

CONGESTION CHARGING IN EDINBURGH – A GESTATION WITH COMPLICATIONS

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Abstract

It is widely accepted that the problem of traffic congestion within Scotland's capital city is beyond acceptable tolerance levels. However, delivering the solution to this problem – a congestion charging scheme - is fraught with complications. Edinburgh's congestion charging scheme is currently at the most critical stages of the decision-making process. Dependent on the outcome, Edinburgh could become the UK's second most significant urban congestion charging scheme.

This paper highlights the range of challenges which have had to be faced in taking forward the theoretical tool of congestion charging, to the point of implementation of a real scheme in order to assist in achieving national transport aims. The focus is on governance: the relationship between national government as the regulator and significant funder, and the local authority as the promoter of the innovative measure. The paper explores the challenges both parties have faced, areas of cooperation in policy and scheme development, and where separation has been required for legal and policy purposes. Issues include development of national policy and guidance for charging authorities, developing and making regulations for a novel policy area, design of the charging scheme itself, the management of risk, funding arrangements, and the final decision making process. The paper does not analyse political issues.

1. SCOTLAND AND EDINBURGH

1.1 Scotland

With a population of just over 5 million, Scotland is a country with its own cultural, educational, religious, and legal institutions and now, a devolved parliament for domestic legislation – and Scotland continues to play a strong role in the UK.

Scotland enjoys a tremendous amount of goodwill around the world, helped by some 40 million people claiming to be of Scottish descent. It is also helped by the recognition of Scotland's contribution to the world, particularly in the fields of medicine, technology and engineering. Scotland gave us penicillin, the rubber tyre, television, the telephone and the fax machine. It produces Scotch whisky and is famous for its leading role in the international financial sector.

The majority of the population lives in and around five cities, of which Edinburgh is the capital. The 'central belt', where Edinburgh is located, is highly urbanised with a population of around 33 people per hectare. This contrasts with large areas of the country that are more than 2 hours drive from a major town. Scotland thus faces a variety of transport chal-

allenges which range from accessing the 96 often remote inhabited islands through to addressing serious congestion issues in the 'central belt'.

There have been a number of worrying transport trends in Scotland in recent decades. These include: neglect of the rail network, reductions in bus services and historic lack of investment in the road network. We have seen a steady increase in traffic volumes, 86% of car and van commuters travel alone, and 32% of people who commute less than 1km to work travel by car or van. Unless action is taken, traffic is projected to increase by 27% over twenty years. However, the Scottish Executive, Scotland's devolved government, is committed to reversing these trends and is investing £3 billion capital in the next decade as well as ensuring that 70% of Executive transport funding goes on public transport projects. In the last five years, the Executive has committed significant funding to transport improvement projects associated with Edinburgh's proposed congestion charge.

1.2 Edinburgh

Edinburgh is a world-famous city. To some it is known for culture, in particular the major International Festival every August. To others it is associated more with history: the Castle, the Royal Mile, pipers and tartan. It has a unique cityscape and urban heritage: the medieval old town and the 18th century 'new' town have been designated by UNESCO as a World Heritage Site. It is a tourist city on a world scale with a unique setting.

But it is also a very modern city, with a vibrant and growing economy. The (re)establishment of the Scottish Parliament in 1999 has renewed its role as Scotland's capital. The financial services sector is booming, and the city has a world-wide reputation for research and innovation. Population and employment in Edinburgh and its surrounding region are increasing, in contrast to the rest of Scotland. Research suggests that Edinburgh will have the fastest growing economy of any major UK city over the period 1999-2005 (Business Strategies Ltd, 2001). The city region has a crucial role in the future development of the Scottish economy.

Edinburgh's population is currently around 460,000, with the wider catchment area home to around 1 million people. Population within the Lothians – Edinburgh and its immediate hinterland – is forecast to grow by 50,000 over 15 years, while employment growth is focused very much on the city itself, with an extra 35,000 jobs over the same period. The consequence of these trends is an expected shortfall in labour supply in and around the immediate environs of Edinburgh. If the economic success of the region is to be sustained, this will inevitably mean more in-commuting over longer distances. Figure 1 shows the area of the local authorities around Edinburgh that have come together in a voluntary South-East Scotland Transport Partnership ('SESTRAN'). Travel between these areas and the city will inevitably increase. The road network and rail services around Edinburgh are already under pressure.

