



# Transport (Scotland) Act 2005

## 2005 asp 12

### PART 1

#### REGIONAL TRANSPORT

#### CHAPTER 1

##### REGIONAL TRANSPORT PARTNERSHIPS

*Establishment etc.*

#### **1 Establishment of regional Transport Partnerships**

- (1) The Scottish Ministers shall, by order—
  - (a) divide Scotland into regions for the purposes of this Part of this Act;
  - (b) create, for each region, a body corporate (to be known as the Transport Partnership with the addition of the name given, by or under the order, to the region);
  - (c) provide as to the constitution and membership of each Transport Partnership.
- (2) In carrying out the duty under subsection (1)(c) above, the Scottish Ministers—
  - (a) shall secure that the total number of councillor members of a Transport Partnership is not more than 20;
  - (b) shall secure that the membership of a Transport Partnership includes one or more (but not more than five) councillors appointed by and from—
    - (i) each council the area or any part of the area of which falls within the Transport Partnership's region; or
    - (ii) if that region is coterminous with a council's area, that council,

(each such member of the Transport Partnership being a “councillor member” and each such council or, as the case may be, that council being, in relation to the Transport Partnership, a or the “constituent council”);
  - (c) shall secure—

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- (i) that during the period ending with the event specified in subsection (3) below, the other members of the Transport Partnership are appointed to it by the Scottish Ministers; and
    - (ii) that afterwards each such member is appointed by the Partnership but subject to the consent of the Scottish Ministers;
  - (d) shall provide as to the duration and termination of membership of members of the Transport Partnership;
  - (e) shall provide as to the determination of questions for decision by the Transport Partnership; and for the purposes of any decision which is to be determined by a vote—
    - (i) shall provide that councillor members may vote on all matters and other members only on such matters as the Transport Partnership determines are appropriate (but not on a question arising under section 3(2)(a) below or on whether to make a request for the making of an order under section 10(1) below);
    - (ii) shall, subject to subsection (4) below, provide as to weightings to be applied to the votes cast by councillor members; and may in so doing provide as to different weightings to be applied to the votes cast by different councillor members;
    - (iii) shall secure, whether in providing as to the weighting of votes of councillor members in accordance with sub-paragraph (ii) above or in providing for the number of other members, or in a combination of both, that the minimum voting capacity of all the councillor members of the Partnership is not less than two-thirds of that of its whole membership;
  - (f) may provide that certain of the offices of the Transport Partnership may be held only by councillor members;
  - (g) may provide that councillor members (but only councillor members) may be represented and vote by proxies at meetings of the Transport Partnership;
  - (h) may provide for the delegation by the Transport Partnership of any of its functions to any committee established by the Partnership;
  - (i) may provide for the appointment by each of—
    - (i) the Transport Partnership; and
    - (ii) the Scottish Ministers,
 of one or more observers, that is to say, persons who may (to such extent as may be specified in or provided for in the order) participate in proceedings of the Partnership but who may not hold office in it or participate in its decisions;
  - (j) may provide for the payment by a Transport Partnership of—
    - (i) remuneration to its members or some of them;
    - (ii) reimbursement of its members' expenses.
- (3) The event referred to in subsection (2)(c) above is the holding of the poll at ordinary elections for councillors in 2007.
- (4) For the purpose of subsection (2)(e)(ii) above, a vote shall be weighted by making it count as one, two, three or four votes.

## **2        Dissolution of regional Transport Partnerships**

- (1) The Scottish Ministers may, by order, dissolve any one or more Transport Partnerships or all of them.
- (2) On dissolving a Transport Partnership, the Scottish Ministers may, by order, provide for any function of the Partnership to be carried out by the person who carried it out immediately before the coming into effect of—
  - (a) the order under section 10 below which transferred it to the Partnership; or
  - (b) if there have been two or more orders under that section transferring that function, the first of those orders.
- (3) Before making an order under this section, the Scottish Ministers shall consult—
  - (a) the Transport Partnership or Partnerships to be dissolved;
  - (b) its or their constituent councils or council; and
  - (c) such other persons as the Scottish Ministers think fit.
- (4) An order under this section may modify any enactment.

