

2006 No. 250

TRANSPORT

The Public Transport Users' Committee for Scotland Order 2006

Made - - - - - *10th May 2006*

Laid before the Scottish Parliament *11th May 2006*

Coming into force in accordance with article 1

The Scottish Ministers, in exercise of the powers conferred by sections 41(1) and (2), 42(3) and 52(4) of the Transport (Scotland) Act 2005(a) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Public Transport Users' Committee for Scotland Order 2006 and except as provided in paragraph (2), shall come into force on 1st January 2007.

(2) Article 4 shall come into force on the date of establishment of the sub-committee in terms of article 10.

Interpretation

2. In this Order—

“relevant complaint” means any written complaint made by or on behalf of any individual to an operator of bus services which relates to the operation of any bus service operated by such an operator;

“bus operator” means the operator of a bus service; and

“bus service” means—

- (a) a local bus service; or
- (b) a service which—
 - (i) uses one or more public service vehicles for the carriage of passengers by road at separate fares;
 - (ii) operates between places at least one of which is in Scotland; and
 - (iii) is not a local service.

Establishment of Public Transport Users' Committee for Scotland

3. There is established from the date of coming into force of this Order a body corporate to be known as the Public Transport Users' Committee for Scotland.

(a) 2005 asp 12.

Further functions of the Committee

4. There is conferred on the Committee the functions of determining any written complaint made by or on behalf of any individual—

- (a) about the manner in which a relevant complaint has been dealt with; or
- (b) appealing against a decision made on a relevant complaint.

Status

5.—(1) The Committee shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) The property of the Committee is not to be regarded as property of or property held on behalf of the Crown.

Constitution and membership of the Committee

6.—(1) The Committee is to consist of—

- (a) a convener; and
- (b) eleven other members,

appointed by the Scottish Ministers

(2) Any person appointed to be the convener or other member of the Committee—

- (a) shall be appointed for such period as is specified in that person's instrument of appointment;
- (b) may, by notice in writing to the Scottish Ministers, resign as a member;
- (c) shall in other respects hold and vacate office in accordance with the terms of that person's appointment; and
- (d) shall, on ceasing to hold office, be eligible for re-appointment.

(3) The Scottish Ministers may remove a member from office if they are satisfied that the member—

- (a) without reasonable excuse, has not complied with the terms of the appointment;
- (b) is otherwise unable or unfit to discharge the functions of member or is unsuitable to continue as a member.

Allowances and expenses for members

7. There shall be paid to the convener and other members of the Committee such allowances and expenses as the Scottish Ministers may determine.

Staff

8.—(1) The Committee may, with the approval of the Scottish Ministers, appoint such employees as it considers are required on such terms and conditions as it may with such approval determine.

(2) The Committee is to—

- (a) pay such remuneration and expenses to its employees;
- (b) pay such pensions, allowances and gratuities to or in respect of its former employees;
- (c) make such payment towards provision of such pensions, allowances or gratuities; and
- (d) provide and maintain such schemes (whether contributory or not) for the payment of such pensions, allowances and gratuities,

as it may, with the approval of the Scottish Ministers, determine.

(3) References in paragraph (2) to pensions, allowances or gratuities include their provision by way of compensation for loss of office or employment.

Proceedings

9.—(1) The Committee may regulate its own procedure (including making provision in relation to the quorum for its meetings).

(2) The validity of any proceedings of the Committee is not affected by—

- (a) any defect in the appointment of any member of the Committee; and
- (b) any vacancy in the membership of the Committee.

Bus user complaints

10.—(1) As soon as practicable after the date of coming into force of this Order, the Committee shall establish a sub-committee to discharge the function as specified in article 4(a) in accordance with Schedule 1.

(2) The Committee shall discharge the function as specified in article 4(b) in accordance with Schedule 1.

Sub-committees

11.—(1) The Committee may—

- (a) establish such other sub-committees as it may from time to time consider necessary or desirable;
- (b) refer to any such sub-committee such matter as it may from time to time specify;
- (c) delegate any of its functions to any such sub-committee; and
- (d) regulate the procedure of any such sub-committee.

