



# Transport (Scotland) Act 2005

## 2005 asp 12

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 29th June 2005 and received Royal Assent on 5th August 2005**

An Act of the Scottish Parliament to provide for the setting up and functions of new transport bodies and to enable the Scottish Ministers to discharge certain transport functions; to provide further for the control and co-ordination of road works and for the enforcement of the duties placed on those who carry them out; to set up national concessionary fares schemes; and to make other, miscellaneous modifications of the law relating to transport.

### PART 1

#### REGIONAL TRANSPORT

#### CHAPTER 1

##### REGIONAL TRANSPORT PARTNERSHIPS

##### *Establishment etc.*

#### **1 Establishment of regional Transport Partnerships**

- (1) The Scottish Ministers shall, by order—
  - (a) divide Scotland into regions for the purposes of this Part of this Act;
  - (b) create, for each region, a body corporate (to be known as the Transport Partnership with the addition of the name given, by or under the order, to the region);
  - (c) provide as to the constitution and membership of each Transport Partnership.
- (2) In carrying out the duty under subsection (1)(c) above, the Scottish Ministers—
  - (a) shall secure that the total number of councillor members of a Transport Partnership is not more than 20;
  - (b) shall secure that the membership of a Transport Partnership includes one or more (but not more than five) councillors appointed by and from—

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- (i) each council the area or any part of the area of which falls within the Transport Partnership's region; or
  - (ii) if that region is coterminous with a council's area, that council,
 (each such member of the Transport Partnership being a "councillor member" and each such council or, as the case may be, that council being, in relation to the Transport Partnership, a or the "constituent council");
- (c) shall secure—
  - (i) that during the period ending with the event specified in subsection (3) below, the other members of the Transport Partnership are appointed to it by the Scottish Ministers; and
  - (ii) that afterwards each such member is appointed by the Partnership but subject to the consent of the Scottish Ministers;
- (d) shall provide as to the duration and termination of membership of members of the Transport Partnership;
- (e) shall provide as to the determination of questions for decision by the Transport Partnership; and for the purposes of any decision which is to be determined by a vote—
  - (i) shall provide that councillor members may vote on all matters and other members only on such matters as the Transport Partnership determines are appropriate (but not on a question arising under section 3(2)(a) below or on whether to make a request for the making of an order under section 10(1) below);
  - (ii) shall, subject to subsection (4) below, provide as to weightings to be applied to the votes cast by councillor members; and may in so doing provide as to different weightings to be applied to the votes cast by different councillor members;
  - (iii) shall secure, whether in providing as to the weighting of votes of councillor members in accordance with sub-paragraph (ii) above or in providing for the number of other members, or in a combination of both, that the minimum voting capacity of all the councillor members of the Partnership is not less than two-thirds of that of its whole membership;
- (f) may provide that certain of the offices of the Transport Partnership may be held only by councillor members;
- (g) may provide that councillor members (but only councillor members) may be represented and vote by proxies at meetings of the Transport Partnership;
- (h) may provide for the delegation by the Transport Partnership of any of its functions to any committee established by the Partnership;
- (i) may provide for the appointment by each of—
  - (i) the Transport Partnership; and
  - (ii) the Scottish Ministers,
 of one or more observers, that is to say, persons who may (to such extent as may be specified in or provided for in the order) participate in proceedings of the Partnership but who may not hold office in it or participate in its decisions;
- (j) may provide for the payment by a Transport Partnership of—
  - (i) remuneration to its members or some of them;
  - (ii) reimbursement of its members' expenses.

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- (3) The event referred to in subsection (2)(c) above is the holding of the poll at ordinary elections for councillors in 2007.
- (4) For the purpose of subsection (2)(e)(ii) above, a vote shall be weighted by making it count as one, two, three or four votes.

## **2 Dissolution of regional Transport Partnerships**

- (1) The Scottish Ministers may, by order, dissolve any one or more Transport Partnerships or all of them.
- (2) On dissolving a Transport Partnership, the Scottish Ministers may, by order, provide for any function of the Partnership to be carried out by the person who carried it out immediately before the coming into effect of—
  - (a) the order under section 10 below which transferred it to the Partnership; or
  - (b) if there have been two or more orders under that section transferring that function, the first of those orders.
- (3) Before making an order under this section, the Scottish Ministers shall consult—
  - (a) the Transport Partnership or Partnerships to be dissolved;
  - (b) its or their constituent councils or council; and
  - (c) such other persons as the Scottish Ministers think fit.
- (4) An order under this section may modify any enactment.

### *Administration*

## **3 Regional Transport Partnerships: funding and borrowing**

- (1) The net expenses of a Transport Partnership for each financial year shall be paid by—
  - (a) its constituent councils; or
  - (b) where there is only one, that council.
- (2) The share of the expenses to be paid by a constituent council under subsection (1)(a) above shall be—
  - (a) such as the Transport Partnership, having regard to its transport strategy, thinks fit; or
  - (b) where the Partnership is unable to decide, such as is determined by the Scottish Ministers by order.
- (3) The Scottish Ministers may, by order, provide as to the arrangements for the payment of amounts payable under this section.
- (4) For the purposes of this section, the net expenses of a Transport Partnership for a financial year are those of its expenses for that year which are not met—
  - (a) by a grant made by any person which is not repayable;
  - (b) by a grant so made which is subject to a condition requiring repayment and which remains unsatisfied; or
  - (c) by any other income for that year.
- (5) A Transport Partnership may give grants or loans to any person for any purposes that, in its opinion, contribute to the implementation of the Partnership's transport strategy.

