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Dear Andrew

Transport (Scotland) Bill at Stage 1

Thank you for your letter of 12 September to James Hynd, setting out specific points on which the Delegated Powers and Law Reform Committee is seeking further explanation of the powers contained in Parts 1-5 of the Transport (Scotland) Bill ("the Bill"). It has been passed to me to reply, as my division has policy responsibility for the Bill. Thank you also for extending the deadline to 5pm 25 September.

Responses to the areas on which the Committee is seeking further explanation are as follows.

Part 1 – Low emission zones

Section 1(4) – Restriction on driving within a zone

- 1. The Committee has requested an explanation of why the emission standard is not set out on the face of the Bill, with a power taken by regulations to amend it, to enable the Parliament to conduct sufficient scrutiny of this choice during the course of the Bill.**

The consultation, Building Scotland's Low Emission Zones, outlined proposals for emission standards (predominantly Euro6/VI for diesel vehicles and Euro 4 for petrol vehicles). These standards were largely accepted by stakeholders who responded to the consultation. It is likely that the Scottish Ministers will set Euro6/VI for diesel vehicles and Euro 4 for petrol vehicles as the initial emission standards in regulations made under the power in section 1(4)(a). However, continuing improvements in technology mean that vehicle emissions should decrease over time. As such, it is possible that the Scottish Ministers will wish to make the emission standards in the regulations progressively more stringent in future.

It is considered that having the emission standard set out in regulations allows for sufficient Parliamentary scrutiny during the course of the Bill as, although it is likely that the emission standards will be set at Euro6/VI for diesel vehicles and Euro 4 for petrol vehicles, no final decision on this has yet been taken. The Scottish Ministers consider that the provisions of Part 1 of the Bill

are set out in sufficient detail to allow the Parliament to scrutinise both the principle of low emission zones, and how it is intended that a low emission zone scheme will operate in practice.

2. The Committee has requested reconsideration of whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under section 1(4)(a) given the effect that this could have on individuals owning vehicles that may not comply with the emissions standard.

As noted in response to the previous question, it is reasonable to assume that the first standards specified in regulations under section 1(4)(a) will be consistent with the leading Euro emission standards. It is also reasonable to assume that subsequent changes in the specified standards will track changes in those Euro standards. It is therefore envisaged that the specification of standards will be to some extent led by technological developments. The Scottish Government's current view is that the negative procedure allows for an appropriate balance between the need to respond to and reflect such developments and the need for Parliament to scrutinise Ministers' policy choices. However, it is also accepted that the emission standards are fundamental to the scope and operation of low emission zones. The Committee's concern about the Bill's silence on the first emission standards is relevant in that regard. The Scottish Government will therefore reflect on the question of whether the affirmative procedure might be appropriate for regulations under section 1(4)(a), taking account of the Committee's views, any evidence given to Parliament during Stage 1 by stakeholders, and the Stage 1 Report.

3. The Committee has requested consideration of whether it would be more appropriate that a limit on the level of the penalty that can be set in regulations is contained on the face of the Bill.

The Scottish Government does not consider it to be either necessary or practicable to set a limit on the penalty which may be set in regulations under section 1(4)(c). A maximum is not necessary because a penalty may amount to a deprivation of property for the purposes of Article 1 of Protocol 1 to the ECHR and must therefore be set at a level which is necessary and proportionate to the achievement of the policy aims of low emission zones. Irrespective of whether a limit is set in the Bill, the Scottish Ministers' discretion is therefore constrained by those factors.

It is not considered practicable to set a maximum penalty limit because flexibility in the setting of penalties is required to deal with a range of circumstances in which penalties may be levied (including the setting of different penalties in respect of different types of vehicle). Likewise, the question of what constitutes a proportionate and effective penalty will not be fixed at the point the Bill is passed; the assessment of this issue will evolve over time through experience of operating schemes and as the value of money changes.

4. The Committee has requested whether it would be more appropriate that the affirmative procedure also applied to regulations made under section 1(4)(c).

In determining its approach to the procedure attaching to regulations under section 1(4)(c), the Scottish Government considered the civil penalty regimes for decriminalised parking (explained further below in response to question 13), and for road user charging under Part 5 of the Transport (Scotland) Act 2001, neither of which require penalties to be set in regulations subject to the affirmative procedure. It is also proposed that the parking provisions in the Bill are subject to the negative procedure. In the case of the parking provisions in this Bill and the road user charging provisions in the 2001 Act, negative procedure is considered to strike an appropriate balance between the need to set out the technical detail of civil enforcement regimes and the need for Parliament to scrutinise the exercise of Scottish Ministers' discretion in setting out that detail.