### *Administration*

## **3        Regional Transport Partnerships: funding and borrowing**

- (1) The net expenses of a Transport Partnership for each financial year shall be paid by—
  - (a) its constituent councils; or
  - (b) where there is only one, that council.
- (2) The share of the expenses to be paid by a constituent council under subsection (1)(a) above shall be—
  - (a) such as the Transport Partnership, having regard to its transport strategy, thinks fit; or
  - (b) where the Partnership is unable to decide, such as is determined by the Scottish Ministers by order.
- (3) The Scottish Ministers may, by order, provide as to the arrangements for the payment of amounts payable under this section.
- (4) For the purposes of this section, the net expenses of a Transport Partnership for a financial year are those of its expenses for that year which are not met—
  - (a) by a grant made by any person which is not repayable;
  - (b) by a grant so made which is subject to a condition requiring repayment and which remains unsatisfied; or
  - (c) by any other income for that year.
- (5) A Transport Partnership may give grants or loans to any person for any purposes that, in its opinion, contribute to the implementation of the Partnership's transport strategy.
- (6) Such grants or loans may be given subject to such conditions (including conditions requiring repayment in specified circumstances) as the Transport Partnership decides.
- (7) A Transport Partnership may borrow money for the purpose of its capital expenditure.
- (8) In this section, “financial year” means the period of 12 months ending with 31st March.

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#### **4 Further provision about regional Transport Partnerships**

Schedule 1 provides further as to Transport Partnerships and their members.

#### *Regional transport strategies*

#### **5 Formulation and content of regional transport strategies**

- (1) It is the duty of each Transport Partnership to draw up a strategy for transport within its region (its “transport strategy”).
- (2) Its transport strategy shall include provision about each of the following matters—
  - (a) the respects in which transport in the region needs to be provided, developed or improved having regard to, among other things—
    - (i) future needs including those occasioned by demographic and land use changes; and
    - (ii) what can be done, taking account of cost, funding and practicability;
  - (b) meeting the needs of all inhabited places, in particular, those which the Partnership considers different from the remainder of the region by reason of their remoteness or the sparsity of their populations;
  - (c) meeting the need for efficient transport links between heavily populated places;
  - (d) how transport in the region will be provided, developed, improved and operated so as—
    - (i) to enhance social and economic well-being;
    - (ii) to promote public safety, including road safety and the safety of users of public transport;
    - (iii) to be consistent with the principle of sustainable development and to conserve and enhance the environment;
    - (iv) to promote social inclusion;
    - (v) to encourage equal opportunities and, in particular, the observance of the equal opportunities requirements;
    - (vi) to facilitate access to hospitals, clinics, surgeries and other places where a health service is provided;
    - (vii) to integrate with transport elsewhere;
  - (e) the order of priority in which different elements of the provision, development and improvement of transport should be undertaken;
  - (f) how the Transport Partnership’s functions will be exercised so as to fulfil its transport strategy and, if the Partnership considers that the conferring of further functions is necessary for that purpose, what those functions are;
  - (g) how the Transport Partnership, so as to enable it to fulfil its transport strategy, will seek to influence its constituent councils or council in the performance of their functions relating to transport;
  - (h) the measuring and monitoring of the achievement of the strategy.
- (3) In performing its duty under this section, a Transport Partnership shall have regard to any guidance in that respect given to it or to Transport Partnerships generally by the Scottish Ministers and to any current national transport strategy established by the Scottish Ministers.

- (4) In subsection (2)(d)(v) above, “equal opportunities” and “equal opportunities requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).

## **6 Procedure before and after the drawing up of regional transport strategies**

- (1) A Transport Partnership shall—
- (a) before arriving at its transport strategy, consult—
    - (i) its constituent councils or council;
    - (ii) each Health Board the area or part of the area of which falls within the Transport Partnership’s region (or, if that region is coterminous with a Health Board’s area, that Health Board); and
    - (iii) such other persons as it thinks fit;
  - (b) subject to subsection (2) below—
    - (i) in the case of a Partnership created under section 1 above on or before 31 March 2006, by 31 March 2007;
    - (ii) in any other case, within 12 months of its creation, submit its transport strategy to the Scottish Ministers for approval.
- (2) The Scottish Ministers may—
- (a) at the request of a Transport Partnership made to them within 8 months of the creation of the Partnership; and
  - (b) if satisfied that there are good reasons for doing so, authorise the Partnership to submit its transport strategy to them later than the time limit specified in subsection (1)(b) above in relation to the Partnership but not later than such date as is specified in the authorisation.
- (3) A Transport Partnership making a request for the purposes of subsection (2) above shall, if so required by the Scottish Ministers, provide them with reports or information of such kind and in such form as they, for the purposes of that subsection, specify in the requirement.
- (4) A transport strategy has effect for the purposes of this Act when it is approved by the Scottish Ministers.
- (5) In deciding whether to approve a transport strategy, the Scottish Ministers shall include among the matters to which they have regard the extent to which it will contribute to the realisation of their transport policies.
- (6) On approving its transport strategy, the Scottish Ministers shall inform the Transport Partnership of that fact.
- (7) On being so informed, the Transport Partnership shall—
- (a) inform its constituent councils or council that its transport strategy has effect, specifying the date when it took effect;
  - (b) send each of them or, as the case may be, it a copy of the transport strategy; and
  - (c) publish the transport strategy in such manner as it thinks fit.

