

Secretary of State Report on the Sub-national Transport Body (Transport for the North) Regulations 2017

Section 102F of Part 5A of the Local Transport Act (“the 2008 Act”), inserted by section 21 of the Cities and Local Government Devolution Act 2016, sets out the requirements in relation to the power under s102E(1) of the 2008 Act to create Sub-national Transport Bodies (“STBs”), to exercise general functions of a local authority. Section 102T(3) of the 2008 Act, provides that as well as laying a draft of a statutory instrument containing regulations under this Part before Parliament, the Secretary of State must also lay before Parliament a report explaining the effect of the regulations and why the Secretary of State considers it appropriate to make the regulations. The report should be read in conjunction with the Explanatory Memorandum to the Sub-national Transport Body (Transport for the North) Regulations.

This report accompanies the Sub-national Transport Body (Transport for the North) Regulations, which are made subject to Parliament’s approval, under the provisions of the 2008 Act, including section 102T.

1. Description of the Sub-national Transport Body (“STB”)

- 1.1** Transport for the North (“TfN”) was established in 2014 as a partnership of northern authorities and Local Enterprise Partnerships (LEPs) to formalise cooperation on transport issues in the North and is a key part of the Northern Powerhouse (NP) initiative which aims to address issues relating to economic growth and productivity in the North. TfN will comprise 19 Constituent Authorities (6 Combined Authorities, 3 County Councils and 10 Unitary Authorities¹).
- 1.2** The regulations will create TfN as the first STB with transport related powers and functions. The STB will develop and adopt a transport strategy that will be used to advise the Secretary of State for Transport on transport matters for their area. Having a statutory body in the North will enable groups of authorities and LEPs to have an increased level of strategic input into national transport plans and investments in their areas. This will jointly benefit DfT and TfN and speaking as one voice for the North will help TfN to bridge the gap that currently exists between local and national transport planning.
- 1.3** Having considered the proposal received from the TfN partnership in October 2016, The Secretary of State agreed in March 2017 that TfN should be established as a STB. TfN is to have a range of general and local authority transport functions and the regulations include constitutional arrangements.

2. Conferral on TfN of local authority functions: powers

- 2.1** Section 102H(1) of the 2008 Act (general functions) empowers the Secretary of State by regulations to provide for a STB to have any of the following functions in relation to its area:
 - a) prepare a transport strategy for the area;
 - b) provide advice to the Secretary of State;

¹ Blackburn with Darwen BC, Blackpool BC, Cheshire East, City of York, Cumbria CC, North East CA, East Riding of Yorkshire, Greater Manchester CA, Kingston Upon Hull, Lancashire CC, Liverpool City Region CA, North East Lincolnshire BC, North Lincolnshire BC, North Yorkshire CC, Sheffield City Region CA, Tees Valley CA, Warrington BC, West Yorkshire CA.

- c) co-ordinate the carrying out of transport functions in relation to the area that are exercisable by the different constituent authorities;
- d) make proposals to the Secretary of State for the transfer of functions to the STB;
- e) make other proposals to the Secretary of State about the role and functions of the STB.

2.2 Section 102H of the 2008 Act empowers the Secretary of State by regulations to provide for a STB to have other functions set out in the regulations.

2.3 Section 102J(1) (exercise of local transport functions) empowers the Secretary of State by regulations to provide for functions that are exercisable by a local authority in an area that is, or is to become, the area of a STB be exercisable by the STB.

2.4 Section 102(J)(5) provides that the provision for the exercise of the function that may be included in regulations under section 102J(1) may provide for the function to be exercisable by the STB instead of the local authority or concurrently with the local authority.

2.5 Section 102K(1) of the 2008 Act (other public authority functions) empowers the Secretary of State by regulations to provide for functions that are exercisable by a public authority in relation to an area to become the area of a STB to be exercisable by the STB.

2.6 Section 102K(5) provides that the provision for the exercise of the function in section 102K(1) may include provision for the function to be exercisable by the STB instead of by the public authority or jointly with the public authority.

2.7 Section 102S of the 2008 Act (incidental etc. provision) empowers the Secretary of State by regulations to make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, regulations under Part 5A of the 2008 Act or for giving full effect to such regulations. Section 102S(5) of the 2008 Act, provides that regulations under Part 5A include provision amending, modifying, repealing or revoking any enactment, whenever made.

3. Effect of the regulations, considerations informing the Secretary of State's decision.

3.1 In response to a formal request by TfN's constituent authorities, the Secretary of State decided that the role of Transport for the North should be:

- The preparation of a Northern Transport Strategy;
- The provision of advice on the North's priorities, as a statutory partner in the Department's investment processes;
- The coordination of regional transport activities (such as smart ticketing) and co-management of the Transpennine Express and Northern rail franchises through the acquisition of Rail North Ltd.

