

MONDAY 2 FEBRUARY 2009

Present

Bradshaw, L
Freeman, L (Chairman)
Mitchell, L
Paul, L
Powell of Bayswater, L
Ryder of Wensum, L
Whitty, L

Memorandum submitted by Department for Transport

Examination of Witnesses

Witnesses: **Mr Jim Fitzpatrick**, a Member of the House of Commons, Parliamentary Under Secretary of State, Department for Transport, **Mr Francis Morgan**, Head of International Aviation and Safety Division, Department for Transport, **Mr Gabriel Hammond**, Policy and Technical Advisor Roads, Department for Transport and **Mr Phil Carey**, Head of Road Pricing, Department for Transport, gave evidence.

Q1 Chairman: Thank you very much, Mr Fitzpatrick, for coming and helping the Committee; it is much appreciated. We hope that 30 or 40 minutes should see us through if that is acceptable to you. For the record, would you be kind enough to introduce yourself and your officials.

Mr Fitzpatrick: I am Jim Fitzpatrick, Parliamentary Under Secretary at the Department for Transport and I have with me Francis Morgan who will help me with questions on the Single European Sky. I have other officials who are leads or associated with other policy areas.

Q2 Chairman: As you know, Sub-Committee B deals with the internal market. Transport is one of our key areas of responsibility and we get a significant number of Community documents coming before us. We have agreed allocation of questions around the Committee

but I am going to start, if I may, on the Single European Skies II and Lord Powell will have a supplementary question concerning Open Skies. Could you give the Committee an update on the outcomes from the Council?

Mr Fitzpatrick: I am pleased to report that the Transport Council of December 9 last reached technical agreements on the revision of the Single European Sky legislation. The UK and Spain are negotiating some wording regarding the legislation's application to Gibraltar in the light of the Cordoba agreement and it was this issue that prevented the agreement of a full common position. However, with the exception of the Gibraltar issue the Council text has been fixed. We are making progress with Spain in terms of the Gibraltar issue but we are not quite there yet.

Q3 Chairman: Do you have any estimate of how long it might take to reach agreement with all the remaining parties?

Mr Fitzpatrick: We are hoping that we will be in a position by the next Transport Council end of March but obviously we do not want to say too much to undermine the negotiating position the UK has adopted.

Q4 Chairman: To what extent has the original intention of the initiative been achieved and how has that intention been affected by compromises within and between the institutions?

Mr Fitzpatrick: The main intention of revising the legislation was to improve efficiency and air traffic management across the EU. This, in the UK's view, has been successfully provided for in the agreed Council text. The centre piece of the revised legislation is a rigorous performance scheme. There are also provisions for increased co-operation and co-ordination at EU level of the network as a whole. Finally, there is an obligation to accelerate the formulation of functional airspace blocks and a firm deadline for their implementation which has been set three years after the implementation of this legislation. We already have, as I am

sure the Committee knows, the agreement with the Republic of Ireland and it is the only joint agreement within the EU at the moment. However, having set this deadline of three years and having made some progress in recent times we are confident that this will put pressure on to see this making much more progress in the very near future.

Q5 Chairman: Could you tell the Committee what provisions regarding exclusive military use of airspace have been agreed?

Mr Fitzpatrick: Provisions for military airspace have not been amended in the latest legislative proposals. They will remain the same as the original Single European Sky regulation where each Member State has the right to reserve and utilise airspace for military purposes. A new recital has been included in the agreed Council text. It reaffirms the commitment of civil and military authorities in co-operation on improving the effectiveness of the Single European Sky. The Single Sky Committee has both civil and military representatives from all Member States to ensure the civil and military interests are expressed and co-ordinated. There is tentative agreement that we will make progress on this and there is a clear sensitivity around the issue but the essential basis remains the same.

Q6 Chairman: Would it be fair to conclude from your very helpful evidence, that this is an area, Single European Skies II, where there has been sensible coherent progress and no obvious either disruption or withdrawal of support from any member of the European Union? Would I be correct in characterising this is a good example of co-operation between the Member States?

Mr Fitzpatrick: Clearly, in terms of the functional air blocks and given the deadline, there is a clear commitment. Given the understanding between civil and military there is an indication that progress will be made. It certainly seems that given the text that has been agreed, other than the position of Gibraltar, clear progress has been made within Europe on

agreeing a common position. Certainly we would want to see that further cemented by the Transport Council in March.

Q7 Chairman: Are there any other functional airspace blocks, other than with the Republic of Ireland, which need to be resolved or addressed in the future?