## **7 Review, modification and renewal of regional transport strategies**

- (1) A Transport Partnership—

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- (a) shall keep its transport strategy under review;
  - (b) may modify its transport strategy or draw up a new one;
  - (c) shall, within such period as is specified in a direction by the Scottish Ministers requiring it to do so, draw up a new transport strategy.
- (2) Sections 5(2) and (3) and 6(1)(a) and (4) to (7) above apply in relation to the modification of a transport strategy and the drawing up of a new one as they apply in relation to the drawing up of a Transport Partnership's original transport strategy.
- (3) A direction given for the purposes of subsection (1)(c) above may be given to one or more or all Transport Partnerships.

## **8      Duty of constituent councils and other public bodies as respects regional transport strategies**

- (1) A constituent council shall, so far as possible, perform those of its functions which relate to or which affect or are affected by transport consistently with the transport strategy of the (or, as the case may be, each) Transport Partnership of which it is a constituent council.
- (2) Each—
- (a) Health Board; and
  - (b) specified public body,
- shall, so far as possible, perform those of its functions and activities which relate to or which affect or are affected by transport consistently with the transport strategy of the (or, as the case may be, each) Transport Partnership in relation to which it is specified.
- (3) The Scottish Ministers shall, as respects each Health Board, specify by order which Transport Partnership's transport strategy is, or which Transport Partnerships' transport strategies are, for the purposes of subsection (2) above, the strategy or strategies consistently with which the Board is to perform its functions.
- (4) In subsection (2) above, "specified" in relation to a public body mentioned in paragraph (b) of that subsection means specified by order made by the Scottish Ministers and in specifying a public body for the purposes of that subsection, the Scottish Ministers shall specify the Transport Partnership or Partnerships in relation to which it is specified.

## **9      Joint regional transport strategies**

- (1) Two or more Transport Partnerships may together, in the discharge of their respective duties under sections 5 and 6(1) above, draw up a joint transport strategy for transport within their combined regions.
- (2) This Part of this Act applies in relation to the Transport Partnerships which draw up a joint transport strategy, to their combined regions and to that strategy as it applies to a Transport Partnership, its region and its transport strategy.

### *Regional transport functions*

## **10 Other transport functions of regional Transport Partnerships**

- (1) The Scottish Ministers may, as respects a Transport Partnership, and by order, provide for any statutory function relating to transport they think fit, to be carried out by that Transport Partnership—
  - (a) instead of the person who, immediately before it was so provided, was responsible for carrying it out; or
  - (b) concurrently with that person.
- (2) In making an order under subsection (1) above after the coming into effect of the Transport Partnership's transport strategy, the Scottish Ministers shall have regard to that strategy.
- (3) The person referred to in subsection (1) above may be the Scottish Ministers.
- (4) The functions which may be the subject of an order under subsection (1) above may, without prejudice to the generality of that subsection, include any of the following—
  - (a) those conferred on local transport authorities by or under Part 2 of the Transport (Scotland) Act 2001 (asp 2) (bus services) and Part 3 of that Act (road user charging);
  - (b) those conferred by or under any enactment and which relate to the management and maintenance of a bridge constructed in pursuance of functions conferred by, or by an order made under or confirmed by, any enactment;
  - (c) those conferred on traffic authorities by sections 1 to 4 of the Road Traffic Regulation Act 1984 (c. 27) (traffic regulation orders) and on local traffic authorities by section 19 of that Act (regulation of use of roads by public service vehicles);
  - (d) those conferred on councils by sections 63 and 64 of the Transport Act 1985 (c. 67) (securing the provision of passenger transport and related consultation and publicity).
- (5) The following are examples of the functions which may be the subject of an order under this section—
  - (a) entering into quality partnership schemes;
  - (b) entering into quality contract schemes;
  - (c) entering into ticketing arrangements and ticketing schemes;
  - (d) providing information about bus services;
  - (e) installing bus lanes;
  - (f) providing subsidised bus services;
  - (g) making and implementing road user charging schemes;
  - (h) operating ferry services;
  - (i) managing tolled bridges;
  - (j) operating airports and air services;
  - (k) entering into public service contracts.
- (6) A Transport Partnership which proposes to request the making of an order under subsection (1) above shall, before doing so, consult its constituent councils or council on what the order might do.

