

EXPLANATORY MEMORANDUM TO
THE LOCAL TRANSPORT ACT 2008 (TRAFFIC COMMISSIONERS)
(CONSEQUENTIAL AMENDMENTS) ORDER 2013

2013 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Great Britain is divided into eight traffic areas, each of which is presided over by a Traffic Commissioner, for the purposes of the licensing and general regulation of operators of public service vehicles (buses and coaches) and ‘heavy’ goods vehicles. When fully implemented, Part I of the Local Transport Act 2008 (“the 2008 Act”) will effectively place all Traffic Commissioners in a ‘pool’, thereby severing their connections with specific traffic areas, and provide for the appointment of a Senior Traffic Commissioner with the power to deploy Traffic Commissioners and issue them with guidance as to the exercise of their functions. This instrument makes the consequential amendments to both primary and secondary legislation that are necessary to enable the Senior Traffic Commissioner to introduce improved administrative arrangements into the regulatory regime

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

3.1 None.

4. Legislative Context

4.1 The Public Passenger Vehicles Act 1981 (“the 1981 Act”) created traffic areas and provided for each area to have a Traffic Commissioner. The 1981 Act deals with public service vehicle operator licensing and regulation. The Goods Vehicles (Licensing of Operators) Act 1995 deals with goods vehicle operator licensing and regulation.

4.2 Prior to the 2008 Act, there was an informal Senior Traffic Commissioner appointed for administrative reasons. To both strengthen that role and put it on a more formal footing, the 2008 Act provided for the formal appointment of a Senior Traffic Commissioner on a statutory basis, with new powers including being able to deploy Traffic Commissioners. The first statutory Senior Traffic Commissioner was appointed in March 2009.

4.3 New section 4D of the 1981 Act empowered the Secretary of State to issue guidance to the new Senior Traffic Commissioner about the exercise of any of the Traffic Commissioners’ functions, to which the Senior Traffic Commissioner must “have regard”. The first version of the Secretary of State’s guidance was published in November 2009.

4.4 The 2008 Act also gave powers to the Senior Traffic Commissioner to:

- Issue statutory directions to the other Traffic Commissioners on administrative matters, such as the procedures to be followed when applying for an operator's licence.
- Issue statutory guidance to the other Traffic Commissioners on regulatory matters such as how legislation should be interpreted.

4.5 The current statutory Senior Traffic Commissioner, who replaced the first statutory Senior Traffic Commissioner in June 2012, has already issued guidance and directions that cover most of the current system over the past year, so the Senior Traffic Commissioner is now in a position to consider how the work of Traffic Commissioners could most effectively be resourced. Therefore, it is now appropriate to implement the remaining provisions in Part 1 of the 2008 Act. This will then allow the Senior Traffic Commissioner to issue statutory guidance and directions on the deployment of Traffic Commissioners, whilst of course respecting individual Traffic Commissioner's terms and conditions.

4.6 When the statutory ties between Traffic Commissioners and their respective traffic areas have been severed, the Senior Traffic Commissioner will be able to use the full range of powers provided for in the 2008 Act. We anticipate changes that the Senior Traffic Commissioner may decide to make using all these powers will deliver economic benefits and benefits in terms of consistency of decision making on a particular matter.

4.7 Although this Instrument makes extensive changes to legislation, there are underlying common principles. For example references to 'the Traffic Commissioner' meaning "the Traffic Commissioner for a particular traffic area" have been changed to simply 'a Traffic Commissioner' meaning whichever Traffic Commissioner the Senior Traffic Commissioner has directed to undertake a particular function. The changes, which are all very similar in nature, do little more than introduce the necessary degree of flexibility to enable the functions of Traffic Commissioners to be fulfilled in the most efficient and effective way.

4.8 Traffic Commissioners will not form part of a central 'pool' based in a single location as this would neither be economic nor practical due to the need for Traffic Commissioners to undertake a number of their functions at a more local level. This is particularly true when Traffic Commissioners undertake their core regulatory function of holding public inquiries.