Given that the principles underpinning low emission zones will be subject to significant scrutiny through the Bill process, it is considered that in this case too, the negative procedure affords the Parliament sufficient opportunities for scrutiny of the technical detail as to penalties.

Section 3(1) – Enforcement

5. The Committee has requested an explanation of what is it about the enforcement of low emission zone schemes in particular that means that it is not foreseeable at this stage what offences will be necessary.

Section 3 generally sets out that the provisions for enforcement of low emission zone schemes will be through provision made by regulations. The power in section 3(3) to create offences in connection with enforcement gives the Scottish Ministers flexibility to frame offences which are appropriate and necessary for securing the effectiveness of the primary enforcement methods set out in regulations under section 3(1) and (2). Until the specific detail of those enforcement methods is settled, it is not considered possible to foresee precisely what offences may be needed in that regard. The power in section 3(1) also allows for flexibility to develop and adjust the approach to enforcement of low emission zones through experience. For example, particular enforcement methods, such as the method of issue of a penalty charge or the manner of enforcement of a penalty charge, may change over time. As the method of enforcement evolves, new ways and means of interfering with enforcement functions or equipment, or otherwise seeking to evade enforcement, may likewise be identified. A power to create offences in connection with enforcement is therefore also needed to complement changes to the overall enforcement mechanisms.

Part 2 – Bus services

Section 29(2) – new section 3L of the 2001 Act – further provision

6. The Committee has requested consideration of whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under new section 3L(2)(c).

The power in section 3L(2)(c) is not intended to be used to define a term in the Bill in the usual sense.

The concepts of “facilities” and “measures” in the context of a partnership scheme are potentially wide-ranging. It is intended that these concepts should be construed widely to allow LTAs to take a flexible and expansive approach to the action they may take under such a scheme. Against that background, section 3L(2)(c) will not allow the Scottish Ministers to define the relevant terms or restrict their scope by way of a general definition. Rather, it will allow them to make provision of an illustrative nature as to what may constitute a facility or measure. This will provide practical illustrations for local transport authorities to consider when developing partnerships, and it is envisaged that the regulations will be updated over time to reflect best practice. It is not considered that the additional levels of parliamentary scrutiny afforded affirmative procedure are necessary for regulations made under new section 3L(2)(c).

More generally, it is not accepted, as a matter of principle, that regulations defining terms used in a Bill should necessarily be subject to the affirmative procedure. With few exceptions, the choice of procedure is considered on a case by case basis and decided on in merits taking into account a range of factors.

Section 32(2) – new section 13H of the 2001 Act – modification of proposed franchising framework (guidance)

- 7. The Committee has requested consideration of whether it would be more appropriate that such provision is set out in regulations rather than in guidance. If the Scottish Government does not consider that to be appropriate, please consider whether the guidance should be subject to parliamentary scrutiny.**

It is not considered that anything in the way that section 13H(5) is framed changes the advisory nature of the guidance under that power.

The requirement imposed on LTAs under the Bill (new section 13H(3)) is to prepare a new assessment of a franchising framework where they consider that the modifications materially affect the existing framework. Those are, in the language of section 13H(5), the circumstances in which a LTA must prepare a new assessment. The guidance therefore cannot, and is not intended to, prescribe or mandate the circumstances in which a new assessment is to be carried out, that being a matter already dealt with under subsection (3). Instead the guidance will help inform a local authority's consideration of whether a further assessment is required. On this basis the use of regulations is not considered appropriate as it is not regulating when a new assessment must be undertaken. Further, given the advisory nature of the guidance, it does not appear to the Scottish Government to merit taking up valuable parliamentary time.