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- (7) In making such a request, a Transport Partnership shall have regard to any guidance given by the Scottish Ministers as to the form and content of such requests.
- (8) Before making an order under subsection (1) above, the Scottish Ministers shall consult—
  - (a) except where the order will be made at its request, the Transport Partnership to which the order will relate;
  - (b) its constituent councils or council; and
  - (c) such other persons as the Scottish Ministers think fit.
- (9) An order under subsection (1) above may modify any enactment.

## **11      Alteration of functions of regional Transport Partnerships**

- (1) The Scottish Ministers may, by order, provide for any function of a Transport Partnership to be carried out by the person who originally carried it out—
  - (a) instead of the Transport Partnership; or
  - (b) concurrently with the Transport Partnership.
- (2) In so providing, the Scottish Ministers shall have regard to the Transport Partnership's transport strategy.
- (3) Subsections (6) to (9) of section 10 above apply to an order under this section as they apply to one made under that section.
- (4) In subsection (1) above, the reference to the person who originally carried out a function is a reference to the person who carried out the function immediately before the coming into effect of—
  - (a) the order under section 10 above which transferred it to the Transport Partnership; or
  - (b) if there have been two or more orders under that section transferring that function, the first of those orders.

## **12      Manner of performance of functions of regional Transport Partnerships**

- (1) A Transport Partnership shall—
  - (a) carry out its functions so as to fulfil its transport strategy;
  - (b) in doing so—
    - (i) comply with any directions in that respect given to it or to Transport Partnerships generally by the Scottish Ministers; and
    - (ii) measure and monitor the achievement of the strategy.
- (2) Where a function of a Transport Partnership falls to be carried out before its transport strategy comes into effect, the Transport Partnership shall carry out the function in accordance with such directions as the Scottish Ministers may give it.

## CHAPTER 2

### TRANSPORT FUNCTIONS: FURTHER PROVISIONS

#### **13 Transfer to Scottish Ministers of certain rail provisions**

- (1) The Scottish Ministers may, by order, provide for any function of the kind specified in subsection (2) below which they think fit to be carried out by them—
  - (a) instead of the person who, immediately before it was so provided, was responsible for carrying the function out; or
  - (b) concurrently with that person.
- (2) That kind of function consists of any statutory function—
  - (a) which relates to the provision or regulation of rail services; and
  - (b) which was immediately before the provision referred to in subsection (1) above carried out by—
    - (i) the Strathclyde Passenger Transport Authority; or
    - (ii) the Strathclyde Passenger Transport Executive.
- (3) An order under subsection (1) above may modify any enactment.

#### **14 Arrangements for performance by regional Transport Partnership of certain transport functions etc.**

A Transport Partnership may enter into arrangements with the Scottish Ministers, a council or any other person having statutory functions relating to transport being arrangements under which the Partnership—

- (a) does, on behalf of the Scottish Ministers, the council or that other person, such things relating to transport as are specified in the arrangements;
- (b) provides such services for the purposes of, or in connection with, transport as are so specified.

## CHAPTER 3

### SUPPLEMENTARY AND CONSEQUENTIAL PROVISION

#### **15 Transfer of staff, property, rights and liabilities**

- (1) The TUPE regulations apply in relation to any function transferred by virtue of section 2, 10 or 13 above whether or not those regulations would so apply apart from this subsection.
- (2) Where, by virtue of the TUPE regulations, whether as applied by subsection (1) above or not, a member of staff (the “employee”) of a body, authority or other person (the “former employer”) becomes an employee of another body, authority or other person (the “new employer”) in consequence of the transfer of a function by virtue of section 2, 10 or 13 above, the employee’s period of employment by the former employer counts, for the purposes of the Employment Rights Act 1996 (c. 18), as a period of employment by the new employer and the change of employment does not break the continuity of the period of employment.

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- (3) For the purposes of subsections (1) and (2) above, a function is to be regarded as transferred by virtue of section 2, 10 or 13 above irrespective of how the transfer is described in that section or in the order made under it.
- (4) For the purposes of subsection (2) above, a function is to be regarded as transferred irrespective of whether arrangements relating to it are made under section 14 above.
- (5) Where, by virtue of section 2, 10 or 13 above, a function of one body, authority or other person (the “original”)—
  - (a) becomes that of another; or
  - (b) falls to be no longer carried out,the Scottish Ministers may, by order, provide for the transfer to that other body, authority or other person or, as the case may be, to such body, authority or other person as they think fit of such of the original’s property, rights and liabilities as are specified in or otherwise identified by the order.
- (6) Subsection (5) above has effect in relation to property, rights and liabilities specified in or identified by an order made under it despite any provision (of whatever nature) which would otherwise prevent or restrict its operation or that of the order; and any provision which would penalise that operation is disapplied.
- (7) In this section, the “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981 ([S.I. 1981/1794](#)) (or any regulations replacing those regulations) as from time to time amended.