Mr Morgan: There is something called FABEC, which is the Central European functional airspace block which is our closest neighbour, and that is essentially France, the Benelux countries and Germany. They are in the process of putting together and developing their functional air space block and that is a very key one for the UK to be involved in. At official level we do observe on a number of their key committees so we are involved.

Q8 Lord Powell of Bayswater: Could we take advantage of your presence and have an update on discussions between Europe and the United States on EU aviation matters and whether there had been any particular developments since we last took evidence from officials?

Mr Fitzpatrick: We are not aware of any further progress made with the US.

Chairman: We were expecting with a change in administration that there would be inevitably a delay. Any other questions on the subject of airspace before I turn to Lord Bradshaw who will ask questions about rail noise abatement.

Q9 Lord Bradshaw: I was reading on the way up in the train a document which is coming in our next inquiry. It is signed by Brian Simpson, who I am sure you know, and it says: “The rail industry is not the most dynamic when it comes to innovative thinking or problem solving, and when they are backed by regulators or national authorities intent on protecting their own empires progress becomes painfully slow.” I am particularly interested in this issue of rail noise abatement because a British company has developed a very low bodied wagon.

You will understand why that is important because it can go under bridges without lots of expensive work. It is a modern vehicle with composite brake blocks and yet there is an insistence that it is sent to the Czech Republic for tests and also that it should be engineered to have spark guards on it. It is impossible to produce sparks between composite brakes blocks and the wheel. It is that sort of petty mindedness which goes into so many things, people defending their national territory, inventing almost technical obstacles and safety obstacles to the through transit of trains. I wonder if you can offer us any hope. The question is about rail noise abatement but it could be extended to almost any facet of railway working.

Mr Fitzpatrick: May I introduce Mr Gabriel Hammond who is assisting me with technical advice on the question of rail noise abatement and spark guards. Having looked at the position certainly it is clear that approximately 80 per cent of UK wagons are already fitted with composite brakes and that low mileage wagons are not considered to be a priority for retrofitting. The UK's approach to track access charges already incentivises the use of track friendly bogies. We are only aware of one project in the UK which has experienced problems with spark guards but that wagon constructor, we understand, has now decided they will fit the spark guards in any case as they may very well be a requirement, given the nature of the construction, to be able to conform to the regulations. Other than that, which now appears to be resolved, we are not aware of any problems in the UK of companies having to conform to regulations, bureaucratic or otherwise, requiring them to go to the Czech Republic.

Q10 Lord Bradshaw: If I may say so, that is all very well but it is an inhibition on people constructing wagons to have to fit really quite obsolete items. It reminds me of a trip to Linz I made to Plasser & Theurer where they showed me a magnificent tamping machine which costs tens of millions of pounds and they said "Do you know for Britain we have to make two modifications: one is to fit a bracket for an oil tail lamp and the other one is a tea warming machine." It is that sort of nonsense that I am driving at.

Mr Hammond: The way I would respond to that is I would say we have looked at the freight wagon TSI in particular which has technical requirements for wagons. We know that it is not perfect but it does have at its heart the hope that you can have vehicles which can travel all across Europe and be commonly accepted across Europe. Where there have been individual issues with the technical specification of the freight wagon TSI, and in particular with particularly innovative wagons, we have pursued options with the European Commission to obtain derogation. We have been very, very successful in doing that.

Q11 Lord Bradshaw: Is that derogation in Europe or derogation in this country?

Mr Hammond: It is derogation from the European standard so it would be a non-compliance with the European specification and then a UK rule can be used instead. In the case of spark guards, I understand the particular wagon you are referring to may have potentially a market in Europe. If it does go to Europe then other European Member States will look at the specification and there is a fairly good chance they will ask for spark guards to be fitted anyway. We have been quite proactive and we regard the fitting of spark guards to be not particularly onerous. The technical specification of the freight wagons TSI does not make it explicitly clear that the fitting of spark guards is independent from composite brake blocks and the fitting of composite brake blocks. We will pursue options with the European Commission to try and get changes in that area.

Q12 Lord Bradshaw: It has to go well beyond spark guards, that was just an example but anything which is needlessly fitted, probably to suit some manufacturer or some country in the Community, they need to be dusted out because lorries go everywhere.

Mr Hammond: The freight wagon TSI itself is under revision and we have been very, very proactive with the industry and with our national safety authority in sending representatives over to the drafting committees that the European Rail Agency uses to revise TSIs. We have

maybe four or five representatives working across all of the issues on braking and pretty much everything that causes concern for the UK and we have options to fix it.

Q13 Lord Bradshaw: I will await the TSI publication with interest.

