

TRANSPORT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Regional Transport

Chapter 1: Regional Transport Partnerships

Section 1: Establishment of regional Transport Partnerships

11. **Section 1** places a duty on the Scottish Ministers to create regionally based Transport Partnerships by order.
12. **Section 1(1)** requires the Scottish Ministers to determine the boundaries of the Transport Partnerships so that every part of Scotland is within a Transport Partnership. It also obliges the Scottish Ministers to ensure that Transport Partnerships have a constitution to govern their activities and to provide as to their membership.
13. **Section 1(2)(a)** limits the total number of councillor members in any one Transport Partnership to a maximum of twenty. **Section 1(2)(b)** requires that the membership of each Transport Partnership includes at least one but not more than five councillors from each council whose area or any part of their area falls within the Transport Partnership's region. It defines the terms "councillor member" and "constituent council". A Transport Partnership's area may comprise the area of a single council.
14. **Section 1(2)(c)** requires the Scottish Ministers to appoint other members to each Transport Partnership. Under section 1(3) this requirement will only continue until the council elections of May 2007. Thereafter, under the terms of section 1(2)(c), these other members will be appointed by the Transport Partnership itself, and these appointments will be subject to the consent of the Scottish Ministers.
15. **Section 1(2)(e)** requires the Scottish Ministers to establish the decision-making rules for a Transport Partnership. Each councillor member will have one vote but, under section 1(4), councillor members shall have their votes weighted by making them count as one, two, three or four votes. **Section 1(2)(e)(i)** ensures that councillor members may always vote and that other members may vote on such matters as the Transport Partnership determines are appropriate. However, other members may never vote on the amount of funding to be provided by individual councils to a Transport Partnership, as provided for by section 3(2)(a) or on the making of a request to the Scottish Ministers to confer transport functions on a Transport Partnership by an order made under the provisions of section 10(1).
16. **Section 1(2)(f)** gives powers to the Scottish Ministers to determine that certain offices of the partnership, for example the chairperson or deputy chairperson, can be held only by councillor members and not by other members.
17. The Scottish Ministers will carry out their duties and powers in this section by orders that will, as stated in section 52(3), be laid in draft and subject to the affirmative resolution procedure.

Section 2: Dissolution of regional Transport Partnerships

18. **Section 2(1)** empowers the Scottish Ministers, by order, to dissolve one or more Transport Partnerships or all of them.
19. Under section 2(2) the Scottish Ministers can ensure, by making provision by order, that on the dissolution of a Transport Partnership any of its transport functions can be performed by the person who was responsible for those functions prior to their transfer to the Partnership. The inclusion of this subsection seeks to avoid the situation of an hiatus, in the delivering of transport functions, between the dissolution of a Transport Partnership and the creation of a new Transport Partnership required by section 1.
20. Before making any order under section 2, the Scottish Ministers are required to consult the Transport Partnership or Transport Partnerships in question, its or their constituent councils or council and any other individuals or bodies that the Scottish Ministers think it appropriate to consult. Any orders made under section 2 will, as stated in section 52(3), be laid in draft and subject to the affirmative resolution procedure.

Administration

Section 3: Regional Transport Partnerships: funding and borrowing

21. **Section 3** requires the constituent councils or council of each Transport Partnership to fund its net expenses, as defined in subsection (4). A Transport Partnership's income can come from a number of sources including from the Scottish Ministers.
22. Under section 3(2) the share of the expenses to be paid by each constituent council or where there is only one, that council, will be determined by the Transport Partnership having regard to its transport strategy (formulated under section 5) but if the Transport Partnership is unable to decide then the relevant shares will be determined by the Scottish Ministers by order.
23. **Section 3(3)** empowers the Scottish Ministers, by order, to make arrangements to ensure that each constituent council meets its obligation to provide the Transport Partnership with the share of its net expenses determined by Section 3(2).
24. **Sections 3(5)** gives to Transport Partnerships a general power to give grants and loans to any person for any purposes that will contribute to the implementation of the Partnership's transport strategy. Section 3(6) allows a Transport Partnership to impose such conditions as it decides on any grant or loan given under section 3(5). Section 3(7) enables a Transport Partnerships to borrow money for the purpose of its capital expenditure. This puts a Transport partnership into the same position as a local authority.

