasing the area covered, increasing or decreasing the level of specified services, postponing the any date specified in the scheme as a date on which the scheme shall come into operation, or providing for new exclusions or variations or revocations of existing exclusions.

45. A QC scheme may not be varied by increasing the area covered or by increasing the level of specified services to be provided unless the both of the conditions in section 13(1) are met with regard to the scheme as varied. An authority may revoke a scheme where either of the conditions in section 13(1) is no longer met or the authority is making a QC scheme covering that area.

46. Where the Scottish Ministers do approve a variation or revocation, the procedure set out in section 17 (making of a QC scheme) applies to that variation or revocation, subject to any modifications of that procedure made by the Scottish Ministers by regulations. The section also provides powers for the Scottish Ministers to make regulations allowing them to revoke a scheme after it has been made but before it comes into operation in circumstances set out in the regulations (for example, an unexpected collapse of the tender process).

Section 24 Reports on quality contract schemes

47. This section imposes a duty on local transport authorities to prepare a report on the effectiveness of each QC scheme for each successive 12-month period and to submit these reports to the Scottish Ministers. In preparing reports, authorities must have regard to representations received during the relevant period. An authority may require an operator to provide information, and the operator is under an obligation to provide that information in so far as the provision of that information would be reasonable. Reports are to be submitted within 6 months of the end of the period to which they relate.

Section 25 Non-implementation of quality contract scheme

48. Subsection (1) provides that a QC scheme will cease to have effect if an authority have not, within 12 months of the date the scheme was made, entered into a QC in respect of each local service. However, subsection (2) provides that local transport authorities may seek a variation of the scheme where they have not been able to enter into a QC in respect of each local service within that period. For example, the authority may seek an extension to the 12-month period to enable them to let any outstanding contracts, or in a multi-contract scheme they may seek to reduce the scope of the scheme by reducing the number of contracts within it.

Section 26 Regulations as respects quality contract schemes

49. This section empowers the Scottish Ministers to make regulations in relation to the detailed implementation of QC schemes. The regulations may deal, in particular, with the procedures for making, varying and revoking QC schemes, the scope of permitted exclusions under section 14(3), the giving of notice and handling of objections, the holding of inquiries or hearings into objections, and various other ancillary matters.

Section 27 Transitional provision as respects quality contract schemes

50. This section empowers the Scottish Ministers to make, by regulations, such transitional provision as they consider appropriate in connection with the coming into operation of QC schemes, the variation of such schemes and the ending of such schemes (whether or not as a result of their revocation). The Scottish Ministers may also make regulations to modify or remove the impact of sections 6 to 9 of the Transport Act 1985.

Ticketing arrangements and ticketing schemes

Section 28 Ticketing arrangements

51. This section imposes a duty on authorities to determine what ticketing arrangements (as defined in subsection (5)) should be made available on local bus services in their area. This enables authorities to determine whether the provision of ticketing arrangements is necessary, and if so, to determine whether those arrangements are being made available. Before making such a determination, the authority must consult organisations representative of local bus users.

52. If it is considered that appropriate ticketing arrangements are not being made available the authority must seek to make arrangements with operators for the provision of such arrangements on a voluntary basis. If such voluntary arrangements cannot be made an authority may impose a ticketing scheme under section 29 of the Act. However it is for the operator to determine the way in which the ticketing transactions are carried out.

Section 29 Ticketing schemes

53. If satisfactory arrangements cannot be made under section 28, this section enables local transport authorities, alone or jointly, to set up ticketing schemes, whereby operators of local bus services are required to make and implement ticketing arrangements (as defined in section 28(5)). In doing so the local transport authority must be satisfied that this is in the public interest and would to any extent implement their relevant general policies (as defined in section 48(1)). A ticketing scheme may not be made unless the authority have complied with the notice and consultation requirements in section 30.