Mr Fitzpatrick: I will draw the Committee's interest in this matter to my colleague, the rail Minister, in respect of this so that we can make sure we furnish the Committee with the appropriate documentation as it materialises.

Lord Bradshaw: This is a classic case where the open market does not work and people are finding obstacles to stop it working.

Chairman: I am grateful to the Minister for that offer. May we move to the Eurovignette.

Q14 Lord Whitty: When I left your predecessor department about eight years ago we were about to impose a vignette on foreign owned HGVs. There has been a few faltering moves in that direction but we have not managed to get an acceptable system. What are the main obstacles to that? Why is it so difficult to get a contribution from foreign truck owners? We have also known about the proposals being discussed about the internalisation of external costs and whilst that may be a bit highfalutin and academic will it eventually lead to an ability to impose something like a vignette in order to meet some of those external costs?

Mr Fitzpatrick: The conclusion of the Freight Feasibility Data Study two or three years ago, which involved officials and representatives of the haulage industry and discussed with Treasury colleagues, was that a vignette scheme would not work. The cost of implementing one would outweigh the amounts of money that it took and it was financially inappropriate. Therefore, we looked at other ways to deal with the question of foreign lorries which may or may not be operating on our roads in breach of the European agreements on how many journeys could be operated, and indeed road safety regulations in terms of construction and use, overloading, drivers' hours, et cetera. We came up with what we thought was a very

positive way in allowing VOSA, the enforcement agency, to tackle these vehicles more effectively than they had been before by using risk assessment. We have continued to monitor the question of whether a Eurovignette would be an appropriate way forward. We have looked at the regulations that apply and whether or not they could be modified in terms of how much could be charged to see if there would be more revenue to balance out the costs angle. We do think that the deal we got at the Transport Council last autumn whereby there would not be full liberalisation of the haulage market until 2013/2014 - and there would have to be some hoops jumped through on the way in terms of giving us some peace of mind in respect of the vehicles that were coming in and the exchange of data from haulage companies so we know who is coming in, so we can more easily track by virtue of identification and risk assessment those haulage companies and individual truckers who are in breach of our regulations and VOSA and the police could enforce against them, in short the costs, so it is balance - was inappropriate. We are monitoring whether or not the costs could be more equalised but in the meantime we are doing what we can to try and make sure we are policing and enforcing of regulations on haulage companies from abroad more effectively in the meantime.

Q15 Lord Whitty: I appreciate there has been some improvement in the basis of enforcement and the way VOSA go about their operations but the reason the balance between revenue and administrative costs does not work out is because there is a limit in the EU regulations about how much you can charge. I wonder whether that issue has been addressed in the Transport Council. You were hinting that you were looking at that. Is there any prospect of progress in that respect? Clearly it is not sensible to go down that road if you are not getting any more money in than you are paying out on administration but if it were to reflect something closer to the true costs, leaving aside the road safety issues, the significant

degradation to the actual infrastructure, if you can get a figure closer to reflecting that then the balance would work out the other way. Is any progress on that front likely?

Mr Fitzpatrick: As I understand it, there have been some informal soundings about whether or not there would be movement in the charging regime. My colleague, who will introduce himself in a moment, may be better informed in respect of where we were going on that. My understanding is that given the advances in technology in vehicle identification, and that we will be able to monitor virtually where every vehicle is, and with electronic tacographs we can see what the vehicles are doing on the ground as well as monitoring from the sky, to introduce a vignette scheme whereby the technology will change to make pricing easier and monitoring much easier in a very short period of time would appear to be short-sighted. In that instance we are not making immediate progress. What we are doing is we do have a refresh of the Freight Data Study taking place in the UK at the moment where we can track how many foreign vehicles there are to see where we are compared to two years ago. There is anecdotal evidence to say there are many more foreign HGVs on our roads than two or certainly five years ago. We are refreshing the data study and we will use that information this spring to be able to make a judgment call on what we will then need to do as a result of that information. If it is virtually the same, it may be that we will adopt the same posture, but if it is clearly different then we may obviously have to arrive at different conclusions.

Mr Carey: I am Phil Carey, Head of the Road Pricing Framework Division of the Department. The reference to the cap within the existing Eurovignette Directive is the thing that bites on our ability to move forward here. It works out an average of 11 euro per vehicle and, even with the slightly weaker Sterling equivalent, that still prevents us recovering enough to meet the estimated running costs of £15 million per annum of a vignette scheme. The reason that the economics of that seem to work in some continental countries and not in Britain is just a reflection of the fact that we have a much lower proportion of transit traffic

and, therefore, a much smaller base of fee payers from whom we could seek to recover the cost of setting up the system that would, by definition, have to apply across the whole vehicle fleet.