Within the city, around 40% of households do not currently have a car available, and non-car travel is at relatively high levels compared to other UK cities. Around 30% of journeys to work are made by bus and train, and 13% on foot (2001). These figures are higher in the city centre. While the relatively low levels of car use are welcome they also represent a risk, with the potential for very substantial growth in car ownership and use in the context of the city's economic success.

However, concern about overall growth is not the only issue driving the need for action about the performance of the transport network. Despite a very low rate of unemployment overall, deprivation and social exclusion are still to be found in some areas of the city and its hinterland and amongst certain social groups. Some areas of the city are badly in need of regeneration. The Council is concerned to ensure that transport difficulties are not a barrier to people in such areas being able to share in the economic opportunities from which the city region as a whole is benefiting.

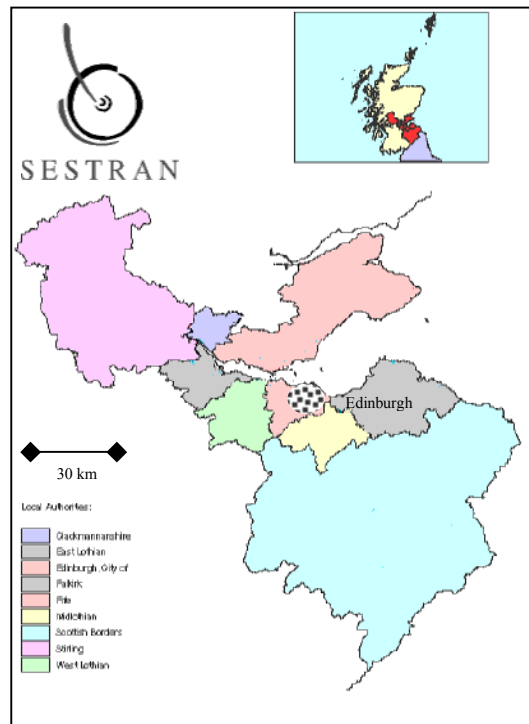


Figure 1: The Edinburgh region

One of the contributory factors to Edinburgh's success is undoubtedly the quality of life and environment it offers to its residents, workers and visitors. To attract key financial services staff, and tourists, these qualities count and the city must maintain its competitive edge against global comparators. Here again, the Council recognises that transport must be managed in such a way as to provide excellent accessibility without the city and its surroundings becoming dominated by traffic, transport infrastructure and pollution.

2. CONGESTION CHARGING AS A TRANSPORT POLICY TOOL

2.1 Recent transport policy development in the UK

Government in the UK initiated a major debate on transport policy in the mid 1990's. As a consequence of this debate, a major policy shift took place from the 'predict and provide' approach to road infrastructure provision that prevailed in the UK during the preceding two decades, to an approach focused much more on management of traffic demand and investment in alternative forms of transport. More recently, the UK Department for Transport has led a debate on the feasibility of a national road user charge, although to date there is no Ministerial commitment to implement such a radical measure. In Scotland, an additional factor in policy development has been the devolution of most powers in relation to the

funding and management of transport to the Scottish Parliament when this was established in 1999.

The Scottish Executive published its White Paper on transport in 2004 (Scottish Executive, 2004), which sets out Scotland's transport future. The overall aim for transport is *to promote economic growth, social inclusion, health and the protection of our environment through a safe, integrated and efficient transport system*. In addition, travel is one of the three priority areas for sustainable development. From a traffic perspective, the Executive is striving to stabilise traffic volumes at 2001 levels by 2021. This recognises that traffic growth has major economic, environmental and social costs; in particular those costs associated with congestion.

Powers for Scottish local authorities to introduce road user charging (and levies on private workplace parking spaces) were considered in the consultation paper *Tackling Congestion* in 1999. These powers were seen as one of the tools that local authorities could use in managing increasing congestion levels, particularly in cities. The rationale for charging was restated: *[Congestion] charges will confront road users with the wider costs of their actions and will encourage them to seek out alternatives. Those who can most easily forego journeys on congested parts of the road network are given a financial incentive to do so. Those who choose to pay the charge should enjoy faster more reliable journey times.*

2.2 Road user charging legislation in Scotland

New legislation on transport was introduced in both UK and Scottish parliaments in 2000. The Transport (Scotland) Act received Royal Assent on 25 January 2001. As proposed in the original consultation paper, the Act, amongst other matters, gave powers for any local authority to introduce a road user charging scheme. This is a purely discretionary power – it is up to individual local authorities to decide if they wish to take up this power or not.