Section 30 Consultation as to proposed ticketing schemes

54. Authorities must give notice of proposed ticketing schemes in at least one local newspaper circulating in the area, and specify the proposed date on which the proposed scheme is to come into effect. After giving notice of the proposed scheme the authority

must consult operators of local services, representatives of bus users, the traffic commissioner and other such persons the authority thinks fit.

Section 31 Making of a ticketing scheme

55. This section enables authorities to make a ticketing scheme if they have complied with the consultation requirements in section 30. The scheme may be made as proposed or with modifications, and shall specify the date it comes into force (not less than 3 months after it is made). There are additional requirements as to publicity and the giving of notice (not later than 14 days after a scheme is made) when a decision is taken to make a scheme. Authorities must give notice of the proposed schemes in at least one local newspaper circulating in the area, and specify the date on which the scheme will come into effect and identify the classes of local services affected by it. The traffic commissioner and bus operators must also be notified separately. The Scottish Ministers may prescribe by regulations what other manner of notice should be given, or any other persons to be notified.

Section 32 Effect of ticketing scheme

56. This section imposes a duty on operators to implement the scheme from the date it comes into force. Failure to do so may result in enforcement action by the traffic commissioner under section 6 of the 1985 Act (by virtue of subsection (2)) and under section 111 of the 1985 Act (by virtue of amendments in section 40 of the Act).

Provision of information

Section 33 Information about bus services

57. This section enables an authority to determine in accordance with their relevant general policies (as defined in section 48(1)), how and what local bus information should be made available in their area. Before making such a determination, the authority must consult the traffic commissioner, organisations representative of local bus users and such other persons as the authority thinks fit. If it is determined that information is not being made available in an appropriate way the authority must seek to make arrangements with operators for its provision in that way. This section and sections 34 and 35 do not apply to any authority to the extent that part of their area falls within the passenger transport area of the SPTA.

Section 34 Duty of authority to make information available

58. This section provides that, if arrangements cannot be made by agreement, local transport authorities, alone or jointly, must make the bus information available, or secure that it is made available. In such a case the authority may recover reasonable costs from the operators concerned. Operators must furnish information to the authority or a third party in such circumstances, to enable the authority to meet these obligations. The traffic commissioner must be informed of any requirement to provide information imposed on operators of local services, and failure to implement such obligations may result in enforcement action by the traffic commissioner under section 111 of the 1985 Act (by virtue of consequential amendments made to that section by section 40 of the Act).

Section 35 Bus information: supplementary

59. This section provides that, in exercising their powers under sections 33 and 34, authorities must have regard to economy, efficiency and effectiveness, and must not discriminate against operators of local services.

Financial and competition provisions

Section 36 Agreements providing for service subsidies

60. This section amends the criteria by reference to which authorities must decide which tender to accept in the case of tenders for additional subsidised public transport services under section 9A of the Transport Act 1968 and section 63 of the Transport Act 1985. It introduces a new "best value" test by requiring authorities to have regard to economy, efficiency and effectiveness and also to have regard to their relevant general policies, and environmental issues, namely the reduction or limitation of traffic congestion, noise or air pollution.

61. This section also removes the present constraint (imposed by section 92(1) of the 1985 Act) that in exercising powers to subsidise those services authorities must not act so as "to inhibit competition". It is replaced with a new duty to have regard to the interests of the public and of operators. This is intended to make it easier for authorities to subsidise additional service frequency in appropriate circumstances by removing them from the requirement to consider whether competition might be inhibited.

Section 37 Competition test for exercise of bus functions

62. This section introduces a new competition test that will apply to the functions of making and varying of QP and ticketing schemes, and inviting and accepting tenders under section 89 or 91 of the Transport Act 1985. The competition test is met unless the measure has or is likely to have a significantly adverse effect on competition and is not justified by reference to the following criteria: that its effect on competition is proportionate and that it either secures improvements in the quality of vehicles or facilities used, secures other improvements in local services or reduces or limits traffic congestion, noise or air pollution.