Section 4: Further provision about regional Transport Partnerships

25. **Section 4** introduces schedule 1 which makes further provision as to regional Transport Partnerships.

Regional transport strategies

Section 5: Formulation and content of regional transport strategies

26. **Section 5(1)** places a duty on each Transport Partnership to draw up a transport strategy for its region. These strategies will focus on transport within the region but should also, in line with section 5(2)(d)(vii), take into account transport to and from the region.
27. **Section 5(2)** outlines the matters that the Transport Partnerships should include in their strategies. Section 5(2)(a) requires the strategy to include an assessment of what needs to be done to provide, develop and improve transport in the region, subject to constraints of cost, funding and practicability. Section 5(2)(e) requires the strategy to

prioritise the different services, schemes and projects of provision, development and improvement that emanate from section 5(2)(a). Under section 5(2)(f) the strategy must describe how the Transport Partnership will use those functions that have already been conferred upon it to fulfil the strategy. It must also identify those other functions, if any, that the Transport Partnership needs in order to fulfil the strategy. Under section 5(2)(h) the strategy must consider how progress towards the objectives is to be measured and monitored. The Scottish Ministers may, under section 5(3), issue guidance about transport strategies and the Transport Partnerships are under a duty to have regard to that guidance and to any current national transport strategy established by the Scottish Ministers.

28. **Section 5(4)** provides that equal opportunities and equal opportunity requirements are as defined in the Scotland Act 1998. In that Act “equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions. The Scotland Act 1998 also states that “equal opportunity requirements” means the requirements of the law for the time being relating to equal opportunities.

Section 6: Procedure before and after the drawing up of regional transport strategies

29. **Section 6** places a duty on each Transport Partnership to submit its transport strategy to the Scottish Ministers. Section 6(1)(b) sets the deadlines for this; for the first set of strategies, produced by the Partnerships to be created by 31 March 2006, the strategies must be completed by 31 March 2007. In any other case the deadline is within 12 months of the establishment of the Partnership. The timing of subsequent strategies is covered by section 7. In line with section 6(1)(a), before submitting the strategy the Transport Partnership must consult its constituent councils, each Health Board covered wholly or partly by the region and other persons as it thinks fit.
30. **Section 6(2)** enables each Transport Partnership to request, within 8 months of their creation, an extension to the 12 month time limit to produce its regional transport strategy. Prior to granting an extension, the Scottish Ministers have the power at section 6(3) to require Transport Partnerships to produce reports or documentation which might, for instance, include details of progress made to date.
31. Under section 6(4) the transport strategy becomes effective when it is approved by the Scottish Ministers and when deciding, under section 6(5), whether to approve the strategy the Scottish Ministers will assess, amongst other factors, the extent to which it will assist with the realisation of their own transport policies.
32. **Section 6(7)(c)** places a duty on the Transport Partnerships to publish their completed strategies.

Section 7: Review, modification and renewal of regional transport strategies

33. Under section 7(1) each Transport Partnership must keep its strategy under review and may modify it or draw up a new one. The Scottish Ministers may direct any Transport Partnership to draw up a new strategy within such a period as they may specify. Subsection (2) applies certain of the provisions of sections 5 and 6 apply to modifying a strategy and the drawing up of a new one as they apply to the preparation of an existing strategy.

Section 8: Duty of constituent councils and other public bodies as respects regional transport strategies

34. **Section 8** obliges constituent councils to perform their transport-related functions consistently with the transport strategy of the Transport Partnership for their area.

Health Boards will also be placed under a duty to perform their functions and activities consistently with the transport strategy or transport strategies specified by the Scottish Ministers. The same duty can be placed on other public bodies as specified by order.

Section 9: Joint regional transport strategies

35. **Section 9** enables two or more Transport Partnerships to produce a joint transport strategy for their combined regions. Under section 9(2) a joint transport strategy is to be subject to all the same provisions in Part 1 that apply to a transport strategy.

