

POST LEGISLATIVE SCRUTINY

Response to Scottish Parliament Rural
Economy and Connectivity Committee

Monday 30 April 2018

We understand that the purpose of this exercise is to identify which Acts should be reviewed by the Rural Economy and Connectivity (REC) Committee, not to carry out any such reviews. Our comments are therefore set at a 'high level', and are designed only to make the case for a review. We would anticipate providing a more detailed examination of the relevant Acts if and when the REC Committee launches a review.

Of the Acts identified by the Committee as of interest, we wish to comment on:

Transport (Scotland) Act 2001

Introduced 5 June 2000, Royal Assent 25 January 2001. The Act gave Scottish Ministers powers to require public bodies to prepare a joint transport strategy. It contained provisions on bus services (e.g. ability to create quality partnership schemes and quality contracts) and road charging schemes by Local Authorities. It gave the Scottish Ministers a power to require the creation of travel concession schemes, and contained other measures.

Transport (Scotland) Act 2005

Introduced 27 October 2004, Royal Assent 5 August 2005. The Act provided for creation of Regional Transport Partnerships, the office of the Scottish Road Works Commissioner, and introduced national concessionary travel schemes and other measures.

Transport and Works (Scotland) Act 2007

Introduced 26 June 2006, Royal Assent 14 March 2007. The Act provided Scottish Ministers with powers to make orders for certain transport developments e.g. construction/operation of railways, tramways etc. and grants for specific transport purposes.

Abolition of Bridge Tolls (Scotland) Act 2008

Introduced 3 September 2007, Royal Assent 24 January 2008. Removed tolls on the Forth and Tay Road Bridges, and repealed the Erskine Bridge Tolls Acts 1968 and 2001.

Assessment against the checklist in the Committee's request for views

- Has the Act had sufficient time to make a difference?
The four Acts considered here were passed between ten and seventeen years ago. This is sufficient to assess their effects.
- Does the Act have a measurable outcome or policy objective, and has it fulfilled these?

Transport (Scotland) Act 2001

The Policy Memorandum states the objectives of the Bill are to deliver sustainable, effective and integrated transport; to empower Local Authorities to deliver solutions to local problems and

promote partnership working; to give Local Authorities powers to manage congestion, influence bus service development, grow the bus market, and work in partnership with other Local Authorities and transport providers; to respond to problems associated with growing traffic levels, carbon emissions, air pollution and the exclusion of people who are elderly, disabled, or on low incomes from adequate public transport.

Transport (Scotland) Act 2005

The Policy Memorandum states the objective of the Bill is to establish statutory Transport Partnerships, and a strong regional approach; to enable Scottish Ministers to run concessionary travel schemes and the regulation of utility company road works; to improve the co-ordination and quality of road works. It included a number of additional technical matters.

Transport and Works (Scotland) Act 2007

The Policy Memorandum states the objective of the Bill is to provide an efficient process to authorise transport-related developments.

Abolition of Bridge Tolls (Scotland) Act 2008

The Policy Memorandum states the objective of the Bill is to remove tolls on the Forth and Tay Road Bridges, as 'it is unacceptable and unfair to leave the two road bridges into and out of Fife as the only remaining toll bridges in Scotland'.

The question of whether the Acts have fulfilled their objectives is the most critical issue here. It is explored later in this response.

- Has another Parliament committee already carried out post-legislative scrutiny of the Act?
Not as far as we are aware, at least within the past five years.

- Does the Act contain an in-built mechanism for post-legislative scrutiny?
None of the four Acts included a mechanism for post-legislative scrutiny.

- Has the Act been subject to, or could it be subject to, significant revision?
It appears that the current Scottish Government's proposed Transport Bill will address some issues cited in the Transport (Scotland) Act 2001 and Transport (Scotland) Act 2005. We are not aware of any proposal affecting the Transport and Works (Scotland) Act 2007 or the Abolition of Bridge Tolls (Scotland) Act 2008.

- Has there been a call from relevant stakeholders for the Act to be reviewed?
We are aware of various views on whether, and which, of the Acts should be reviewed. The Government intends to review some issues covered by the Transport Acts 2001 and 2005.

- Would there really be merit in undertaking post-legislative scrutiny of the Act?
Yes. This is explored below.

- Is the Act subject to legal challenge?
We are not aware of a legal challenge to any of the four Acts considered here.

Have the Acts have fulfilled their objectives?

With regard to the Transport and Works (Scotland) Act 2007, it appears that an annual report of TAWS orders should be lodged in Parliament, but it is difficult to locate any report except in 2017. This referred to EGIP and the redevelopment of Glasgow Queen Street station. This suggests the Act has been little used.