4.9 Traffic Commissioners hold hundreds of public inquiries every year that are attended by operators and those with a local interest. If Traffic Commissioners were based in just one location in Great Britain, there would be a significant additional cost and time burden on all operators except those fortunate to be located near the single remaining location. However this Order will still allow for far greater flexibility as to how Traffic Commissioners fulfil their functions as many of their functions are not dependent on where their offices are located. It will also allow for more Traffic Commissioners to be appointed, which will deliver efficiency benefits as referred to in paragraph 7.2 below.

4.10 There will continue to be a dedicated Traffic Commissioner for Scotland, known as the Scottish Traffic Commissioner. That Commissioner will be able to deal with those functions that arise under devolved legislation, but to contribute to the greater flexibility of the Traffic Commissioner resource, the Scottish Traffic Commissioner will be able to

consider reserved matters in relation to England and Wales as well. The other Traffic Commissioners will also be able to support the Scottish Traffic Commissioner by being able to undertake reserved matters in Scotland.

4.11 To ensure greater accountability of Traffic Commissioners, the 2008 Act also amends current provisions to clarify the circumstances in which existing and future Traffic Commissioners, who are systematically underperforming, can be dismissed. The accompanying Commencement Order to this Order brings into force that amendment.

5. Territorial Extent and Application

5.1 Subject to devolution limitations in relation to Scotland, articles 2 and 3 and Schedules 1 and 2 extend to Great Britain. Articles 4 to 6 and Schedules 3 to 6 extend to England and Wales only but article 5 and Schedule 5 apply to England only while article 6 and Schedule 6 apply to Wales only.

6. European Convention on Human Rights

6.1 Stephen Hammond MP, Parliamentary Under Secretary of State for Transport, has made the following statement regarding Human Rights:

6.2 “In my view the provisions of the Local Transport Act 2008 (Traffic Commissioners) (Consequential Amendments) Order 2013 are compatible with the Convention rights.”

7. Policy background

- *What is being done and why*

7.1 The main purpose of the 2008 Act was to empower local authorities to take appropriate steps to meet local transport needs in the light of local circumstances. The purpose of including administrative provisions in the 2008 Act relating to Traffic Commissioners reflects the strengthened regulatory role the 2008 Act offered to Traffic Commissioners, particularly on bus punctuality.

7.2 Given the wider range of regulatory responsibilities Traffic Commissioners would have as a result of the 2008 Act, it was imperative that the Traffic Commissioner system would not continue to be unnecessarily restricted by regulation as to where, and on what matters, a Traffic Commissioner could be deployed. By removing the regulatory barrier on the deployment of Traffic Commissioners, it would also allow a greater number of Traffic Commissioners to be appointed over time and a reduced cost to the regime through less use of part time Deputy Commissioners who are paid on a more expensive basis.

7.3 The provisions were also in response to concerns raised by the industry about different standards or processes being applied by different Traffic Commissioners in different parts of the country. There was also a widely-held view that further steps were needed to ensure that the Traffic Commissioner system is equipped to deliver the strengthened role that the provisions in the 2008 Act provide.

7.4 At present, under section 4 of the 1981 Act, a Traffic Commissioner is appointed to a single traffic area and may only exercise his or her statutory powers in that area – unless appointed as a deputy in another traffic area.

7.5 However, section 2 of the 2008 Act abolishes the legislative requirement that, for England and Wales, a single Traffic Commissioner must be appointed to each traffic area. This will create a ‘pool’ of commissioners able to act in any traffic area in England and Wales, and thus allow for a far more flexible system that should deliver cost savings compared to leaving the current system unchanged.

7.6 For devolution reasons there will remain a single statutory Traffic Commissioner for Scotland. However, that person will have power to exercise all the commissioners’ statutory powers on reserved matters in England and Wales. Equally, the same freedoms will also apply to Deputy Traffic Commissioners.