Section 33(1) (inserting new section 6ZB(2)(c) of the 1985 Act) – Provision of service information: extent of permissible disclosure

- 8. The Committee has requested consideration of whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to allow the Parliament to be satisfied that the rights of operators will be respected.**

The powers to prescribe additional prospective recipients of information relates only to patronage information which is unlikely to be commercially sensitive and therefore to affect the rights of operators. In addition new section 6ZB(7)(b) of the Bill prevents an affected authority from disclosing information to any person if they consider it likely to be commercially damaging, providing a safeguard for operators if it is required. As such it is not considered that the additional levels of parliamentary scrutiny afforded affirmative procedure are necessary for regulations made under new section 3ZB(2)(c). In addition, in their 2011 investigation of the local bus market¹, which informed the development of this policy, the Competition Commission stated: "We did not consider that monthly information relating to patronage would be sensitive, especially as all operators told us that the market was transparent."

Part 3 – Ticketing arrangements and schemes

Section 35 - new section 27A of the 2001 Act – additional classes of service participating in ticketing arrangements

- 9. The Committee has requested examples of the sort of provision that may need to be made under the power in new section 27A(6).**

The provision made in section 27A(6) makes clear that when regulations made under section 27A(5) amend the definition of "ticketing arrangement", those regulations can also make any

¹ Local Bus Services Market Investigation: http://webarchive.nationalarchives.gov.uk/+http://www.competition-commission.org.uk/inquiries/ref2010/localbus/pdf/00_sections_1_15.pdf

necessary changes to the provision made in sections 28 to 31 of the 2001 Act (which set out the steps to be taken in making ticketing arrangements and schemes). For example, it may be necessary to add new bodies to the list of bodies with whom local transport authorities must consult with before making a scheme (in terms of section 30(3)) or to change/add to the information which is to be set out in the notice of making a ticketing scheme (in terms of section 31(4)).

10. The Committee has requested an explanation of why the power in new section 27A(5) is not considered sufficient when read in light of the ancillary power in existing section 81(2) of the 2001 Act.

General powers such as those in section 81(2) of the 2001 Act are intended to deal with any unforeseen or tangential consequences or circumstances which may emerge in the course of making regulations and so ensure that the purpose of an Act may be given full effect.

By contrast, the provision made in section 27A(6) relates to a known and foreseeable requirement to deal with consequential matters and it is therefore appropriate to make clear that the power in section 27A(5) includes the power to make the types of changes outlined above as a result of any changes to the definition of “ticketing arrangements.”

Section 36 – new section 27B of the 2001 Act – National technological standard for smart ticketing

11. The Committee has requested an explanation of why it is considered appropriate to confer an administrative power on the Scottish Ministers to set the technical standard, rather than that standard being set in regulations which would be subject to scrutiny by the Parliament.

The standard will be very technical and will be reviewed and updated on a reactive (and potentially regular) basis. In addition, it may be that Ministers do not prescribe the content of the standard – they may refer to a standard developed by third party. On that basis it was considered appropriate for the standard to be published, reviewed and updated by Ministers as and when required.

Section 39 - new section 32A(1) of the 2001 Act – directions about ticketing schemes

12. The Committee has requested consideration of whether, to put the position beyond doubt, it would be more appropriate to require on the face of the Bill that reasons are given in the published direction for making the direction.

The Scottish Ministers are required to provide reasons for issuing a direction as a matter of administrative law and as such it was considered that any express requirement to set out reasons in the direction would be superfluous.

Part 4 – Pavement parking and double parking

Section 48(5) – Setting the level of the penalty charge

13. The Committee has requested consideration of whether it would be more appropriate that such a limit is set or that the affirmative procedure applies to the scrutiny of regulations setting the amount of the penalty charge.

The current biggest regime for “civil penalties” in relation to parking contraventions is the decriminalised parking regime provided for under the Road Traffic Act 1991. In order for criminal offences for parking contraventions to be de-criminalised in a local authority area, a designation order requires to be made under schedule 3 of that Act. Such an order is subject to the negative procedure in Parliament. A designation order decriminalises the offences listed in paragraphs (2) and (3) of schedule 3 to the 1991 Act and also applies with modifications various sections of the Road Traffic Act 1991 and the Road Traffic Regulation Act 1984, in so far as they apply, in the designated area of the relevant local authority. One of the modifications which is made by a designation order is to substitute section 74 of the Road Traffic Act 1991 to enable the fixing of parking charges in the designated area of the relevant local authority. The modified section 74 provides that parking charges in the designated area are to be set by the local authority in accordance with any guidance issued by the Scottish Ministers. This accords with the approach taken by the Traffic Management Act 2004 in relation to civil enforcement areas, which are established under that Act (see schedule 9, part 3, paragraphs 7 and 8).