The Act does not allow¹ for any tolling of the main strategic inter-urban ('trunk') roads, and includes a number of safeguards in relation to approval of a charging scheme and on the use to which the revenue from such a scheme can be put. In addition, the Act does not include the powers for a workplace parking levy that had been included in the original Bill, and which are provided in England and Wales.

The mechanism by which a local authority would introduce congestion charging is set out in the Act, the subordinate legislation (road user charging regulations) and in associated guidance. The Act requires a charging scheme to be established by a charging order that must be confirmed (approved) by Scottish Ministers. As well as requirements included in the legislation, a number of criteria that any charging scheme would have to meet are set out in guidance issued by the Executive (Scottish Executive, 2001). The Guidance outlines the two stage consultation and approval process a charging authority should follow: an *in-principle* stage to demonstrate that road user charging is an appropriate solution for local transport problems; and an *in-detail* stage to show that the detail of the scheme to be implemented achieves policy objectives.

Four policy criteria identified by Scottish Ministers for any charging scheme are incorporated in the guidance:

¹ There are very limited powers in UK legislation to toll on the trunk road network in Scotland.

- that the scheme will reduce congestion and/or noise and emissions
- that the net revenues from charging will be additional (ie, it should not replace baseline transport funding from other sources);
- that there is fair treatment of those who pay the charge (and/or suffer the congestion or environmental problem) and those who benefit from the scheme;
- that a range of public transport improvements are in place before charging is introduced, with further improvements to follow.

Scottish Ministers have also indicated that the promoters of a scheme should be able to demonstrate ‘clear public support’ for their proposal. Ministers have not provided any guidance on how this support might be demonstrated – preferring to leave that flexibility with local authorities. However, charging authorities are required to comply with the consultation regulations, issued under the Transport (Scotland) Act.

3. THE EDINBURGH SCHEME

3.1 The ‘New Transport Initiative’

In 1999, local authorities in Scotland were asked by government to produce ‘Local Transport Strategy’ (LTS) documents. While not compulsory, government contributions to funding of local authority projects would be conditional on an LTS being in place and providing an appropriate policy context. This provided the opportunity for a fundamental review of transport policy for the city and the development of a new vision for the future. The need for such a vision was reinforced in informal discussions the Council held with a range of city stakeholders at that time.

In this context the City of Edinburgh Council decided to start the development of a ‘New Transport Initiative’ (NTI) in May 1999, as part of the Local Transport Strategy process. The aim was to take an imaginative approach to giving Edinburgh a ‘world-class’ transport system to support the wider Council aims outlined earlier.

The NTI examined the options for achieving a step change in transport quality. The deliverability of such a change from a financial point of view was a key focus of the initial stage of the study, taking into account the expected levels of conventional public funding likely to be available from central government. Road user (congestion) charging and a wide range of other potential funding sources were examined. Alternatives ranged from tourist taxes to bus quality partnerships, from parking charges to the Private Finance Initiative.

At the same time, the Council together with neighbouring local authorities started to develop an integrated and consistent set of policies, linked with an appropriate project portfolio. The detail of this exercise is beyond the scope of this paper, although there was a close inter-relationship between this work and the NTI study. As well as a Local Transport Strategy for the City of Edinburgh, further updated in 2004 (The City of Edinburgh Council, 2004), this exercise concluded with publication of a non-statutory ‘Regional Transport Strategy’ by the SESTRAN local authorities (SESTRAN, 2003).

Key aims of the local and regional strategies are to reduce congestion and to increase the proportion of journeys made by public transport, walking and cycling. This would be achieved by major transport investment, by optimising the use of roadspace between all

road users, by appropriate land use planning and environmental measures, and potentially by demand management in the form of congestion charging.

The biggest component in terms of transport investment was a proposal to develop a light rail system for Edinburgh. This would form the core of an upgraded public transport system, integrating with improved rail and bus services, as well as linking with Park and Ride sites around the edge of the city. Significant enhancement of the city centre environment to maintain its attractiveness as a shopping and tourist destination was a key element of the strategy, which was also linked to strategic land use plans for the region.

Public views were and are seen as a crucial to the development of the initiative. A major consultation was undertaken in 1999, comprising the distribution of a questionnaire throughout Edinburgh. The questionnaire sought views in relation to three strategic transport policy options, as well as testing key objectives and components of the transport strategy. Around 19,000 responses were received with high levels of support (62%) shown for the strategic option including congestion charging (City of Edinburgh Council, 1999). In addition to the public consultation, there was also extensive consultation with stakeholders.