7.7 The Department does not consider that the changes made by the 2008 Act impact on the independence of Traffic Commissioners. The Secretary of State for Transport’s guidance to the Senior Traffic Commissioner, published in November 2009 is clear that where the Senior Traffic Commissioner develops approaches to ‘pooling’ of Traffic Commissioners that impact or may impact on any Traffic Commissioner’s or Deputy Traffic Commissioner’s individual terms and conditions of appointment, the Secretary of State expects the Senior Traffic Commissioner to raise those issues early with all concerned and to obtain prior approval from the Secretary of State. This is because the Senior Traffic Commissioner does not have the power to alter the individual terms and conditions of appointment for Traffic Commissioners or Deputy Traffic Commissioners, which remain matters for agreement between the Secretary of State and individual office holders.

7.9 It will be for the Senior Traffic Commissioner to determine, through Directions and Guidance, and subject to consultation as set out in Part 4 of the 1981 Act (as amended by the 2008 Act), how Traffic Commissioners would be most appropriately deployed across Great Britain.

- ***Consolidation***

7.10 This Order makes a great many amendments to numerous pieces of primary and secondary legislation, some of which do not fall within the Department’s general responsibility. The Department will nevertheless continue to be mindful of the need for consolidation in appropriate cases.

8. Consultation outcome

8.1 The Local Transport Bill was formally consulted on during 2007, with a specific consultation conducted entitled ‘Modernising the Traffic Commissioner System’. The latter contained two options for change to the Traffic Commissioner system. Option one was to make minor changes to the current system with the Senior Traffic Commissioner given a statutory role to be able to issue directions and guidance to Traffic Commissioners. The second option was to create a Board of Traffic Commissioners that would, in summary, manage and monitor the Traffic Commissioner system and its’ workload. Another suggestion was that Traffic Commissioners be placed on fixed term contracts.

- 8.2 140 organisations were consulted and 29 responded. There was support for the strengthening of the role of the Senior Traffic Commissioner and Traffic Commissioners rather than any more radical reform. There was also support for maximising the effectiveness of the Traffic Commissioner system whilst preserving its' regional nature, particularly to ensure matters arising under devolved legislation would continue to be dealt with in the same way.
- 8.3 The Department responded to the consultation by dropping the more radical plans (Option 2), but allowing some further changes to the current system to ensure Traffic Commissioners were able to respond to their strengthened role under the 2008 Act. Those further changes were to remove the association between a specific Traffic Commissioner and a traffic area (whilst respecting devolution by maintaining a Scottish Traffic Commissioner), and revising the statutory means by which a Traffic Commissioner could be removed from office. No specific further consultation has been undertaken on this Order as this only makes consequential amendments.
- 8.4 So, in summary, the provisions in the 2008 Act:
- provide a means for Traffic Commissioners who have an increased number of regulatory functions as a result of the 2008 Act to perform in a more economic way; and
 - address perceived flaws in the current system around inconsistency in Traffic Commissioner (including Deputy Traffic Commissioner) decision-making.
- 8.5 In line with the requirement under Paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007, the Administrative Justice and Tribunals Council has been consulted. The Council was content with the Order as drafted.

9. Guidance

9.1 It is the Senior Traffic Commissioner's responsibility to develop, and consult on, statutory directions and guidance that contain any proposals for deploying Traffic Commissioners. The consultation would include explanatory guidance on the aims and objectives of the statutory directions and guidance.

10 Impact

10.1 An Impact Assessment has been prepared for this instrument.

10.2 The impact on the public sector is negligible.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring and review

12.1 As this instrument makes considerable changes to legislation, those changes will not be the subject of review. However as part of changes to the Traffic Commissioner

system under the 2008 Act, the Secretary of State has the power to issue, and indeed has issued, guidance to the Senior Traffic Commissioner. Depending on what actions the Senior Traffic Commissioner takes subsequent to the 2008 Act being implemented in full, the Secretary of State has the power to adjust the guidance in future.

13. Contact

13.1 Matthew Hammond at the Department for Transport Tel: 020 7944 2492 or e-mail: matthew.hammond@dft.gsi.gov.uk can answer any queries regarding the instrument.