(2) The Committee may appoint persons who are not members of it to be members of any sub-committee established by it (provided that no such sub-committee shall consist entirely of persons who are not members of the Committee) and shall pay to a person so appointed such allowances and expenses as the Committee may, with the approval of Scottish Ministers, determine.

Reports

12.—(1) As soon as practicable after the end of each relevant period, the Committee shall submit to the Scottish Ministers a report on the exercise and performance of its functions during that year.

(2) In paragraph (1), “relevant period” means—

- (a) the period beginning with 1st January 2007 and ending with 31st March 2008; and
- (b) thereafter each period of 12 months ending with 31st March.

(3) The Scottish Ministers shall, as soon as possible following the submission of the report to them, lay before the Scottish Parliament a copy of the report submitted under paragraph (1).

TAVISH SCOTT
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
10th May 2006

SCHEDULE 1

Article 10

Bus user complaints

Interpretation

1. In this Schedule “the Sub-Committee” means the sub-committee to be established under article 10(1).

Making a complaint

- 2.—(1) A written complaint shall be made by a notice of complaint sent to the Sub-Committee.
- (2) A notice of complaint—
- (a) shall be sent to the Sub-Committee within 28 days of the date on which the complainant has been advised that the bus operator has determined the relevant complaint;
 - (b) shall state the full name and address of the complainant;
 - (c) may specify some other address as being the address to which documents may be sent in connection with the complaint;
 - (d) shall specify the date on which the relevant complaint was made and the nature of any determination made by the bus operator on that complaint; and
 - (e) may include any representations which the complainant wishes to make.
- (3) The notice of complaint shall be signed by the complainant or an authorised representative.

Action upon receipt of notice of complaint

- 3.—(1) Upon receiving a notice of complaint in accordance with paragraph 2, the Sub-Committee shall—
- (a) send an acknowledgement of receipt to the complainant;
 - (b) enter particulars of the complaint in a register maintained by the Sub-Committee for that purpose; and
 - (c) send a copy of the notice of complaint to the bus operator.
- (2) Upon receiving a copy of the notice of complaint in accordance with sub-paragraph (1)(c), the bus operator shall within 21 days send to the Sub-Committee a copy of—
- (a) the original representations contained in the relevant complaint;
 - (b) its response to those representations; and
 - (c) its response to the notice of complaint.

Further representation

- 4.—(1) The Sub-Committee may invite a party to send to the Sub-Committee representations dealing with any matter relating to the complaint within such time and in such a manner as may be specified by the Sub-Committee.
- (2) Any representations sent under this paragraph shall be signed by the party concerned or an authorised representative.
- (3) Where the complainant sends representations to the Sub-Committee under this paragraph the Sub-Committee shall send a copy of the representations to the bus operator.
- (4) Where the bus operator sends representations to the Sub-Committee under this paragraph, it shall at the same time send a copy of those representations to the complainant.

Determining the complaint

5.—(1) The Sub-Committee shall consider the notice of complaint and any additional representations submitted under paragraph 4(1) by the complainant and any representations and response submitted by the bus operator under paragraphs 3(2) and 4(1) and shall, subject to sub-paragraph (2), determine the complaint.

(2) Where, following consideration under sub-paragraph (1), the Sub-Committee is unable to determine the complaint without further information it may adjourn its consideration to a future date to be specified and request further information from the complainant, bus operator or any other person whom it believes to be in possession of the information so required.

(3) The Sub-Committee shall advise the complainant and bus operator of an adjournment under sub-paragraph (2).

(4) The determination when given shall be entered forthwith in the register maintained under paragraph 3(1)(b) with a statement of the reasons for the decision and the Sub-Committee shall send a copy of that entry to the complainant and bus operator.

Appeal from Sub-Committee's determination

6.—(1) The Committee shall have power to consider, on the application of a party, an appeal against a determination issued under paragraph 5(1) to dismiss or allow a complaint or any decision as to compensation on the grounds in each case that—

- (a) the decision was wrongly made as the result of an error;
- (b) where the decision was made after the complaint has been disposed of under paragraph 5, new evidence has become available since the disposal the existence of which could not have been reasonably known of or foreseen; or
- (c) the interests of justice require such an appeal.