Q16 Lord Whitty: Another complication is the issue of hypothecation. I have recently sat on an inquiry into the A12, which you may know is a pretty under-invested road with rather a lot of foreign trucks and not much recent investment. In that area there is some serious resentment from the county and other users of the road that there is no contribution to the upkeep of the road and the enforcement matters on the road from those foreign truck drivers coming from Felixstowe and Harwich. The Government accept hypothecation in congestion charging and potentially in road user charging so why is hypothecation not potentially an option where a vignette approach could be pursued?

Mr Fitzpatrick: We have no objections in principle to money from road pricing from such a charging regime being diverted and pigeon-holed for improvements in infrastructure and improvements in roads. Our position in Europe is that is a matter for national governments. What we would not do is allow Europe to tell us what to do with the money. If we decided that we wanted to introduce road pricing that would be a matter for us. We have already said that road pricing schemes would go to improving transport infrastructure so we have already made a principled decision in that way. If we decided to go for a vignette, I do not think it would be illogical for us also to say that that money should then go in the same way as any road pricing money would go which would be for maintenance of the transport infrastructure.

Q17 Lord Whitty: Your objection is simply you do not want Europe to tell you to do that.

Mr Fitzpatrick: Hypothecation is a national decision.

Mr Carey: The UK is far from alone in arguing that. A significant number of other Member States take the same position.

Q18 Lord Bradshaw: Lord Roberts of Llandudno has been asking questions at my behest about what is going on at Holyhead. VOSA is actually doing very substantial checks at Holyhead but has discovered that in the first half of the current financial year over half the vehicles checked were issued with prohibition notices for mechanical defects, drivers' hours irregularity and overloading. The majority of them were for drivers' hours. Many of them, and I use my words carefully, are committed by lorries which originate in the Republic of Ireland, the drivers of which do not comply with the regulations. I asked two years ago what action the Government was taking to persuade the Irish government that they have responsibilities. These checks are picked up repeatedly: ten offences by the same company. If the law is being made a fool, then what is the Government proposing to do about it?

Mr Fitzpatrick: As you say, Member States are required to submit a Drivers' Hours Enforcement Return to the European Commission every two years and this data forms the basis of a European Commission Report on EU implementation. The last published report covers the years 2003/2004. All but two Member States met the required number of checks and it remains for the European Commission to take action against those Member States which fail to meet the required level of checks. The introduction of digital tacographs obviously makes this easier. What we are doing is we are in contact with Member States to make sure this issue is receiving appropriate attention. We are even dealing directly with Irish companies who are in breach of our regulations, and featuring far too regularly being in breach of the regulations, and advising them what actions they should be taking to make sure they do conform. I do not see, if you forgive me, the stats from Holyhead being a sign of failure, although in one sense they are; I see that as a sign of success in VOSA's additional resourcing and their additional targeting, on a risk-assessed basis, of those vehicles that we think and we know are in breach, whether it is overloading, drivers' hours or whatever. VOSA are using technology a lot more than they were before. As I am sure the Committee

knows, we awarded VOSA £24 million extra last year, increasing the staff by around 100 officers, going to 24/7 enforcement so there is no hiding by people coming in at night when they think we will be in our beds, and by introducing new technology with automatic number plate recognition cameras and the weigh-in motion sensors which are being rolled out as well as some extra stations for stopping and checking. VOSA are clearly having an impact. However, Ireland, in certain instances, some companies and individuals, are still very much in breach. We need to make sure that we do not just catch them, fine them and then send them back only for them to come back again. We do need to follow up and that is why I say one of the important initiatives VOSA have undertaken is talking to the companies in Ireland because their vehicles are being tied up and wasting money and costing them a lot of money and profit. It is something we are aware of and sensitive to and certainly something we want to prosecute as vigorously as we can.

Q19 Lord Bradshaw: Can I encourage you, Minister, to consider more immobilisation if the vehicle is breaking the law and can be shown, of course, to have broken it on several previous occasions, it should actually be immobilised because that does hurt the company.

Mr Fitzpatrick: One of the elements that will be introduced hopefully in April this year will be immobilisation. We are introducing fixed penalties and on-the-spot fines for vehicles which we cannot do at the moment. We are empowering VOSA and the police to take these fines at the roadside, which they cannot do at the moment. One of the additional most emphatic powers we are introducing is the power to immobilise vehicles, which is most sought after by the VOSA inspectors. They say if you give us that power then that will make sure we get an immediate reaction because they cannot take the vehicles on. We have up to nine Statutory Instruments which we have to introduce to enact the provisions of the 2006 Road Safety Act and immobilisation is one of them and that will be done by March of this year to allow the penalties to be introduced in April.