Neither of those regimes set out the maximum level on the face of the primary legislation and the Scottish Government does not consider it to be either necessary or practicable to set a limit on the penalty which may be set in regulations under section 48(5). A maximum is not necessary because, as explained above in relation to low emission zones, the Scottish Ministers may only set penalties under section 48(5) which are necessary and proportionate to the achievement of the policy aims of the parking prohibitions. Irrespective of whether a limit is set in the Bill, the Scottish Ministers’ discretion is therefore constrained by those factors. It is not considered practicable to set a maximum penalty limit because the question of what constitutes a proportionate and effective penalty will not be fixed at the point the Bill is passed; the assessment of this issue will evolve over time through experience of operating schemes and as the value of money changes.

So far as procedure is concerned, it is the Scottish Government’s view that, despite the current approach in similar regimes being to not provide any parliamentary scrutiny in relation to the setting of parking charges in decriminalised parking areas that such scrutiny is warranted in the setting of a national penalty charge level. As such in contrast to the approach taken in relation to the current decriminalised parking regimes the Bill provides for parliamentary scrutiny for the setting of penalty charges under the Bill. Given the existing approach and experience of setting penalty charge levels under the decriminalised parking regimes it is considered that the negative procedure provides an appropriate level of scrutiny.

Section 49(1) – Enforcement of parking prohibitions

14. The Committee has requested an explanation of what it is about the enforcement of the parking prohibitions in particular that means that it is not foreseeable at this stage what offences will be necessary.

Section 49 generally sets out that the provisions for enforcement of the parking prohibitions will be through regulations. The power in section 49(4) to create offences in connection with enforcement gives the Scottish Ministers flexibility to frame offences which are appropriate and necessary for securing the effectiveness of the primary enforcement methods set out in regulations under section 49(1) and (2). Until the specific detail of those enforcement methods is settled, it is not considered possible to foresee precisely what offences may be needed in that regard. The power in section 49(1) also allows for flexibility to develop and adjust the approach to enforcement of the parking prohibitions through experience. For example, particular enforcement methods, such as the method of issue of a penalty charge or the manner of enforcement of a penalty charge, may change over time. As the method of enforcement evolves, new ways and

means of interfering with enforcement functions or equipment, or otherwise seeking to evade enforcement, may likewise be identified. A power to create offences in connection with enforcement is therefore also needed to complement changes to the overall enforcement mechanisms.

Sections 51(1), 52(1) and 53(1) – Removal of vehicles, moving vehicles parked contrary to parking prohibitions and disposal of removed vehicles

15. The Committee has requested consideration of whether it would be appropriate for the Bill to contain an express requirement to consult organisations representative of the drivers of motor vehicles.

Throughout the development of the Bill provisions the Scottish Government has consulted widely with various motoring organisations and others. The Scottish Government is also currently working closely with representative bodies of various transport and road related interests in the development of the guidance and directions to be issued under the Bill. It is also a matter of standard practice when promoting any transport related secondary legislation to consult with a wide range of representative bodies including organisations representative of drivers. The Scottish Government will, however, consider as the Bill progresses whether a requirement to consult organisations representative of drivers and perhaps other road users, including non-motorised users, should be included within the Bill provisions.

Part 5 – Road works

Section 61(2) – new section 153I of the 1991 Act – compliance notices: power to make supplementary etc. provision

16. The Committee has requested confirmation of whether the reference to section 153G in section 163(2A) of the 1991 Act as inserted by section 61(3) of the Bill should be to section 153H.

The Scottish Government is grateful to the Committee for drawing its attention to this point. The reference in section 163(2A) should be to section 153H, rather than to section 153G. The Scottish Government will bring forward an amendment to correct that reference at Stage 2.

Section 62(3)(d)(ii) – new paragraph 1A of schedule 6B of the New Roads and Street Works Act 1991 – fixed penalty notices

17. The Committee has requested reconsideration of whether the enhanced scrutiny afforded by the affirmative procedure would be more appropriate to regulations made under new paragraph 4(1A) of schedule 6B of the 1991 Act given the significance of the maximum penalty that may be imposed.

