

Annex H

Legislation and Devolution

Introduction

H.1 The purpose of this Annex is to summarise the state of current charging legislation and to examine what legislation might be needed to implement a system of road pricing. This Annex also considers the way in which pricing relates to the UK's devolution framework.

Current legislation

H.2 The current powers to operate charging schemes are contained in the immediately following four Acts of Parliament with the fifth being essentially a 'paving provision' for the lorry road user charging scheme:

- the Greater London Authority Act 1999
- the Transport Act 2000
- the Transport (Scotland) Act 2001
- new Roads and Streetworks Act 1991
- the Finance Act 2002.

H.3 The first three Acts set out which authorities are entitled to make a charge for the keeping or use of vehicles on a road and the statutory process by which these schemes are managed.

H.4 The New Roads and Streetworks Act 1991 provides powers to toll new infrastructure and provides the powers under which tolls are levied on the M6 Toll and Skye Bridge, in order to recoup the costs of construction.

H.5 The Finance Act 2002 (Section 137) provides outline powers for the levying of a tax on road use by lorries, provides that the proceeds from any such charge shall be paid into the Consolidated Fund, and that Government may incur expenditure to prepare for the introduction of the Lorry Road User Charge. It provides that the level and management of the charge shall be such as Parliament may provide. This Annex does not consider this legislation further as it clearly does not provide powers for a more general charge.

- H.6** The authorities on which the current legislation confers charging powers are set out in Figure H1:

Figure H1. Authorities with charging powers under existing legislation	
Act	Authority
Greater London Authority Act 1999	Transport for London London Boroughs
Transport Act 2000	A non-metropolitan local traffic authority Jointly by more than one non-metropolitan local traffic authority Jointly by one or more non-metropolitan local traffic authorities and one or more London traffic authorities By the Secretary of State or the National Assembly for Wales on trunk roads where the local traffic authority requests such a charge as part of a local charging scheme or where the road passes through a bridge or tunnel of at least 600 metres in length
Transport (Scotland) Act 2001	A local traffic authority or combination of authorities acting jointly

- H.7** The Transport Act 2000 (for England and Wales) and the Transport (Scotland) Act 2001 provide local authorities with the power to implement road pricing schemes on local roads. The power to introduce road pricing schemes on trunk roads is limited to interaction with local schemes and on structures such as bridges and tunnels (see below). There are no general road pricing powers in Northern Ireland, however the Roads (Northern Ireland) Order 1993 provides the Department for Regional Development with the power to introduce tolls in certain circumstances.
- H.8** The Greater London Authority Act 1999 allows Transport for London and the London Boroughs to introduce road user charging schemes within Greater London subject to the approval of, or under direction from, the Mayor. The Secretary of State has no power of veto over a scheme proposed by the Mayor. However, the Mayor does require Government approval for the general plan for spending the net revenues of a charging scheme.
- H.9** Local schemes under the Transport Act 2000 may be made if they are desirable to achieve the aims of the authority's local transport plan. The legislation also requires that surplus proceeds are devoted to transport purposes.
- H.10** Each of the pieces of legislation described in the table above contains wide but essentially similar powers to establish and run charging schemes.
- H.11** Under the current legislation:
- The Secretary of State has no powers to levy a charge on trunk roads save, in England, where he is the traffic authority therefor and the road is carried by a bridge or passes through a tunnel of at least 600 metres in length or the scheme pursuant to which the charge is to be made has been requested in connection with another charging scheme

- The Secretary of State has no powers to initiate local charging schemes, and there are no provisions under which a local charging scheme can address any strategic, non-local issues.

Outline powers in current charging legislation

H.12 In summary, the existing legislation confers the following powers on charging authorities:

- powers to make orders introducing schemes, and to consult
- powers to specify the content of a scheme i.e. level of charge, designated roads, period for which scheme will run, and exemptions
- powers to prescribe how the charges are made
- powers to vary the charge by time of day, location etc.
- powers to require vehicles to carry equipment or to display documents
- enforcement powers, including powers to clamp and impound vehicles
- powers to install and maintain equipment to operate the charge
- powers to install signs
- powers to incur expenditure and to appoint contractors to administer schemes
- powers to collect and disclose information
- powers to make regulations in relation to enforcement, exemptions etc.

Devolution

H.13 The Road Pricing Feasibility Study's remit covered the whole of the United Kingdom. Within the UK, there are four separate legislative areas. The devolution framework is set out in the Scotland Act 1998, the Government of Wales Act 1998 and the Northern Ireland Act 1998. The framework is described briefly below, together with the current position in relation to English regional government.

H.14 Decisions on the implementation of road pricing in the devolved areas would fall to the respective devolved administrations, however, to the extent that road pricing would involve matters of national taxation, some elements would need to be legislated for by the Westminster Parliament.

Constitutional background – Northern Ireland

H.15 The Northern Ireland Act 1998 led to the creation of the Northern Ireland Assembly which has full legislative and executive authority for all matters that are the responsibility of the Northern Ireland Government Departments – the **transferred** matters and with the consent of the Secretary of State for **reserved** matters. The Assembly has no power in respect of certain **excepted** matters. Road pricing *per se* is likely to fall into the category of a transferred matter whereas road tax and petrol duty are excepted matters.