3.2 TfN's role will be at the forefront of the Northern Powerhouse aims, helping initially to deliver a better performing, more unified economy in the North. It will do this by supporting work to deliver faster and better journeys for people living and working in the North, harnessing the economic potential of the North, estimated to be an extra Gross Value Added of £97 billion and 850,000 jobs by 2050. This will realise significant transport user benefits for the region's

communities and businesses. It will help to generate jobs and growth that will significantly rebalance the UK economy.

3.3 Transport for the North's Role – Transport Strategy

- 3.3.1 The primary role of STBs is to develop a regional transport strategy that identifies and proposes to government the projects that encourage safe, sustainable and efficient services to, from and within the North and support economic growth.
- 3.3.2 The Secretary of State will remain the final decision-maker on national transport strategies but once TfN has been established as a statutory body, the Secretary of State must have regard to TfN's statutory transport strategy when developing the national transport strategies and plans. The constituent authorities must also exercise functions in a way that supports the implementation of TfN's strategy.
- 3.3.3 The TfN partnership has already made substantial progress in developing its statutory transport strategy and will begin the statutory requirement to publish the consultation on the strategy as soon as the regulations establishing TfN as a STB are made.

3.4 Transport for the North's Role – Advising the Secretary of State

- 3.4.1 In creating TfN as the first STB ministers are asserting the need for a strong and permanent partner in the North that understands and can represent the views of that region. TfN will determine the North's objectives in relation to the Department's investment processes and work with the Department to enable northern priorities to be incorporated in its national level prioritisation decisions.
- 3.4.2 This role strikes the right balance between ensuring both national and regional priorities are taken into account and represents a fundamental change, providing STBs with enhanced access to decision-making. This role has been characterised as a 'statutory partner' of the Department.
- 3.4.3 The core feature of this role is formal structures for the provision of advice to the Department and ministers on how priorities are set in TfN's statutory transport strategy. This partnership will ensure that ministers have the best evidence and advice on which to take decisions.
- 3.4.4 This new approach requires the Department to create bespoke governance mechanisms for TfN that can align to the relevant investment processes – Road Investment Strategy for Roads, and High Level Output Specification (HLOS) and Rail Upgrade Plan (RUP) for rail. Being recognised formally inside these processes affords TfN an opportunity to influence central government decision-making and is an important component in ensuring that transport decision making is targeted at delivering the needs of local communities.

3.5 Transport for the North's Role - the Road Investment Strategy (RIS)

- 3.5.1 As a statutory partner, TfN will work closely with DfT as part of the Highways North Board (HNB). The function of this new body is to provide

TfN with a formal setting, alongside DfT and Highways England representatives to discuss and set long term strategic priorities for their region. The HNB can submit conclusions, papers and materials to be shared with the RIS decision making groups but does not itself have a decision-making function. The principles underpinning this new Board and role of TfN in RIS are:

- TfN will be treated differently to other stakeholders having an identified role in RIS with access to information and input into RIS.
- TfN will support decision-making that aligns with their priorities.
- Sensitive information will be carefully managed. The HNB should, with appropriate controls, have access to key documents and the Department will provide internal oversight of sensitive information to ensure it takes account of TfN priorities;
- The Secretary of State will continue to take all decisions relating to national road investment.

3.5.2 TfN will have a formal role in RIS commensurate with their current capability, capacity and funding, equally balancing the benefits of a regional perspective on transport planning and investment with the requirements of maintaining national road networks.

3.6 Transport for the North's Role - the Rail Investment Process

3.6.1 As a statutory partner, TfN will work with the Department to identify and progress the case for investments that could assist with the delivery of their Strategic Transport Plan. The forum for this role will be the existing Rail North Partnership Board (RNPB) on which the Department and TfN will be represented and for which the terms of reference will be expanded to include and facilitate the new statutory partner role.

3.6.2 TfN, through the RNPB will have visibility of, and will be formally consulted at each stage of the Department's decision making process for investments within their area. TfN's views will be reported in any papers submitted to the Department's decision making boards and timely feedback provided to the RNPB. To enable this the Department will provide representatives to the RNPB and where appropriate materials, (subject to confidentiality conditions) to ensure that the group remains actively engaged in the Department investment decision making process.

3.6.3 The RNPB will agree a work programme, milestones, deadlines and resources to ensure that appropriate resources and time are allocated.

3.6.4 TfN's role as a statutory partner will be identified in any published governance for the Department's rail investment decision-making processes.

3.6.5 In accordance with the Partnership Agreement between Rail North Ltd and the Department, TfN can propose that the responsibility for delivering projects or 'clienting' of certain schemes be delegated to RNPB. The implementation of this arrangement will be underpinned by the following principles:

- As part of its ongoing engagement with the Department's rail investment processes, TfN will have the right to set out its own rail investment priorities on behalf of the North, based on its Strategic Transport Plan.