It is considered that the proper starting point in determining the appropriate procedure in this case is the procedure attaching to regulations made under the existing power in 4(1) of the 1991 Act to set fixed penalties. Those regulations are subject to the negative procedure by virtue of section 163 of the 1991 Act and it is considered that this procedure strikes the appropriate balance between the need to set out the technical detail of the fixed penalty regime in relation to the section 153G(1) offence and effective Parliamentary scrutiny of that detail. It is not considered that the maximum potential fixed penalty in relation to the section 153G(1) offence alters that assessment. Indeed, in Scottish Government's view the existence of such a maximum bolsters the proposition that the negative procedure is sufficient. The maximum will itself have been subject to significant Parliamentary scrutiny and to Parliamentary agreement through the Bill process. That maximum

is set to ensure that that a fixed penalty is set at a level sufficiently below the level of the maximum fine on prosecution to create an incentive to accept that penalty as an alternative to prosecution, rather than to create an additional safeguard. But the prior Parliamentary scrutiny given to it is a further reason why, in the Scottish Government's view, it is not necessary to subject regulations setting penalties within the pre-determined parameters to the affirmative procedure.

It is also important to note that those to whom the penalty would apply – both undertakers and roads authorities – have been very supportive of increasing the maximum penalty to that level. That being the case, the negative procedure is also considered appropriate as the maximum penalty is being set in primary legislation at a level accepted by those potentially affected.

Section 64(3) – new section 60A(1) of the Roads (Scotland) Act 1984 – Safety measures: code of practice

18. The Committee has requested consideration of whether it would be more appropriate that codes of practice issued under new section 60A of the Roads (Scotland) Act 1984 are subject to some form of parliamentary scrutiny.

The intention is not to create a new code, but to make the existing code followed by undertakers under section 124 of the 1991 Act (known as “Safety at Street Works: A Code of Practice 2013”) legally applicable to the functions of Scottish roads authorities. That code is the standard to which roads authorities already work and practitioners from the wider Scottish road works community were directly involved in its creation and in its maintenance. It is an operator level guide which is informed by nationally applicable standards from another highly technical document, Chapter 8 of the traffic signs manual (“Part 1, Design of traffic safety measures and signs for road works and temporary situations”). It is concerned with the practical application of safety standards to live carriageways and footways, and if deviated from poses an immediate risk to health. Every aspect of the code and how it is applied is the product of decades of very sector specific engineering knowledge. It has been cited in a number of Health and Safety Executive prosecutions elsewhere in the UK (where it is legally binding). One example is HSE case number 4436300, where a £12000 fine was imposed on a telecommunications company for failing to protect its workforce as a result of incorrectly applied safety zones. The standard safety zones, maximum speed limits and limits on working areas make up the bulk of this over 100 page manual, based on the content of the over 300 page long Chapter 8 of the traffic signs manual (“Part 1, Design of traffic safety measures and signs for road works and temporary situations”). The content of the document directly impacts on the safety of both those working within the work zone, and the public travelling around it, all of which means that separate scrutiny of the code is considered inappropriate and would be problematic in many ways.

19. The Committee has requested that if the Scottish Government does not consider that this is appropriate, whether there should at least be requirements for a code of practice issued under section 60A to be published and consulted on.

The existing code was developed by industry engineers with specific traffic management backgrounds. It is based on tested industry standards and principles with regards to stopping distances and visibility and is supported by the Health and Safety Executive as being the correct and required standard for safeguarding the workforce in terms of the Health and Safety at Work Act 1974. Given the limited flexibility to alter the code in response to general comment from the public, a wider consultation on content would not be practicable. The code has been developed by industry and issued for approval by Ministers rather than Ministers developing it themselves. Through that process, industry concerns and interests are more than adequately catered for

rendering a separate consultation redundant. The roads and utilities community designate Scottish industry experts to sit on a UK wide working group based on technical expertise. Additionally the office of the Scottish Road Works Commissioner has significant influence on the document and the group that maintains it, and sits as a technical expert on the group's moderation panels.

A narrower, specialist consultation would be normal practice if the code is reviewed. Should there be a future requirement to have a unique code for Scotland, a full consultation process would be appropriate and would be undertaken, albeit still heavily informed by industry experts. But given that any code or adjustments to the code, would be led and developed by the industry itself, it is not considered necessary to impose a requirement on Scottish Ministers to consult on such a code prior to approving it.