An initial technical appraisal was also carried out to identify how a range of charging configurations might perform against a series of objectives ranging from congestion reduction to revenue generation to economic impact. Technology options and feasibility for implementation of a charging and enforcement system were also considered at this stage.

Overall, the conclusions drawn from this initial work were that congestion charging was feasible, would reduce traffic levels, could generate substantial revenue for transport investment, and would have no or very limited adverse economic impact if the charge was set at an appropriate level. In addition, consultation and market research indicated a high degree of acceptance provided that the overall package was right.

On this basis the Council undertook more detailed development of a charging scheme, leading to an application for 'approval in principle', the first stage of the consultation and approval process set out in Scottish Executive Guidance. The Executive also agreed to match fund the development studies with the Council – each party paying 50% of the costs.

In agreeing to submit the proposed charging scheme to Ministers, the Council decided that a 'referendum' of Edinburgh citizens should be held before any final decision to implement the proposals. Approval in principle of the scheme was granted by Ministers in December 2002. Following this, statutory procedures to provide the local legislation giving the powers to introduce the scheme, a charging order, were started in September 2003. Finally, formal consultation in late 2003 led to the definition of the final proposals examined at a public inquiry in Spring 2004 and set out below.

3.2 The scheme examined at Public Inquiry

The proposed charging scheme is the focus of an integrated set of measures that also includes: transport improvements carried out before the charging scheme goes live; transport improvements to be carried out using the revenues from the scheme; and transport improvements funded from public money that would take place in any case.

The proposed charging scheme consists of two cordons at which a charge would be levied for vehicles travelling inbound, towards the city centre. There would be an outer cordon around the edge of the built-up area of Edinburgh, just inside the outer city bypass to tackle the rapidly growing congestion around the edge of the city, and an inner cordon around the centre of the city, broadly encompassing and aiming to protect the World Heritage Site (Figure 2). The outer cordon would operate between 7am and 10am only; the inner between 7am and 6.30pm, Mondays to Fridays in both cases. The finish time of 6.30pm was amended from 7pm following early stages of consultation, and proposed charges at the outer cordon in the evening peak period were also dropped following consultation.

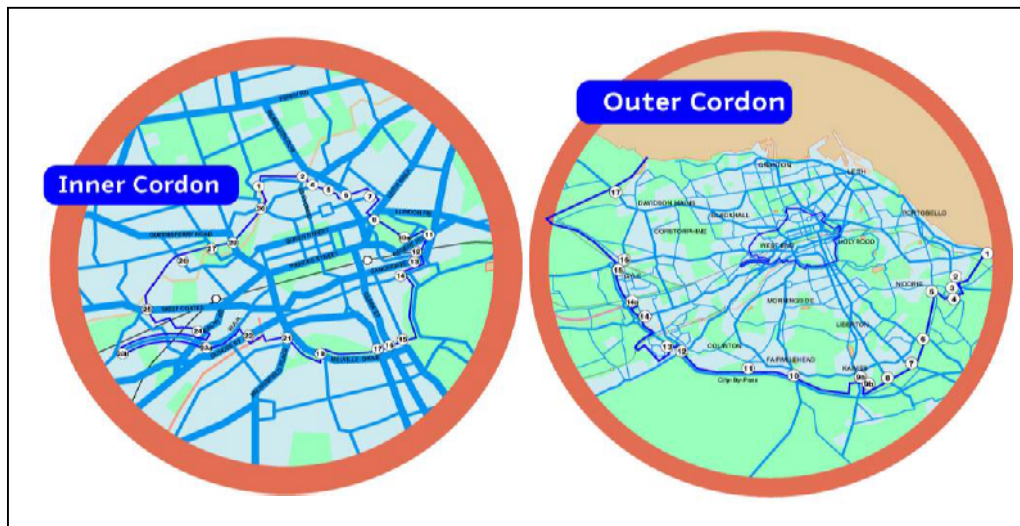


Figure 2: Charging cordons

The proposed charge is £2, levied no more than once per day on any single vehicle. If a vehicle were to cross both cordons, or to cross either cordon a number of times during the day, the charge would still only be applied once that day. In this sense, the scheme resembles an entry permit scheme. The charge level was selected on the basis that it could both achieve effective reductions in congestion and that it could gain public acceptance.

There are two levels of exemptions: those set out in road user charging regulations that must apply to all charging schemes in Scotland, and those that the Council can choose to apply over and above those. Regulations require exemption of disabled badge holders, emergency service vehicles and buses. To these the Council has added powered two-wheelers, licensed taxis, approved breakdown recovery vehicles and vehicles belonging to an approved 'city car club' scheme.