Section 38 Grants to bus service operators

63. The grant making power contained in this section will replace the current Fuel Duty Rebate scheme operated under section 92 of the Finance Act 1965, which is repealed by subsection (6). This section makes new statutory provision for grants to bus operators, including power to make regulations as to the classes of bus services for which grant may be paid, and the method of calculation.

Section 39 Penalties

64. This section makes alternative provision to the penalties that are currently available to the traffic commissioner under section 111 of the Transport Act 1985 (as amended by section 40 of the Act). The section provides that the traffic commissioner may impose a penalty on an operator who has failed to operate a registered local service, or has failed to operate a local service in accordance with a QP or QC scheme, have failed to comply with a ticketing scheme or who has failed to provide information required by an authority under section 34(3). The maximum penalty under this section is £550 or such other sum as the Scottish Ministers may by order specify multiplied by the number of vehicles the operator is licensed to use under his public service vehicle licence. There is a right of appeal for operators to the Transport Tribunal.

Section 40 Repayment of grants towards bus fuel duty

65. This section amends section 111 of the Transport Act 1985 to enable the traffic commissioner to impose a penalty on a bus operator, if that operator fails "to a significant extent" to operate services as registered under section 6 of the 1985 Act. The amended provision enables the traffic commissioner to impose additional penalties in relation to:

— Operators using QP facilities when not entitled to do so (section 8(4));

— Operators providing a service within a QC area without entering into a QC with the local transport authority (section 22(1)(b) or (2));

— Operators failing to implement a ticketing scheme when required to do so (section 32(1)); and

— Operators failing to provide information to a local transport authority (section 34(3)).

66. The section also amends the current level of penalty, which the traffic commissioner must impose - a penalty of 20% of the fuel duty rebate paid in the previous three months. The amendment will enable the traffic commissioner to impose a penalty between 1% and 20% and there will no longer be a requirement to be satisfied that the operator has failed "to a significant extent", thus allowing a more flexible use of the power. This amendment only has effect, however, only until such time as section 111 of the 1985 Act is replaced by the provisions of section 38 of the Act.

Miscellaneous

Section 41 Bus User Complaints Tribunal

67. This section provides the Scottish Ministers with the power to establish by regulations a Tribunal whose remit will be to deal with complaints by bus users where the operator has not satisfactorily dealt with their complaints.

68. Subsection (2) provides that the Tribunal will have a convenor and two other members, who will be appointed by the Scottish Ministers. Subsection (3) provides that regulations may make provision in connection with such matter as the form of complaints, the procedure to be followed by the Tribunal, the matters to which the Tribunal shall have regard, the powers of the Tribunal on making determinations, the tenure of Tribunal members, the payment of remuneration and allowances, the making of reports to the Scottish Ministers, reporting arrangements and appeals.

69. Subsection (4) provides that the traffic commissioner shall make available the necessary staff, pay remuneration, allowances and any other expenses and provide the Tribunal with any other reasonable assistance. Subsection (6) provides that the Scottish Ministers shall pay the traffic commissioner an amount agreed as appropriate to reimburse this expense.

Section 42 Traffic regulation conditions to reduce or limit noise or air pollution

70. This section extends the powers of the traffic commissioner to impose traffic regulation conditions on local bus services under section 7 of the Transport Act 1985. Previously, these powers permitted the traffic commissioner, at the request of local authorities, to impose restrictions on routes and stopping places in the interests of preventing danger to road users or reducing severe traffic congestion. This section enables the traffic commissioner to do so for the additional purposes of reducing or limiting noise or air pollution.

Section 43 Power to obtain information about local services

71. This section enables a local transport authority to obtain from bus operators basic statistical data which may be needed in connection with any of its public transport functions - for example, in the context of local transport strategies or tendering of bus services. The data is limited in subsection (2) to passenger journeys, bus mileage and fare structures. There is a requirement in subsection (3) to produce it in any reasonable form; and in subsections (4) and (5) not to disclose it except with consent or in other specified circumstances.