Q20 Lord Ryder of Wensum: If we are to introduce those Statutory Instruments, and you are to take the action which you claim to be taking in response to Lord Bradshaw, can you tell us what other countries in Europe are taking similar action and, if so, when?

Mr Fitzpatrick: My best understanding is that VOSA are held up as the market leaders in terms of enforcement. We have a number of agencies from European partner countries who will come to see how VOSA do it, what they are doing and what they need to do to get their act up to speed to be able to compete with VOSA. Other countries take road safety as seriously as we do. The Dutch are probably above us in the league table in terms of their improvements in reducing deaths and injury but we may be second in the world. We were fourth and we may be tying with them back in second place. We did drop for a few years. There are some countries in Europe who we have very strong relations with and we know their services are comparable to ours and there are others who are coming to us to ask for our advice as to how to improve.

Chairman: Our last question is on mirrors on left-hand drive HGVs.

Q21 Lord Paul: On HGVs that were first registered before January 2000, what further action is likely either on national level or by the EU to increase the use of close-proximity mirrors?

Mr Fitzpatrick: The situation in terms of further action which might be likely within the EU sadly the answer is none. The decision to require these mirrors to be fitted to vehicles registered from January 2000 took account of a range of issues including safety benefits, cost of fleet turnover and the practicalities of retrofitting to older vehicles. We do not expect this to be revisited. However, we obviously do accept and are aware that vision to the passenger side of large goods vehicles is restricted. We have supported a number of initiatives aimed specifically at improving the safety of all large goods vehicles. We have the improved mirrors in new vehicles from January 2007. Vehicles affected by the mirror retrofit must

comply by March of this year. Fresnel lenses which we have piloted have been handed out by the Highways Agency and by VOSA and they are now being handed out by Transport for London and the Olympic Delivery Agencies. These are plastic film mirrors which go on the opposite side of vehicles. For left-hand drive they go on the right-hand window but UK drivers are taking them and putting them on the left-hand windows when they go to the continent because they see how effective they are. Indeed, the earliest evidence we had was that the Fresnel lenses were cutting down sideswipe accidents where you have that blind spot by up to 59 per cent. We are reporting that to the Commission to see if we can get movement in respect of that. We know there is an issue there. There are improved mirrors which are coming on and new vehicles have to have them. Other vehicles up to 2000 will have to have them retrofitted by this year. This is something that we do monitor very carefully because we recognise it is a key source of collisions and incidents.

Q22 Lord Bradshaw: I have one point if I might follow up. If these Fresnel mirrors do have the effect of improving vision on the opposite side to the driver, and if they are made available, which I believe they are by Kent police amongst others, if a driver is involved in an accident, usually with a cyclist who often gets killed, will the driver be prosecuted for dangerous driving, careless driving or causing death by dangerous driving?

Mr Fitzpatrick: That would be a matter for the prosecuting authorities but given that there is no legal requirement to have them fitted then obviously it would not be an omission on the part of the driver. As an aside, one of the linguistic discussions we are having within the Department at the moment is that the big killers on roads primarily are people drinking and driving or taking drugs drinking and driving, people speeding, people not wearing seatbelts and people who are driving through fatigue. These are all deliberate acts and are not accidents. These are decisions people are making and then causing incidents, collisions and crashes resulting in deaths. We are having the discussion within the Department at the

moment for our post-2010 strategy whether we should be looking at changing the terminology of calling “collisions” incidents rather than accidents and “incidents” crashes or collisions where we can define them. There will always be some accidents: a tyre which will blow out or something which is unavoidable but we think they are very much at the narrow end of the margin compared to the big killers which are deliberate acts by human beings. That linguistic change might throw the balance of emphasis onto the individual for their responsibility for causing incidents, crashes and collisions. That is a long aside. In terms of the legality, I do not think there could be a charge. Not being a lawyer but a fireman I would not know whether there would be a charge but I would think it is unlikely they would be charged with dangerous driving or causing death by dangerous driving simply because the criteria would probably be much greater than simply they did not fit a lens which is voluntarily available to be purchased or to be collected at a weigh-side station and given out by VOSA.

Lord Bradshaw: One of the horrible fatal accidents in North Wales was caused by a driver who had the mirror and it was still in its wrapping paper on the cab seat when he killed the cyclist.

Chairman: That is a sad note to end on but thank you very much. It has been a very helpful session and we thank you and your officials for coming.