A further exemption added at a late stage by the Council is that residents of the administrative area of the City of Edinburgh who live outside the outer cordon will not be liable for the outer cordon charge. This proposed exemption was included by the Council on the grounds of fairness for all Edinburgh residents. However, it has given rise to considerable concern and opposition that is discussed further below.

It is proposed that the scheme should operate for 20 years. In this case it could fund around £35m-£40m of transport investment each year after deduction of collection and financing costs – a total package of £760m at 2002 prices over the 20 years. All this investment must

be additional to what would otherwise be spent, and guaranteeing this additionality will be a key issue for implementation.

An important consideration from the start was to ensure that the geographical distribution of projects funded from the congestion charge reflected the anticipated distribution of charge payers. As indicated earlier, “Fair treatment...” is one of the key policy tests set out in Scottish Executive guidance. For the scheme as defined, it is estimated that 55% of the revenues would be spent within Edinburgh and the remainder outside. Agreement would have to be reached with neighbouring Councils about the effective measuring and monitoring of the actual proportion.

The scheme is also conditional on the achievement of a defined programme of ‘pre-charging’ investment projects over the period 2001-6, including bus priorities, Park and Ride schemes, a guided busway and rail improvements. The bulk of the £140m funding for these has come from the Scottish Executive. For example, the Executive contributed £6 million to the guided busway, £8.5 million to Edinburgh Crossrail and several million pounds to the park and ride schemes and to bus service enhancements. In addition, the Council has committed a significant proportion of the charging revenues to bus service improvements to be in place from the day charging starts.

The final element in the overall package is the set of measures that would be funded from public funds. This is made up of two components: funding that would be available in any case – a base level that would represent the normal support for local transport investment. Again, the bulk of this funding is from the Scottish Executive. Secondly a sum of £375m was included in the total package, which the Scottish Executive made available for the first two tram lines (subject to a robust business case) whether or not the congestion charging scheme went ahead.

Forecasts indicate that by 2011, introduction of the scheme would result in:

- Reduction in total delays of over 20% within the city centre.
- An increase of 5% in total journeys terminating in the city centre by all modes
- Virtually no change in traffic levels between the inner and outer cordons, with small reductions in average delays.
- An increase in public transport use of around 10%.
- A very marginal impact on the Lothian economy – in terms of value added and jobs this is forecast to be marginally negative.
- A redistribution effect within the area of both jobs and population: population will be slightly higher in the city centre and outside the city; there would be some movement of jobs out of the city into the surrounding areas.

The investment package will have further impacts on achievement of Council objectives. These include environmental improvement (through grants for clean engines in buses and taxis, and city centre improvements); social inclusion, through the substantial improvement to public transport; and safety and residential amenity (more funding for 20mph zones and safe routes to schools). It will provide the ability to maintain higher standards of safety and comfort for road, footway and cycleway users through increased maintenance funding.

3.3 The Public Inquiry and referendum

The inquiry took place over 12 weeks between April and July 2004 in front of three independent reporters. 1462 formal objections to the scheme were received and considered, although only a small proportion appeared at the inquiry. After considering all the evidence, the reporters gave their endorsement to the scheme, subject to a number of detailed comments and changes. In summary, their conclusions were that:

- The City of Edinburgh Council should ‘proceed with caution’ with the charging order with certain amendments and caveats.
- As an essential measure in order to achieve fair treatment of those paying the charges, the exemption from outer cordon charges of residents of the Council’s area outside the outer cordon should be abandoned.
- As a matter of principle, exemptions should be kept to an absolute minimum; several detailed recommendations were also made on specific exemptions.
- Some detailed alterations should be made to the payment arrangements, and to the locations of individual charging points.

The City of Edinburgh Council considered these recommendations in December 2004 and agreed to proceed with the ‘referendum’ of Edinburgh residents². While accepting some of the detailed recommendations for amendments to the charging scheme, it did not agree to abandon the outer Edinburgh exemption. At the time of writing, the Council is holding the ‘referendum’ by means of a postal ballot. The result will be known on 22 February 2005. If this provides support for the charging scheme, and Scottish Ministers subsequently confirm the charging order (they can confirm, modify or reject the order submitted to them by the Council), the Council will then initiate contracts for the implementation of the scheme, with a target date of summer 2006 for going live.