The Act was designed to simplify the cumbersome arrangements previously required for guided transport or canal projects, which typically required their own Act of Parliament. However, no such project has commenced since the Act was passed. Projects such as EGIP and Glasgow Queen Street redevelopment were not subject to particularly onerous approvals before the TAWS Act, so we question how useful it has been in practice. In summary, there is little evidence either way, so a case for review is not clear.

Whilst there are historical reasons why parliamentary consent was introduced in the 19th century for rail projects, these are no longer relevant. We see no good reason for the process being different to that for road projects; these do not require a parliamentary process.

We believe that the Abolition of Bridge Tolls (Scotland) Act 2008 was misguided. The premise on which it was based (that tolls were unacceptable and unfair) was flawed, given that the price of road transport falls far short of its environmental, social and economic costs. However, there are a number of ways to remedy this, and it is not useful to focus solely on the tolls affected by this Act. We do not, therefore, suggest that it be reviewed.

There are stronger cases for reviewing the Transport (Scotland) Acts 2001 and 2005. As noted above, it appears the Scottish Government intends new legislation giving Local Authorities powers to influence local bus services, grow the bus market, and work in partnership with others. It may include road works and the Road Works Commissioner, and the future of Regional Transport Partnerships; we agree that both of these topics require further consideration.

The 2001 Act contained specific powers for Local Authorities in respect of integrated local fares schemes. These powers remain in force, but appear largely to have been ineffective; this has been partly because bus operators have appeared to be averse to such schemes, but also because there is little if any activity at Government level to encourage implementation. Official action appears to be focused on the non-statutory, limited 'PlusBus' scheme sponsored by industry trade bodies (Confederation of Passenger Transport and the Rail Delivery Group (formerly the Association of Train Operating Companies)). The Act's original intentions have not been delivered and indeed perhaps frustrated.

We do not object to Local Authorities gaining new powers over bus services, but, as stated in our response to recent Scottish Government consultations, we do not believe that this alone will achieve the Government's wider objectives to reverse the decline in bus patronage and achieve a modal shift away from private car use. This is because the Acts have failed to deliver sustainable, effective, integrated transport; to enable Local Authorities to manage congestion; or to respond to problems associated with growing traffic levels, carbon emissions, air pollution, and the exclusion of those who are elderly, disabled, or on low incomes from adequate public transport.

In the absence of Government legislation to address them, the REC Committee should review at least these components of the Transport (Scotland) Acts 2001 and 2005. As noted, our comments are designed only to make the case for a review, not to examine the Acts in detail. It is necessary to consider the following points in relation to the Transport Acts 2001 and 2005:

- Is transport sustainable, effective, and integrated?
- Do Local Authorities manage congestion, and respond to growing traffic levels, carbon emissions, and air pollution?
- Can those who are elderly, disabled, or on low incomes access adequate public transport?

We have no doubt that the answer to these questions is 'no'. This is reflected in the Government's own statistics. For example: The proportion of journeys made by public transport, walking and cycling is the same as it was in 1999;¹ carbon emissions from transport decreased by only 1.1% between 1990 and 2015;² congestion increased by 0.9% between 2003 - 2016;³ and bus patronage has declined by 14% since 2001 (i.e. when the first Transport Act was introduced).⁴ We therefore strongly believe that the 2001 and 2005 Acts should be reviewed.

Furthermore, the Acts allowed Scottish Ministers to require public bodies to prepare a joint transport strategy, and contained provisions on road user charging schemes. Whilst initially Local Transport Strategies and Regional Transport Strategies were adopted across Scotland, and were very useful, many have not been updated and are not actively used.

No road user charging schemes have been implemented, and the bridge tolling mechanism (discussed above) has been abolished. Combined with the wider failings described above, a review is needed to consider how the underlying objectives of providing sustainable, effective, integrated transport; managing congestion and responding to traffic levels, CO2 emissions, air pollution and exclusion from public transport can be addressed.

Conclusion

We conclude that there is a very strong case for the Committee to review the Transport (Scotland) Act 2001 and the Transport (Scotland) Act 2005. We do not believe that there is a good case at present for reviewing the Transport and Works (Scotland) Act 2007 or the Abolition of Bridge Tolls (Scotland) Act 2008, provided a review of the Transport (Scotland) Acts includes the issues highlighted above.

We would be pleased to submit further evidence to a review of these Acts, if and when it takes place.

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¹ <http://www.gov.scot/About/Performance/scotPerforms/indicator/transport>

² <http://www.gov.scot/Resource/0052/00520839.pdf>

³ <http://www.gov.scot/About/Performance/scotPerforms/indicator/congestion>

⁴ <https://www.gov.uk/government/statistical-data-sets/bus01-local-bus-passenger-journeys>

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We campaign for walking, cycling and public transport to be the easiest and most affordable options for everyone. Our diverse membership brings together public, private and third sector organisations from across Scotland. We are a registered Scottish charity (SC041516).