- The RNPB will be the primary vehicle for the statutory partner role interface between the Department and TfN.
- The RNPB has at its disposal the joint management team which includes an investment planning function – a shared resource between the Department and TfN – as well as supporting resources from each partner as set out in the Partnership Agreement.
- The statutory partner role includes three broad phases:
 1. Outcome setting through the HLOS.
 2. Control Period priority setting through the RUP.
 3. Individual scheme Development, Design and Delivery.
- In each phase there will be a number of key decisions and milestones which TfN will have visibility of and be able to interact with.
- The joint Network Rail and DfT North of England Programme Board (NoEPB) will remain the primary governance body for Network Rail's North of England Programme, and TfN will continue to have membership of it to ensure that its objectives, as reflected in the RUP and enhancements portfolio, are being delivered by Network Rail.
- It is recognised that the final decision on each HLOS and RUP remains with the Secretary of State.

3.7 Transport for the North's Role - Regional Coordination

3.7.1 TfN requested a number of local authority powers that it should have the ability to exercise 'concurrently' with local authorities (or Passenger Transport Executives). Those powers are set out below:

Capital Grants

3.7.2 TfN has been granted the power of a local authority to pay capital grants for the provision of facilities for public passenger transport. This will enable TfN to support funding and the delivery of joint projects.

Ticketing schemes

3.7.3 Regulations provide TfN with the same powers as a Local Transport Authority in relation to the making of advanced, joint and through ticketing schemes (smart ticketing).

3.7.4 The Secretary of State has asked TfN to coordinate and deliver a new system of smart and integrated ticketing, and has allocated funding to develop proposals. Up to £150m has been set aside for the introduction of smart ticketing within the North. Providing TfN with these powers will enable them to carry out activities like the procurement of services, goods, equipment and/or infrastructure; entering into contracts to deliver smart ticketing and receive or give payments. This will support TfN as it moves beyond the concept of smart ticketing and into the delivery phase.

Construction of Highways

3.7.5 TfN requested powers to plan, initiate, and deliver a highway development scheme, either unilaterally or bi-laterally/multi-laterally with other relevant highway authorities. Their agreed role will involve promoting regionally significant schemes, across boundaries that otherwise might not be progressed.

Any scheme will be driven by TfN's operating protocols governing the use of concurrent powers. To exercise these powers TfN will need the express permission of the relevant highways authority, agreed in a manner set out in the TfN constitution.

- 3.7.6 These provisions do not give TfN a full highway authority role but they will support and add statutory weight to TfN's regional role. The Secretary of State's vision for TfN and other STBs, is to play a role in future strategic road schemes that fall between the gaps of national and local strategic planning – these powers will support that role.

Franchise Agreements

- 3.7.7 TfN have been granted the powers of a Passenger Transport Executive ("PTE") to be consulted on franchise agreements and to enter into agreements with the Secretary of State or franchisees in relation to such services proposed to operate in the TfN area. The right of consultation is important because it aligns with TfN's role as a strategic partner, able to represent the North as a whole, whilst also ensuring it will be on an equal footing with PTE members.

Power to promote/oppose bills and Transport and Works Act powers

- 3.7.8 TfN has been granted the power of a local authority to promote or oppose local or personal bills under section 239 of the Local Government Act 1972. Under the Transport and Works Act 1992 a body that has power to promote or oppose bills also has the power to apply for an order to carry out works. The Government sees this as an important legislative tool that would enable TfN to promote transport projects. This power is added as an incidental provision in regulation 19(3)(g).

3.8 Finance and funding

- 3.8.1 TfN is currently funded directly by grants from the Secretary of State up to the spending period ending in 2020. That funding settlement was agreed in 2015 and amounts to:
- £50m of up to 2020 core funding (Resource DEL²)
 - £150m: Smart Ticketing (£100m Capital DEL)
 - £60m for Northern Powerhouse Rail
- 3.8.2 Although TfN funding is solely by grants from the Department, TfN's constituent authorities can make contributions towards the costs of TfN. These contributions are voluntary and all decisions on the requirement for contributions and the amount will require unanimous agreement by TfN's constituent members. The size of contributions will be determined by the size of the resident populations, unless it is agreed unanimously to the contrary.
- 3.8.3 The Department recognises the key role that TfN will play in transforming the economy of the North and that long-term central government support for TfN will be needed. The Department has committed to funding the administration of TfN up to 2020 but any future funding decisions will always remain the responsibility of governments at the time.

² Delegated Expenditure Limit

3.9 Incidental

3.9.1 This section of the regulations includes incidental amendments supporting the main regulations. They include areas relating to the operation of TfN as a type of local authority with duties in respect of staffing, pensions, transparency, monitoring and the provision of information about TfN.

3.10 Material considered by the Secretary of State

- TfN Proposal for Statutory Status
- TfN Proposal for Constitutional Arrangements and Powers
- The Northern Powerhouse Independent Economic Review
- DfT and TfN Principles Document