In parallel to this process, three neighbouring Councils have requested a judicial review of the Council’s decision, focusing on the grounds that the proposed exemption for some Edinburgh residents does not meet the ‘fair treatment’ requirement. This request has not yet been heard by the Courts. The Council has agreed to amend the charging order in the event that the Courts rule against the exemption.

3.4 Challenges

The Council has faced four major areas of challenge in taking forward the congestion charging proposals:

- The technical challenge in designing the scheme, forecasting impacts and identifying technological solutions for implementation;
- The organisational challenge relating to the capacity of the Council to take forward a major innovative project of this type;
- The procedural challenge arising from the untested and often incomplete legislation, advisory and decision-making requirements; and
- The challenge of public and stakeholder acceptance.

The responses to these challenges are considered in section 4 and 5 below.

² The Council does not have powers to hold a referendum in the strict legal sense of the word; formally, this is rather a ballot of Edinburgh residents to gauge their opinion on the choices offered to them. For simplicity however, the exercise is referred to in this paper as a ‘referendum’ (in quotation marks). A consequence of the legal position is that the Council does not have the powers to use the full electoral roll and has therefore had to run an additional registration exercise to ensure the maximum number of people can participate.

4. HOW COUNCIL IS TACKLING THE CHALLENGES

4.1 The technical challenge

In many respects, the technical challenge is the least difficult. The Council has avoided considering innovative technology solutions for the scheme itself, and has benefited from the experience of the London congestion charging scheme, which uses the same technology as that proposed for Edinburgh. This solution also avoids problems of using equipment for which standards and inter-operability requirements have not yet been defined.

Slightly more difficult has been the selection of appropriate techniques to design and forecast the impacts of alternative charging configurations. Transport and land use modelling techniques have been adopted using cutting edge approaches to try and understand complex interactions between different modes of travel and with land use and economic impacts. Effects on employment and the local economy are clearly critical in respect of a scheme of this type, and innovative modelling approaches were commissioned with the support of the Scottish Executive and the local enterprise agency.

4.2 The organisational challenge

The second challenge relates to the organisational capacity of the Council to take forward a large-scale and long term innovative project with significant risk attached. The project raises issues in relation to:

- The wide range of skills and expertise required;
- The limited resources available to support this type of long-term policy initiative when set against immediate short term service delivery priorities for the Council;
- Public scepticism about Council aims in taking forward the project.

With the support of the Scottish Executive, the Council responded to these issues by creating an 'arms-length' company wholly owned by the Council. **tie** ltd was established in 2002 with an independent Board of 7 non-Executive Directors. Of these three are City of Edinburgh Councillors, and the other four, including the Chairman, are drawn from the private sector. The company has been remitted by the Council to take forward not only the development of the congestion charging scheme, but also a number of the major projects within the overall transport initiative, in particular the tram proposals. More recently it has also taken on a number of further projects, including development of an Edinburgh Airport rail link directly on behalf of the Scottish Executive and a road user charge proposal for the Forth Road Bridge.

This structure separates road user charging and funding from some local authority constraints, allowing more flexible resource and financing arrangements, a focus on delivery of major projects and initiatives and an opportunity to build relationships with the public and stakeholders that can be to some extent independent of the Council. At present, however, the company is totally dependent on funding from the Council and Scottish Executive and its activities are subject to successful bids for such funds as are available.

If the congestion charging scheme goes ahead the company will manage the revenue generated by the scheme and the investment of the net proceeds in transport improvements, subject to the terms of an annual business plan agreed with the Council. The company is intended to be a delivery organisation. Policy remains the responsibility of the Council, directly accountable to the public through the democratic process.

4.3 The procedural challenge

The third challenge is uncertainty over the legislative and decision-making processes involved. The primary legislation was new and untested, with secondary legislation and guidance evolving during the development of the charging scheme. There was limited definition of the scope and detail of the information expected for consideration at the various stages both within the Council and by the Scottish Executive.

This created significant difficulties for the Council and **tie** in programming and budgeting for the development. At the start of serious planning for the scheme in 2000 a target implementation date of 2004 was considered feasible. The current target date is now summer 2006 – an increase from 4 to 6 years. The most significant additions to the original programme resulted from an Executive request for further development of the scheme at the in-principle stage, from the Council's decision to hold a referendum, and from the time-scale required for the public inquiry. Consequently it has been difficult to forecast the necessary funding and resource requirements for staff and advisers, creating particular problems in an environment where resources are very constrained. Even with match funding from the Scottish Executive and the establishment of **tie**, the delivery and scope of the appropriate outputs to support the planning and approval process has been affected by budget issues. The total cost of the development stages of the charging scheme is expected to be around £10m over around 5 years, including the costs of the 'referendum'.