Section 67 – new section 130C(2) of the 1991 Act – reinstatement quality plans: regulations

20. The Committee has requested that in the absence of any explanation in the DPM, for an explanation of why the list of powers contained in new section 130C(3) is stated to be without limit to the generality of the regulation-making power in new section 130C(2); and has requested an explanation of what other provision it is envisaged may need to be made about plans to be entered in the SRWR under new sections 130A or 130B beyond the examples provided in new section 130C(3).

The list in section 130C(3) is said to be without limit to the generality of the power in section 130C(2) to avoid any impression that the list in the former is intended to be prescriptive.

That said, it is anticipated that the list of matters specified in section 130(3) will be a reasonably comprehensive reflection of what regulations under section 130(2) will require to cover. But these are untested waters for the Scottish road works community, and indeed for the wider UK. There is currently no frame of reference for how quality plans in this sector operate in practice, and there was an industry-wide concern that they could, if not properly developed, become a 'box ticking exercise' which would not result in changes in working practices on site. In order to achieve the policy aim, and in particular to ensure that reinstatement quality plans are effective, the regulatory framework in relation to those plans must be robust and requires to be developed in partnership with the road works industry. Given the relatively early stage of work on that issue, it is not possible to foresee with absolute certainty the likely content of any underpinning regulations and it is therefore considered prudent to retain some flexibility in the enabling powers to allow for currently unforeseen matters to be addressed. These are matters of which, by their very nature, it is not possible to provide examples. Looking to the future, the Scottish Government considers that the basic framework of the plans should come from the road works industry itself and the community was given a year to identify a way forward. That work was done but it identified that, until the primary legislation was finalised, and associated regulations set, a full working code of practice could not be developed beyond the broad principles that were agreed.

21. The Committee has requested an explanation of why new section 130C(3)(f) is considered necessary and appropriate.

The consequence of failing to comply with the quality plan code of practice won't necessarily be that such a failure is to be taken as evidence of a failure to comply with the duties in relation to such a plan. It is considered that the reinstatement quality plan code can be distinguished from the safety code, where failure to comply with the code is taken to amount to a failure to discharge the underlying duties. In particular, the nature of the duties under sections 130A and 130B means that there may not be to any great extent an element of subjectivity as to how they should be

discharged. The requirement for prior Commissioner approval of a plan, in particular, should avoid defective plans being submitted in purported discharge of the relevant duties. This may be contrasted with safety duties under the 1984 and 1991 Acts and the relevant code of practice which provides guidance as to how those duties are to be discharged.

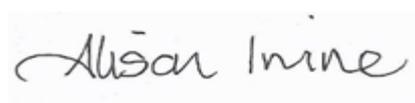
However, this is a new area to Scottish road works and the quality plans working group have discussed only very broad themes. The consequences of failure to comply with the quality plan code will be dictated to some extent by the content of the code itself but there is a likelihood that provision about those consequences will be needed. It is envisaged, for example, that provision could be made about the circumstances in which failure to comply with the code might lead to a refusal by the Commissioner to approve a plan or could be made to require mandatory training in the use of the Scottish Road Works Register on which notices and plans under section 130A must be entered.

Whatever consequences of non-compliance may be considered appropriate in due course, the power will not be capable of being used to require compliance in a strict sense. For that, it is considered that some form of penalty for non-compliance with the code – as opposed to non-compliance with the underlying duties – would be required. While the regulations under section 130C(2) may create offences, those offences may relate only to requirements under the regulations. Section 130C(2)(f) does not permit requirements to be imposed, but rather permits provision to be made about a failure to comply with the code of practice. This would not, in the Scottish Government's view, include provision making it an offence – or imposing any other penalty – for failure to comply. Express provision for that would be required.

22. The Committee has requested an explanation of why the enforcement of reinstatement quality plans in particular requires the creation of criminal offences in subordinate legislation.

Section 130C of the 1991 Act generally sets out that the detailed regulatory framework in relation to reinstatement quality plans will be set out in regulations. The power in section 130C(4) to create offences gives the Scottish Ministers flexibility to frame offences which are appropriate and necessary for securing the effectiveness of that framework. Until the specific detail of that framework is settled, it is not considered possible to foresee precisely what offences may be needed in that regard. The power in section 130C(2) also allows for flexibility to develop and adjust the approach to enforcement through experience. A power to create offences in connection with enforcement is therefore also needed to complement any changes which may be made to the overall regulatory regime.

Yours sincerely



Alison Irvine
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