- H.16** In NI there are 11 Government Departments each with its own Minister. The Department for Regional Development is responsible for both roads and transport.
- H.17** The Assembly is currently in suspension, with all devolved power reverting to the UK executive. The Secretary of State for Northern Ireland and his Ministers have taken over the executive responsibility for the NI Government Departments. Their functions all remain the same, however, the route to enact legislation is, at the present time, by order in council through Westminster.

Constitutional background – Scotland

- H.18** Under the Scotland Act 1998 the Scottish Parliament legislates in respect of **devolved** matters. It can both pass bills that become Acts of the Scottish Parliament and secondary legislation under those Scottish Acts. Devolved matters are those not specifically **reserved** to the Westminster Parliament, which has ultimate responsibility to legislate in 'override' of the Scotland Act's division of competence. The UK Government and Parliament have agreed that the Westminster Parliament will not normally legislate in relation to devolved matters in Scotland without the consent of the Scottish Parliament.
- H.19** The devolved matters include a wide range of transport areas. Particularly relevant for road pricing are the Scottish road network; parking controls; promotion of road safety; bus policy; rail and bus responsibilities of Strathclyde Passenger Transport Executive/Authority and any new such bodies.

Constitutional background – Wales

- H.20** Under the Government of Wales Act 1998 some existing powers to make subordinate legislation have been transferred to the National Assembly for Wales. Primary legislation remains the responsibility of Westminster in both devolved and reserved areas. According to the drafting of any particular provision there is varying scope for the Assembly to adopt secondary legislation that is significantly different in its application to Wales. In some Acts there is wide scope for the details of the policy to be made under secondary legislation, allowing considerable autonomy to the Assembly; in others, the details are prescribed, leaving little scope for specifically Welsh initiatives.
- H.21** Wales has responsibility for some transport policy arising from Westminster legislation in addition to those transferred under the Government of Wales Act. These include powers to fund transport development and approve local congestion charges (Transport Act 2000). The forthcoming Traffic Management Bill will confer further powers.

Constitutional background – English regions

- H.22** The Regional Governance White Paper "Your Region, Your Choice", published in May 2002, set out the Government's proposals for Elected Regional Assemblies (ERA). In terms of transport, it stated that ERAs will have responsibility for, *inter alia*, advising central Government on the allocation of funding for local transport, including the consistency of local bids with regional policies and priorities.
- H.23** Referenda for ERAs are to be held in Autumn 2004 in three English regions: North East, North West, and Yorkshire and the Humber, and ODPM plan to publish a draft Elected Regional

Assembly (Functions) Bill in July 2004. Assuming one region or more says yes to an ERA in the referendum, the Bill will be introduced in the following session. The overall timetable suggests that an ERA would not be established until around 2007.

- H.24** A road pricing system, and particularly any freedom or constraint on revenue usage, would need to be compatible with a future regional devolution settlement.

Issues

- H.25** The constitutional settlement raises a number of issues for road pricing that can only be fully addressed when we are clearer on how charging is to be taken forward. Since road transport is either a devolved or transferred matter, separate primary legislation would likely be needed for Northern Ireland and Scotland, though Wales might be covered by the same Bill as for England. However, depending on the implications for road tax and fuel duty (excepted or reserved), UK-wide legislation might be necessary.
- H.26** The Northern Ireland Act 1998 requires public authorities, in carrying out their functions, to have due regard to the need to promote equality of opportunity. The Act defines nine equality categories – i.e. between persons with different religious belief, political opinions, racial group, age, marital status, sexual orientation, between men and women generally, between persons with a disability and persons without and between persons with and without dependants. It is anticipated that for a Road Pricing proposal a full Equality Impact Assessment is likely to be required, which would involve a full public consultation. The results of this exercise must be taken on board during the drafting of any proposal for primary legislation.
- H.27** Northern Ireland is the only part of the United Kingdom with a land border with another state. As such, this already raises significant issues for transport policy and taxation, including the consequences of lower rates of fuel duty in the Republic¹. Issues may also arise with a road pricing scheme, including interoperability, occasional users, and roads which repeatedly cross the border.

Legislative requirements to implement a national charging scheme

- H.28** In order to bring about a national charging scheme, it seems clear that primary legislation would be needed. That legislation would need to cover the following issues:
- powers for the Secretary of State to charge on the strategic road network, with similar scope to those described above to ensure the full range of functions, including powers to define schemes, to require the fitting of on-board equipment to vehicles, and roadside equipment

¹ In 2003, petrol was 20p per litre higher and diesel 25p per litre higher in Northern Ireland. Source: Northern Ireland Affairs Committee report "The Impact in Northern Ireland of cross-border road fuel price differentials: three years on". The NAO report "The Misuse and Smuggling of Hydrocarbon Oils" (February 2002) contains more information on the scale of the problem.

- powers to allow the Secretary of State to work with local highway authorities to initiate or support localised schemes. These powers will need to cover questions of the objectives of a charging scheme and how responsibility is shared between central and local Government; and will need to deal with the potential conflict of interest between the Secretary of State's role as initiator of schemes and his role under current charging legislation of approving local schemes. The powers will also need to define consultation arrangements
- the use of the revenues from charging revenue, on which, as the main report notes, there are a number of options
- legislation would also need to reflect the devolution issues described above. While management of the road networks is devolved, tax policy is reserved to Westminster. It will therefore be necessary to develop arrangements to ensure that tax and revenue issues are handled appropriately.