72. A local transport authority that, without reasonable excuse, discloses information other than in accordance with subsections (4) and (5) commits an offence and is liable on conviction to a fine not exceeding level 5 on the standard scale. In certain circumstances an employee of the authority can also commit an offence and be subject to the same penalties as the authority.

Section 44 *Civil penalties for bus lane contraventions*

73. This section enables the Scottish Ministers to make regulations allowing "approved" local authorities to impose civil penalties on motorists committing certain bus lane driving offences. Where such a scheme exists, the offences in question will have been decriminalised and the local authority enforcing the scheme will be able to retain receipts received through the penalties imposed. The receipts will, however, have to be used by the local authority for the purposes of achieving policies set out in their local transport strategy.

74. A local authority will be regarded as being "approved" for the purpose of this section if an order has been made designating the whole or part of their area as a permitted or special parking area or the Scottish Ministers have made an order specifying them as such.

Section 45 *Registered services: minimum period of operation*

75. This section amends section 6 of the Transport Act 1985 in order to require operators of local services to operate new or varied registered services for a period of at least 90 days, or such other period as the traffic commissioner may specify.

Section 46 *Power to restrict dates on which scheduled timings of local services may be varied*

76. This section amends section 6 of the Transport Act 1985 to enable the Scottish Ministers, by regulations, to restrict the dates on which operators of local services may vary a registration in so far as it relates to the scheduled times of that local service. The regulations may specify the local authority area or areas which are to be subject to such a restriction. Such regulations cannot specify more than 4 dates in any calendar year on which a registration may be varied, and they cannot have effect for a period of more than 3 years.

Section 47 *Co-operation*

77. This section requires local transport authorities, when carrying out their functions under this Act in relation to QP, QC and ticketing schemes and the provision of information to have regard to the desirability of joint arrangements with other authorities and to co-operate with one another.

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 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.

Supplementary

Section 61 Powers of charging authorities

105. This section allows charging authorities to spend money developing, setting up and operating a charging scheme and to enter into contracts with third parties in connection with the setting up and operation of a scheme. This will allow authorities, for example, to enter into a contract with a private company for the installation and maintenance of electronic equipment at the roadside.

Section 62 Grants to charging authorities

106. This section enables the Scottish Ministers to make grants to assist authorities interested in bringing forward a charging scheme. The payment of such a grant does not commit an authority to introduce a charging scheme; nor does it commit the Scottish Ministers to approve any particular scheme.

Section 63 *Information*

107. This section allows various bodies carrying out statutory functions to share information in relation to charging schemes. This will allow, for example, information needed for enforcement purposes to be given by the Driver and Vehicle Licensing Agency to the charging authority.

Section 64 *Determination of disputes, appeals and evidence*

108. This section gives the Scottish Ministers a power to make regulations to provide for appeals and adjudication in respect of charging schemes.

Section 65 *Offences by bodies corporate and partnerships*

109. This section sets out the circumstances in which an officer of a body corporate or a partner of a Scottish partnership is also guilty of an offence committed by the body or partnership.

Part 4

Miscellaneous and General

Section 68 *Travel concession schemes*

110. This section gives the Scottish Ministers the power, by order, to require local authorities, either acting alone or jointly with other local authorities, to provide a minimum level of travel concession for pensioners and disabled people.

111. The Scottish Ministers may by order require local transport authorities to provide a minimum level of travel concession for eligible persons i.e. elderly and disabled people, on eligible services which are defined in subsection (7) as including bus services, ferry services and others services which the Scottish Ministers may by order specify. The Scottish Ministers may also by order extend eligibility for travel concessions to other specified groups.

Section 69 *Joint boards for management, maintenance etc. of certain bridges*

112. This section gives the Scottish Ministers powers to dissolve by order any body other than a roads authority which under any enactment has responsibility for the management and maintenance of certain bridges in Scotland (at present the only two bodies are the Forth Road Bridge Joint Board and the Tay Road Bridge Joint Board) and to transfer the property, rights and liabilities of that body to a new joint board. Subsection (2) sets out the provisions that may be specified in such an order.