Regional transport functions

Section 10: Other transport functions of regional Transport Partnerships

36. **Section 10(1)** gives the Scottish Ministers powers to confer, by order, transport functions on Transport Partnerships. This provision enables the Scottish Ministers to transfer a transport function from one body, such as a local authority, to a Transport Partnership so that the local authority can no longer directly exercise that function. It also enables the Scottish Ministers to confer a transport function on a Transport Partnership without taking it away from a local authority, or whichever body is currently exercising the function. In this case the transport function would be exercised concurrently by that local authority or body and the Transport Partnership.
37. **Section 10(2)** requires that the Scottish Ministers must, when conferring functions by order on a Transport Partnership, have regard to the Partnership's transport strategy, if one is in place.
38. **Section 10(3)** provides that the Scottish Ministers may, in the same way, transfer to or share their own transport functions with Transport Partnerships.
39. **Sections 10(4) and (5)** provide a list of certain functions that could be conferred on Transport Partnerships by order under section 10(1). The functions listed are not the only ones which may be so conferred.
40. **Sections 10(6) and (7)** requires a Transport Partnership proposing to request the making of an order conferring functions on them, prior to making that request, to consult with its constituent councils or council and also to make that request in line with guidance produced by the Scottish Ministers.
41. **Section 10(8)** requires the Scottish Ministers, before making an order under section 10(1), to consult the Transport Partnership to which the order will apply (except where the order is to be made at their request), that Partnership's constituent councils or council and such other persons as they think fit.
42. **Section 10(9)** enables an order under subsection (1) to modify any enactment. This means, for instance, that a function listed in subsection (4) such as road user charging may form part of an order and to enable that order to make sense it may require that the Transport (Scotland) Act 2001 is modified so as to include a regional Transport Partnership within the definition of local traffic authorities i.e. those bodies that may apply road user charges.

Section 11: Alteration of functions of regional Transport Partnerships

43. **Section 11** allows the Scottish Ministers to return the functions of a Transport Partnership to the person that previously undertook the function. The alteration may occur, for example, where in the light of operational experience or a change in strategic approach a Transport Partnership concludes that it would be appropriate for a particular function to be exercised by the person who was previously responsible (in most cases the constituent councils or the Scottish Ministers). Without this provision the Scottish Ministers would need to invoke the provisions within section 2 to dissolve a Transport

Partnership (and re-create it under section 1) if they wished to transfer functions from a Transport Partnership back to a council.

Section 12: Manner of performance of functions of regional Transport Partnerships

- 44. **Section 12(1)** requires that a Transport Partnership carries out its functions in fulfilment of its strategy and in doing so complies with directions from the Scottish Ministers and measures and monitors progress in achieving its objectives.
- 45. **Section 12(2)** ensures that the application of section 12(1) does not prevent a Transport Partnership from performing its functions in advance of its strategy being drawn up and approved. It does this by enabling Ministers to give directions as to how functions should be exercised. It does not require Ministers to give such directions.

Chapter 2: Transport Functions: Further Provisions

Section 13: Transfer to Scottish Ministers of certain rail functions

- 46. **Section 13** gives a power to the Scottish Ministers, by order, to transfer rail transport functions from Strathclyde Passenger Transport Authority or Strathclyde Passenger Transport Executive to the Scottish Ministers.

Section 14: Arrangements for performance by regional Transport Partnership of certain transport functions etc.

- 47. **Section 14** enables a Transport Partnership to enter into arrangements to carry out such things relating to transport as specified in those arrangements on behalf of a council, the Scottish Ministers or any other person having statutory transport functions. It is expected that any arrangements would be explicit about the bounds on the extent of the Transport Partnership's discretion.

Chapter 3: Supplementary and Consequential Provision

Section 15: Transfer of staff, property, rights and liabilities

- 48. **Section 15** specifies that the regulations governing the protection of employment rights in the event of a transfer of undertaking, as defined in section 15(7), apply whenever the transfer of a function to a Transport Partnership or the Scottish Ministers takes place under sections 2, 10 or 13. These transfers have implications for those people currently engaged in exercising those functions.
- 49. **Section 15(5)** and **(6)** empower the Scottish Ministers, when a transfer of functions takes place, to require, by order, the transfer of any property, rights or liabilities linked to those functions.