4.4 The challenge of acceptance

The final and perhaps most serious challenge concerns public, stakeholder and political acceptance of the proposals. Despite its long-established basis in economic theory, congestion charging remains controversial, mainly because there will inevitably be both winners and losers from any practicable scheme and because many people believe they are already paying high motoring costs. Tackling this challenge has been a major focus of the development of the scheme, the detail of which is beyond the scope of this paper (see for example University of Westminster, 2002). However, one aspect of this does affect governance and organisational issues: the relationship between the City of Edinburgh Council and neighbouring local authorities.

Surrounding authorities object to the Council's proposed scheme because they consider there is an unfair balance between its impacts on their residents and on residents of Edinburgh. They particularly oppose the exemption for outer Edinburgh residents as they consider it discriminates against their own residents living in similar geographical locations. Their opposition is grounded in the third of the Ministerial criteria referred to in section 2.2, regarding 'fair treatment'.

This criterion has been interpreted by different players in different ways. The Council has adopted an approach that it believes can be delivered in practical terms. This is that transport improvements within the city, benefiting primarily (but not solely) city residents, will be funded from the proportion of the congestion charging revenue originating from city residents. Conversely, regional transport investments, benefiting primarily residents of the surrounding areas would be funded from charges raised from this group on the basis of priorities determined by the local authorities concerned. This principle has been maintained throughout the development of the initiative. In spite of this, neighbouring authorities have maintained their objections.

The need to ensure a coherent approach to strategic planning and effective delivery of transport measures on a city region basis has led the Scottish Executive to propose new transport legislation currently before the Parliament. This will establish statutory transport partnerships to replace the present voluntary arrangements, such as SESTRAN, that currently exist in a number of areas of Scotland.

5. HOW THE SCOTTISH EXECUTIVE IS TACKLING THE CHALLENGES

5.1 The procedural challenge

The Executive has faced similar challenges; most of which have involved procedural issues. While the concept of congestion charging has been around a long time, developing policy and associated legislation for taking forward congestion charging schemes on the ground is both new for the UK, and new for the Executive. One of the key challenges for the Executive has been to develop road user charging policy in a novel area in parallel with the City of Edinburgh Council designing its own local scheme. Cooperation has been crucial for a number of reasons.

Firstly, there has been a need to ensure that the subordinate legislation used to regulate aspects of the schemes is fair, workable and transparent. Subordinate legislation has been made while the Council has been developing its scheme. The Council has had input to the making of the regulations through the formal consultation exercises undertaken by the Executive and many (although by no means all) of the suggestions have been taken on board. The consultation processes allowed Executive officials to test the draft regulations on a 'real scheme' and work through case examples of how the regulations might work in practice. The consultation processes also provided the Council with a sense of the Executive's thinking on the regulations, allowing it to at least start the design process of issues related to the regulations such as the handling of penalties for non payment of charges, and defining classes of exemptions. However, the Executive would not guarantee any particular outcomes of these consultation exercises, and the Council could not finalise details until regulations were actually made.

A second critical area of cooperation has been the match funding by the Executive of the development costs of the scheme. The Executive supports local authorities in bringing forward local schemes, and the match funding principles illustrates the Executive's willingness to both encourage local authorities, and to share some of the financial risks and burdens of innovative and novel schemes which could contribute to long term transport objectives. The match funding arrangement has involved setting up formal monitoring arrangements, in-depth discussion of various phases of the scheme, and the need to agree on a definition of 'development costs' to ensure that public money is spent wisely and that risks are shared and managed appropriately.

A third important area has been the Executive's significant funding contribution to a wide range of transport projects associated with the scheme – both on the 'up front' transport improvements required before the scheme could go live, and associated 'base case' projects. The Executive has provided this funding to assist up front alternatives to car travel, which are consistent with its own long term objectives to encourage sustainable travel patterns.

5.2 Effective partnership

On a day to day level, officials from the Executive, the Council and the Executive have maintained an effective liaison on details relating to the progress of the scheme. All parties have project plans relating to the charge, and have identified various elements at risk from both internal and external factors. This has required the parties to keep each other informed of any slippage, or change of focus. This day to day cooperation has been challenging for the Executive. It has endeavoured to provide a high quality service to its customers, ie, the Council, by being outward focused and sensitive to the Council's aspirations, and on the other hand it has needed to assert its independence. The need to ensure clear separation between the parties is twofold:

1. It is critical that the Executive *is, and importantly is seen to be*, independent of Edinburgh's scheme given Scottish Ministers' final role in confirming, modifying or rejecting the charging order.
2. The Executive must ensure that road user charging policy and associated legislation is flexible enough to deal with all types of charging schemes in Scotland rather than just being responsive to Edinburgh's proposals.