113. Subsection (3) provides that a new joint board shall be deemed to be a joint board within the meaning of the Local Government (Scotland) Act 1973 (c.65); and to be a local traffic authority in relation to any road carried by the bridge for the purposes of Part 3 of the Act. Subsections (2)(c) and (3)(b) will enable any new joint board to plan for all modes of transport relating to travel across the relevant river, and where appropriate, bring forward a charging scheme under Part 3 of the Act.

Section 70 *Grants for transport-related purposes*

114. This section enables the Scottish Ministers to make grants to any persons for transport-related purposes. Grants will be of such amounts and subject to such conditions as the Scottish Ministers may determine. The Scottish Ministers are required to lay a report before the Scottish Parliament on grants made during any financial year, and the report must include details of the amount of grant, the person to whom it has been paid and the purposes for which it has been paid.

Section 71 *Financial assistance for inland waterway and sea freight*

115. This section repeals section 140 of the Railways Act 1993 which gave Ministers powers to award freight facilities grants for inland waterway traffic. This section will also give the Scottish Ministers power to award grants to aid the transfer of freight from road to inland waterway and coastal and short sea shipping movements that begin and end in Scotland.

Section 72 *Disabled persons' transport needs: power to establish committee*

116. This section gives the Scottish Ministers the power, by regulations, to establish a committee to advise on the transport needs of disabled people. It also gives the Scottish Ministers the power to make regulations concerning the membership and operation of the committee.

Section 73 *Badges for display on motor vehicles used by disabled persons: enforcement*

117. This section amends section 21 of the Chronically Sick and Disabled Persons Act 1970 which established the Orange Badge Scheme of Parking Concessions for Disabled and Blind People and was replaced from 1 April 2000 by the European Blue Parking Badge Scheme for Disabled People. (The new blue badge will be phased in over a 3 year period as existing orange badges come up for renewal or as new applications are processed.) The addition of section 21(4BA) provides the police, traffic wardens and local authority parking attendants with the powers to inspect blue/orange badges issued under the schemes. The addition of section 21(4BB) creates an offence of refusing to produce a badge when requested to do so by any of these authorised persons. The addition of section 21 (8A) defines "constable" as meaning a police constable, a traffic warden and a parking attendant.

118. The addition of section 21(7CA) allows the Scottish Ministers to make regulations about appeal procedures where an appeal against the local authority's decision not to issue a badge has been refused by the Scottish Ministers.

119. The addition of section 21(7F) enables the Scottish Ministers to give recognition in regulations made in Scotland to badges issued in Northern Ireland and other EC member states outside the United Kingdom.

Section 74 *Home Zones*

120. This section enables local authorities to designate home zones with a view to implementing measures for securing certain purposes, namely: to improve the safety of persons using the road, to improve or preserve the environment through which the road runs; to improve facilities and bring benefits to non-motorised vehicle users of the road; and to any extent to implement their transport policies. It also enables the Scottish Ministers to make regulations prescribing the procedures to be followed by local authorities when designating roads as home zones.

121. Under subsection (3), local authorities will be required to produce a report on the measures they have implemented in the home zones they have designated.

Section 75 *Amendment of Roads (Scotland) Act 1984*

122. This section allows roads authorities to introduce an experimental redetermination order ("ERO") for a maximum period of 18 months to test the effectiveness of such an order. Thereafter, the ERO would either lapse or the authority would promote a permanent redetermination order.

Section 76 *Amendment of Road Traffic Act 1988*

123. Section 40 of the Road Traffic Act 1988 enables the Scottish Ministers to make contributions towards the cost of measures, taken by authorities and bodies other than local authorities, for promoting road safety. Section 76 extends the scope of section 40 so as to enable the Scottish Ministers to make contributions towards the cost of measures taken by local authorities for promoting road safety.

