

EXPLANATORY MEMORANDUM TO
THE SCOTLAND ACT 1998 (CROSS-BORDER PUBLIC AUTHORITIES) (TRAFFIC
COMMISSIONER FOR THE SCOTTISH TRAFFIC AREA) ORDER 2007

2007 No. 2139

- 1.** This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.1 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This Order in Council makes provisions concerning the Traffic Commissioner for the Scottish Traffic Area (“the Traffic Commissioner”), a cross-border public authority. It does so using the powers available at section 89 of the Scotland Act 1998 (“the 1998 Act”). This Order allows for the Scottish Ministers to make regulations under the Transport Act 1985 (“1985 Act”) which relate to the Traffic Commissioner and to exercise powers in relation to appeals relating to traffic regulation conditions determined by the Traffic Commissioner under the 1985 Act.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Order is made in exercise of the powers conferred in section 89 of the 1998 Act. The Instrument is, by virtue of section 115 and Schedule 7 to the Scotland Act, subject to Type F procedure and is subject to negative procedure in both Houses of the UK Parliament and the Scottish Parliament because it does not amend primary legislation.

3.2 Section 89 of the Scotland Act 1998 confers a power for Her Majesty to make such provision in relation to a cross-border public authority as is considered necessary or expedient in consequence of that Act. Such an Order allows arrangements to be made to allocate accountability and control in relation to a particular cross-border public authorities between the UK Government and the Scottish Ministers, and between the UK and Scottish Parliaments.

4. Legislative Background

4.1 This Order will allow the Scottish Ministers to make regulations which relate to the Traffic Commissioner and to deal with appeals relating to traffic regulation conditions determined by the Traffic Commissioner.

4.2 Specifically, the Order will allow the Scottish Ministers to make regulations under the 1985 Act. The subject matters of that Act and the Public Passenger Vehicles Act 1981 (“the 1981 Act”) are only reserved under section E1 of Part 2 of Schedule 5 to the Scotland Act 1998 so far as they relate to public service vehicle operator licensing. Otherwise, section 53 of the 1998 Act transferred executive powers to the Scottish Ministers insofar as those powers were exercisable within devolved competence. However, the operation of section 88 of the 1998 Act meant that

functions specifically exercisable in relation to a cross-border public authority were not transferred automatically under section 53. The Traffic Commissioner for the Scottish Traffic Area is specified (under SI 1999/1319) as a cross-border public authority for the purposes of the Scotland Act. The result was that generally all the functions under the 1981 and 1985 Acts which did not relate to public service vehicle operator licensing and did not relate to the Traffic Commissioner were transferred to the Scottish Ministers by section 53 at the time of devolution. The functions which were specifically exercisable in relation to the Traffic Commissioner remained with the Secretary of State, even where they related to a devolved subject matter.

4.3 The functions which are to be transferred by this order are sections 60 and 61 of the 1981 Act (as applied by sections 134 and 135 of the 1985 Act and only insofar as they are exercisable in relation to the functions under sections 6, 7 and 9 of that Act exercisable by the Scottish Ministers by virtue of this Order) and section 6(9) (but only to allow provision to be made in regulations as set out in paragraphs (g),(i) and (j) of that subsection), section 7(6)(d), (9) and (11) and section 9 of the 1985 Act. These functions do not relate to public service vehicle operator licensing so they fall within a subject area which is generally within devolved competence but they are exercisable in relation to the Traffic Commissioner so remained with the Secretary of State as a result of the operation of S88.

5. Extent

5.1 This instrument extends to the whole of the United Kingdom with the exception of Northern Ireland..

6. European Convention on Human Rights

6.1 The Minister of State at the Scotland Office has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the The Scotland Act 1998 (Cross-Border Public Authorities) (Traffic Commissioner for the Scottish Traffic Area) Order 2007 are compatible with the Convention rights”

7. Policy background

7.1 The Order will transfer to the Scottish Ministers regulation making functions under section 6(9) of the 1985 Act but only so as to allow provision to be made as set out in paragraphs (g), (i) and (j) of that section. This will allow the Scottish Ministers to make provisions that will enable the Traffic Commissioner to require public service vehicle operators to keep records relating to the operation of local bus services and also to require that those records be made available to the Traffic Commissioner. This will also enable the Scottish Ministers to make regulations in relation to any documents issued by the Traffic Commissioner.

7.2 This Order transfers powers to prescribe certain matters under section 7 of the 1985 Act which deals with the application of traffic regulation conditions (“TRCs”). A traffic authority may ask the Traffic Commissioner for a traffic area to exercise his powers under section 7 of the 1985 Act in relation to a particular problem. The Traffic Commissioner may then determine TRCs which must be met by bus operators in the provision of local registered bus services in the area to which the conditions are

expected to apply. TRCs may be introduced in order to prevent danger to road users, reduce severe traffic congestion or reduce or limit noise or air pollution. For instance this Order will transfer functions under section 7(6)(d) to the Scottish Ministers which will allow them to make regulations which will enable the Traffic Commissioner for the Scottish Traffic Area to introduce TRCs to control bus emissions. Similar regulations were introduced in England and Wales in 2004 (S.I. 2004/2682). The transfer of functions will allow the Scottish Ministers to make regulations in order help to address poor air quality in urban areas. More generally, the Order is necessary to complete the process of transferring to the Scottish Ministers those TRC related functions which are specifically exercisable in relation to the Traffic Commissioner.

7.3 The Order transfers to the Scottish Ministers the functions specified under Section 9 of the 1985 Act. This will allow operators who are subject to TRCs made by the Traffic Commissioner to appeal about a TRC to the Scottish Ministers. The Scottish Ministers will also be able to prescribe the procedures for handling such appeals.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it only transfers existing functions from the Secretary of State to the Scottish Ministers and therefore has no direct impact on business, charities or voluntary bodies.

9. Contact

9.1 Adam Pile at the Scotland Office (e-mail: adam.pile@scotland.gsi.gov.uk) can answer any queries regarding the instrument.

Scotland Office
July 2007