

2007 No. 2139

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

PUBLIC PASSENGER TRANSPORT

**The Scotland Act 1998 (Cross-Border Public Authorities)
(Traffic Commissioner for the Scottish Traffic Area) Order 2007**

Made - - - - - *25th July 2007*

Laid before Parliament *1st August 2007*

Laid before the Scottish Parliament *1st August 2007*

Coming into force *1st October 2007*

At the Court at Buckingham Palace, the 25th day of July 2007

Present,

The Queen's Most Excellent Majesty in Council

The Traffic Commissioner for the Scottish Traffic Area has been specified as a cross-border public authority by the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999(a).

In accordance with section 89(3) of the Scotland Act 1998, following consultation with the Traffic Commissioner for the Scottish Traffic Area, a recommendation has been made to Her Majesty in Council to make this Order.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by sections 89, 113(3) and (4) and 124(2) of the Scotland Act 1998(b), is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the Scotland Act 1998 (Cross-Border Public Authorities) (Traffic Commissioner for the Scottish Traffic Area) Order 2007 and shall come into force on 1st October 2007.

(2) This Order does not extend to Northern Ireland.

(a) S.I. 1999/1319, to which there are amendments not relevant to this Order.

(b) 1998 c.46.

Transfer of functions to the Scottish Ministers

2. The functions which are conferred on a Minister of the Crown by the enactments specified in column 1 of the Schedule shall—

- (a) so far as exercisable by that Minister in relation to the Traffic Commissioner for the Scottish Traffic Area; and
- (b) subject to any restriction in the corresponding entry in column 2 of the Schedule,

be exercisable by the Scottish Ministers instead of by the Minister of the Crown.

General modification of enactments

3. Sections 117 and 118 (general modification of enactments) of the Scotland Act 1998 shall apply in relation to the exercise of functions by the Scottish Ministers by virtue of article 2 of this Order as they apply in relation to the exercise of functions by the Scottish Ministers within devolved competence.

Transitional and saving provisions

4.—(1) The transfer, by virtue of this Order, of any function exercisable by a Minister of the Crown to the Scottish Ministers shall not affect the validity of anything done (or having effect as if done) by or in relation to a Minister of the Crown, for the purposes of or in connection with any such function, before the date on which the transfer takes effect.

(2) Anything (including legal proceedings) which, at the time when that transfer takes effect, is in the process of being done by or in relation to a Minister of the Crown may, so far as it relates to any function transferred, be continued by or in relation to the Scottish Ministers.

(3) Anything done (or having effect as if done) by or in relation to a Minister of the Crown for the purposes of or in connection with any function transferred to the Scottish Ministers by virtue of this Order shall, if in force at the time when that transfer takes effect, have effect as if done by or in relation to the Scottish Ministers in so far as that is required for continuing its effect after that time.

Judith Simpson
Clerk of the Privy Council

SCHEDULE

Article 2

ENACTMENTS CONFERRING FUNCTIONS TRANSFERRED TO THE SCOTTISH MINISTERS

<i>Column 1</i>	<i>Column 2</i>
<i>Enactments</i>	<i>Restrictions</i>
The Public Passenger Vehicles Act 1981 (c.14), sections 60(a) (general power to make regulations for purposes of Act) and 61(b) (exercise of regulation making powers and parliamentary control thereof), as applied by sections 134 (regulations, rules and orders) and 135(c) (procedure for making regulations, rules and orders) of the Transport Act 1985 (c.67).	Only so far as the functions are exercisable in relation to those functions under sections 6(d), 7(e) and 9 of the Transport Act 1985 which are exercisable by the Scottish Ministers by virtue of this Order.
The Transport Act 1985 (c.67)– (a) section 6(9) (registration of local services);	Only so as to allow provision to be made in regulations as set out in paragraphs (g), (i) and (j) of section 6(9) of the Transport Act 1985.
(b) section 7(6)(d), (9) and (11) (application of traffic regulation conditions to local services subject to registration under section 6); and	-
(c) section 9 (appeals against traffic regulation conditions).	-

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- (a) Section 60 was amended by the Transport Act 1985 (c.67), section 134(2), Schedule 2, Part II, paragraph 4(18), Schedule 7, paragraph 21(9) and Schedule 8, the Transport and Works Act 1992 (c.42), section 61(5) and (6) and the Deregulation and Contracting Out Act 1994 (c.40), section 66(5).
- (b) Section 61 was amended by the Transport Act 1985, Schedule 8.
- (c) Section 135 was amended by the Statute Law (Repeals) Act 2004 (c.14), Schedule 1, Part 14.
- (d) Section 6 was amended by the Transport Act 2000 (c.38), Schedule 27, paragraph 14, the Transport (Scotland) Act 2001 (asp 2), sections 45 and 46 and schedule 2, paragraph 4(2) and the Railways Act 2005 (c.14), Schedule 12, paragraph 8.
- (e) Section 7 was amended by the New Roads and Streetworks Act 1991 (c.22), Schedule 8, paragraph 117(2), the Transport (Scotland) Act 2001, section 42 and S.I. 1996/974.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in relation to the Traffic Commissioner for the Scottish Traffic Area who was specified as a cross-border public authority by the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999 (S.I. 1999/1319).

Article 2 provides that the functions conferred on a Minister of the Crown by the enactments specified in the Schedule to this Order shall, so far as exercisable in relation to the Traffic Commissioner for the Scottish Traffic Area, be exercisable by the Scottish Ministers instead of by a Minister of the Crown, subject, in certain cases, to specified restrictions.

The functions specified in the Schedule are functions which are specifically exercisable in relation to the Traffic Commissioner for the Scottish Traffic Area by the Secretary of State and which, as a result of the operation of section 88(1) of the Scotland Act 1998, have not transferred to the Scottish Ministers at devolution by virtue of section 53 of the Scotland Act.

In relation to the Public Passenger Vehicles Act 1981, this Order transfers the regulation making functions of the Secretary of State under sections 60 and 61 (which are applied, with modifications, to regulations made under Part I and Part II of the Transport Act 1985 by sections 134 and 135 of that Act), insofar as they are exercisable in relation to the Traffic Commissioner for the Scottish Traffic Area, and subject to the restriction specified in Column 2 of the Schedule. This restriction means that sections 60 and 61 are transferred only insofar as they are exercisable in relation to those functions under sections 6, 7 and 9 of the Transport Act 1985 transferred by this Order.

In relation to the Transport Act 1985 this Order transfers—

- (a) the regulation making functions of the Secretary of State under section 6(9) in relation to the registration of local services (but only so as to allow provision to be made in regulations as set out in paragraphs (g), (i) and (j) of section 6(9));
- (b) the function of the Secretary of State under section 7(6)(d) to prescribe matters which can be regulated by traffic regulation conditions (which may be determined by a traffic commissioner under section 7(1));
- (c) the function of the Secretary of State under section 7(9) and (11) to prescribe periods within which requests may be made to a traffic commissioner for an inquiry into traffic regulation conditions; and
- (d) the functions of the Secretary of State in relation to appeals against traffic regulation conditions under section 9,

insofar as they are exercisable in relation to the Traffic Commissioner for the Scottish Traffic Area.

Article 3 ensures that any references to the Secretary of State and powers to make legislation are glossed appropriately to reflect the transfer of functions to the Scottish Ministers.

Article 4 makes transitional and saving provisions as regards the previous exercise of functions by a Minister of the Crown prior to their devolution to the Scottish Ministers.

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