(2) An appeal under this paragraph shall be made to the Committee within 14 days after the date on which a copy of the entry of the decision was sent to the complainant and bus operator under paragraph 5(4) and must state in full the grounds of appeal.

(3) The parties shall have the opportunity to submit written representations on any application for appeal under this paragraph and if, having considered the determination and any written representations, the Committee directs that the appeal is to be upheld the Committee shall issue a substitute determination.

Compensation

7. The Sub-Committee or the Committee (in the case of an appeal under paragraph 6) may, on making a determination, require the bus operator to make payment to the complainant of such compensation for actual loss incurred as is reasonable in the circumstances.

Miscellaneous powers of the Sub-Committee

8.—(1) The Sub-Committee may, if it thinks fit—

- (a) extend the time appointed by or under this Schedule for doing any act notwithstanding that the time appointed may have expired;
- (b) if the complainant at any time gives notice of the withdrawal of the complaint, dismiss the proceedings;
- (c) if the bus operator consents to the complaint being allowed, allow the complaint;
- (d) if the complaint is allowed under paragraph (c), make a determination allowing the complaint and may award compensation in accordance with paragraph 7.

Sending of documents

9.—(1) This paragraph has effect in relation to any notice or other document required or authorised by this Schedule to be sent to a party, to the Sub-Committee or Committee or to any other person.

(2) Subject to sub-paragraph (3), any such document shall be regarded as having been sent to the person concerned if it is—

- (a) delivered personally;
- (b) left at the person's proper address;
- (c) sent to that address by post or through a document exchange; or
- (d) transmitted by FAX or other means of electronic data transmission in accordance with sub-paragraphs (3), (4) and (5).

(3) A document may be transmitted to the person concerned by FAX where that person has indicated in writing that the document will be considered to have been duly sent if it is transmitted to a specified FAX number and the document is transmitted to that number.

(4) In the case of the bus operator, an indication under sub-paragraph (3) can be expressed to apply to any appeal to which it is a respondent.

(5) Sub-paragraphs (3) and (4) shall apply with the appropriate modification to a transmission of electronic data other than by FAX as it applies to a transmission by FAX.

(6) Where the proper address includes a numbered box number at a document exchange, a document may be sent by leaving the document addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that exchange; and any document which is left at a document exchange in accordance with this sub-paragraph shall, unless the contrary is proved, be deemed to have been delivered on the second business day following the day on which it is left.

(7) For the purposes of this Schedule and of paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999(a) in its application to this regulation—

- (a) the proper address of the complainant is the address specified in the notice of complaint pursuant to paragraph 2(2)(b) or (if no such address is so specified) the address stated pursuant to paragraph 2(2)(c); and
- (b) the proper address of the bus operator in proceedings in which it is the respondent is such address as the bus operator from time to time specifies in a notice sent to the Sub-Committee as being the proper address in all such proceedings.

(8) If no address has been specified or stated, the proper address for the purposes of this Schedule and paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 shall be the person's usual or last known address.

(9) A complainant may at any time by notice in writing (which, for the purposes of this paragraph shall include communication in electronic form) to the Sub-Committee change the proper address for the purposes of this Schedule and paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999.

(10) A party may, by notice in writing sent to the Sub-Committee, vary or revoke any indication given by that party under sub-paragraph (3).

(a) S.I. 1999/1379.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes the Public Transport Users' Committee for Scotland.

Article 6 sets out the membership of the Committee and article 7 enables the members to be paid such allowances and expenses as are determined by Scottish Ministers.

Article 8 enables the Committee, with the consent of Scottish Ministers to appoint staff.

Article 10 ensures that the Committee sets up a sub-committee to provide for the determination of written complaints in connection with the operation of bus services. Schedule 1 sets out the procedures for making and receiving complaints from any individuals, makes provision for the sub-committee to determine the complaint, for the sub-committee to award reasonable compensation for actual loss incurred and makes it clear that an appeal against the sub-committee's determination lies with the Committee.

Article 11 enables the Committee to establish such other sub-committees as it thinks fit.

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