Section 77 *Patrolling school crossings*

124. Sections 26 to 28 of the Road Traffic Regulation Act 1984 make provision enabling local authorities to make arrangements for patrolling places where children cross roads on their way to or from school, or from one part of a school to another between the hours of 8 a.m. and 5.30 p.m. School crossing patrols have power to stop traffic to enable children to cross the road.

125. Subsection (2) amends section 26(1) of the 1984 Act by removing the restriction on the times when school crossing patrols may operate. Subsection (3) inserts a new subsection after section 26(1) of the 1984 Act. The new subsection (1A) gives local authorities the power to determine the times when school crossings are patrolled.

126. Subsection (4) amends section 28(1) of the 1984 Act by removing the restriction on the times when school crossing patrols have power to stop traffic. In addition, it gives school crossing patrols the power to stop traffic for any person who is crossing or seeking to cross the road.

Subsection (5) amends section 28(2)(a) of the 1984 Act so as to require a driver of a vehicle to stop, when required to do so by a school crossing patrol, for any person to cross the road.

Section 78 *Stands etc. for bicycles and motor cycles*

127. Section 72 amends section 63 of the Road Traffic Regulation Act 1984 so as to give powers to local authorities to provide devices for securing bicycles and motorcycles. As well as stands or racks, these devices could be in the form of a bar to which a motorcycle or bicycle could be fastened.

Schedules

Schedule 1 *Road user charging: financial provisions*

128. This schedule contains the financial provisions for road user charging schemes.

129. Paragraph 1 defines “net proceeds”. Once the gross proceeds have been received under a scheme, the charging authority or a third party working for the charging authority will subtract the expenses of establishing or operating the scheme to give net proceeds.

130. Paragraphs 2 and 3 deal with the apportionment of the net proceeds of a scheme between (or among) the relevant local authorities.

131. Paragraph 4 covers the accounts and funds charging authorities are required to keep. Sub-paragraph (3) provides the Scottish Ministers with the power to make regulations specifying the form of those accounts.

132. Paragraph 5 sets out how the net proceeds can be spent. It requires the net proceeds to be “hypothecated”, that is, to be spent only in support of the authority or authorities’ local transport strategy. Sub-paragraph (2) requires that local authorities should endeavour to spend net proceeds on transport-related investment which is economic, efficient and effective.

Schedule 2 Minor and consequential amendments and repeals

133. Paragraph 1 amends the Finance Act 1965 to ensure that bus services provided under a QC are eligible for bus fuel duty rebate.

134. Paragraph 2 is a minor amendment related to section 2 of the Act. It brings the Act within the ambit of section 211 of the 1973 Act.

135. Paragraph 3 amends the Road Traffic Regulation Act 1984.

136. Sub-paragraph (2) enables local traffic authorities to make traffic regulation orders affecting trunk roads if necessary to give effect to QP schemes, if the Scottish Ministers, or the Secretary of State, consent.

137. Sub-paragraph (3) is concerned with traffic regulation orders made for the purposes of a QP scheme made by more than one authority. It provides that a QP scheme may not be varied or revoked by the Scottish Ministers or the Secretary of State unless they have consulted the other authorities that made the scheme. It also provides that a QP scheme may not be varied or revoked by any other authority without the consent of all the authorities that made the scheme.

138. Paragraph 4 amends the Transport Act 1985.

139. Sub-paragraph (2) makes further provision for the making of regulations under section 6(9) of the 1985 Act.

140. Sub-paragraph (3) repeals subsection (3) of section 63 of the 1985 Act.

141. Sub-paragraph (4) amends section 82 of the 1985 Act to ensure that nothing done in relation to a QP scheme shall be taken to be discrimination prohibited by subsection (1) or (3) of that section (bus stations: restrictions on discriminatory practices).

142. Sub-paragraph (5) amends the definition of “eligible services” in section 94(4) of the 1985 Act.

143. Sub-paragraphs (5), (6) and (7) are consequential on section 68 of the Act.