On the first point, the separation can be illustrated by the Executive's refusal, since the in-principle stage, to comment on any aspect of Edinburgh's scheme to the Parliament, media, business or individuals. The scheme has been highly controversial to date, with a number of questions raised in the Parliament, and many letters written to the Minister for Transport. To comment on the scheme before it is finally submitted for confirmation would jeopardise Scottish Ministers' independence, and could open their decision to challenge by judicial review.

This silence has, however, resulted in criticism of the Executive in some quarters where claims have been made that Scottish Ministers should take a positive stand towards the scheme proposals, in order to promote public support. Critics have claimed that these types of schemes are so controversial, that Ministers should show active leadership and take the debate forward in a way which reflects national traffic policy (for example, the traffic stabilisation target).

A related challenge to the first point has been the match funding of the development costs. Given the role of Scottish Ministers in confirming the charging order, and the lack of certainty about whether the scheme will proceed or not, the Executive has exercised a progressive but cautious approach in its funding policy. In practice this has meant a largely hands off approach to the detailed development of the scheme, with funding requests assessed on a reasonableness test in relation to 'development', Council commitment to match funding, and risk management, rather than on whether the Executive supports a particular aspect of the scheme design. Tensions have arisen where aspects of the scheme are not clearly 'development' and either stray into implementation, or are considered too political for the Executive to fund (for example the Executive did not fund any aspect of the Council's 'referendum'). Importantly, the match funding bears no relationship with the final decision making process undertaken by Scottish Ministers.

On the second point, it could have been tempting for the Executive to design the policy and subordinate legislation to fit closely with Edinburgh's proposals – given the amount of detail available and the work already undertaken by Edinburgh's legal team on the charging order. However, not only would this have been inappropriate, but it would also have created potential problems for future schemes with different design elements. For example,

at the time of writing, the Executive is expecting an in-principle application for a road user charge on the Forth Road Bridge to be submitted. This scheme is restricted to a bridge and therefore differs in many essential elements to that of Edinburgh's.

6. CONCLUSION

The development of Edinburgh's congestion charging proposals has been a long and complex process. Both the Executive and the Council have been challenged by the need to find ways to tackle a project that is both innovative and controversial, implying higher than normal costs and risks in project development. Each has had a different role to play: the Executive as both regulator and supporter of associated transport improvements, and CEC as the promoter and designer of the scheme. The benefits of a successful scheme could be highly significant to both organisations.

For the Executive, this is the first attempt by a local authority to apply an important policy instrument which could contribute to aspirations for long-term reduction in congestion and traffic stabilisation throughout Scotland. While the Executive cannot comment on the details of Edinburgh's proposals at this stage, a road user charging scheme that goes live offers a number of critical lessons for transport policy development that could help shape the future of road pricing in Scotland in the long term. For the Council the scheme could make a significant contribution to ensuring the local transport system is of a quality to support wider social and economic objectives

Lessons have also been learnt by both parties on the difficult concept of partnership between a promoter of a scheme and the regulator. The Executive has had to find ways of working with a promoter on a scheme that has attracted controversy and at times vitriolic criticism, in a way that ensures both its independence and the safeguarding of public funds. This has required

- the design and implementation of formal monitoring systems
- a mutual understanding of each party's functions and operational constraints
- a level of trust that perhaps has not always been achieved in the past
- new more open ways of working to reflect the demands of taking novel policy through the development stages to implementation.

The Council has had to adapt to the same issues, while remaining in the front line of public reaction. It has done this primarily by proceeding one step at a time, engaging in substantial public consultation and market research well beyond the minimum requirements, and adapting the scheme in response to these. The partnership with the Executive has helped reduce risk, especially procedural risks, while politically, the Council has similarly sought to reduce risks by committing itself to both the public inquiry and the 'referendum' even though these were not necessarily required.

There is no doubt that road user charging remains a difficult measure to introduce. Whether or not Edinburgh is successful with the current proposals, the experience has shown how the controversial nature of such proposals impacts on the technical, organisational, financial and procedural aspects of taking a project forward. Partnership between different levels of government has made an important contribution to tackling the challenges.

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