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- (6) Such grants or loans may be given subject to such conditions (including conditions requiring repayment in specified circumstances) as the Transport Partnership decides.
- (7) A Transport Partnership may borrow money for the purpose of its capital expenditure.
- (8) In this section, “financial year” means the period of 12 months ending with 31st March.

#### **4 Further provision about regional Transport Partnerships**

Schedule 1 provides further as to Transport Partnerships and their members.

#### *Regional transport strategies*

#### **5 Formulation and content of regional transport strategies**

- (1) It is the duty of each Transport Partnership to draw up a strategy for transport within its region (its “transport strategy”).
- (2) Its transport strategy shall include provision about each of the following matters—
  - (a) the respects in which transport in the region needs to be provided, developed or improved having regard to, among other things—
    - (i) future needs including those occasioned by demographic and land use changes; and
    - (ii) what can be done, taking account of cost, funding and practicability;
  - (b) meeting the needs of all inhabited places, in particular, those which the Partnership considers different from the remainder of the region by reason of their remoteness or the sparsity of their populations;
  - (c) meeting the need for efficient transport links between heavily populated places;
  - (d) how transport in the region will be provided, developed, improved and operated so as—
    - (i) to enhance social and economic well-being;
    - (ii) to promote public safety, including road safety and the safety of users of public transport;
    - (iii) to be consistent with the principle of sustainable development and to conserve and enhance the environment;
    - (iv) to promote social inclusion;
    - (v) to encourage equal opportunities and, in particular, the observance of the equal opportunities requirements;
    - (vi) to facilitate access to hospitals, clinics, surgeries and other places where a health service is provided;
    - (vii) to integrate with transport elsewhere;
  - (e) the order of priority in which different elements of the provision, development and improvement of transport should be undertaken;
  - (f) how the Transport Partnership’s functions will be exercised so as to fulfil its transport strategy and, if the Partnership considers that the conferring of further functions is necessary for that purpose, what those functions are;
  - (g) how the Transport Partnership, so as to enable it to fulfil its transport strategy, will seek to influence its constituent councils or council in the performance of their functions relating to transport;

- (h) the measuring and monitoring of the achievement of the strategy.
- (3) In performing its duty under this section, a Transport Partnership shall have regard to any guidance in that respect given to it or to Transport Partnerships generally by the Scottish Ministers and to any current national transport strategy established by the Scottish Ministers.
- (4) In subsection (2)(d)(v) above, “equal opportunities” and “equal opportunities requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).

## **6 Procedure before and after the drawing up of regional transport strategies**

- (1) A Transport Partnership shall—
  - (a) before arriving at its transport strategy, consult—
    - (i) its constituent councils or council;
    - (ii) each Health Board the area or part of the area of which falls within the Transport Partnership’s region (or, if that region is coterminous with a Health Board’s area, that Health Board); and
    - (iii) such other persons as it thinks fit;
  - (b) subject to subsection (2) below—
    - (i) in the case of a Partnership created under section 1 above on or before 31 March 2006, by 31 March 2007;
    - (ii) in any other case, within 12 months of its creation, submit its transport strategy to the Scottish Ministers for approval.
- (2) The Scottish Ministers may—
  - (a) at the request of a Transport Partnership made to them within 8 months of the creation of the Partnership; and
  - (b) if satisfied that there are good reasons for doing so, authorise the Partnership to submit its transport strategy to them later than the time limit specified in subsection (1)(b) above in relation to the Partnership but not later than such date as is specified in the authorisation.
- (3) A Transport Partnership making a request for the purposes of subsection (2) above shall, if so required by the Scottish Ministers, provide them with reports or information of such kind and in such form as they, for the purposes of that subsection, specify in the requirement.
- (4) A transport strategy has effect for the purposes of this Act when it is approved by the Scottish Ministers.
- (5) In deciding whether to approve a transport strategy, the Scottish Ministers shall include among the matters to which they have regard the extent to which it will contribute to the realisation of their transport policies.
- (6) On approving its transport strategy, the Scottish Ministers shall inform the Transport Partnership of that fact.
- (7) On being so informed, the Transport Partnership shall—
  - (a) inform its constituent councils or council that its transport strategy has effect, specifying the date when it took effect;
  - (b) send each of them or, as the case may be, a copy of the transport strategy; and

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- (c) publish the transport strategy in such manner as it thinks fit.

## **7 Review, modification and renewal of regional transport strategies**

- (1) A Transport Partnership—
  - (a) shall keep its transport strategy under review;
  - (b) may modify its transport strategy or draw up a new one;
  - (c) shall, within such period as is specified in a direction by the Scottish Ministers requiring it to do so, draw up a new transport strategy.
- (2) Sections 5(2) and (3) and 6(1)(a) and (4) to (7) above apply in relation to the modification of a transport strategy and the drawing up of a new one as they apply in relation to the drawing up of a Transport Partnership's original transport strategy.
- (3) A direction given for the purposes of subsection (1)(c) above may be given to one or more or all Transport Partnerships.

## **8 Duty of constituent councils and other public bodies as respects regional transport strategies**

- (1) A constituent council shall, so far as possible, perform those of its functions which relate to or which affect or are affected by transport consistently with the transport strategy of the (or, as the case may be, each) Transport Partnership of which it is a constituent council.
- (2) Each—
  - (a) Health Board; and
  - (b) specified public body,
 shall, so far as possible, perform those of its functions and activities which relate to or which affect or are affected by transport consistently with the transport strategy of the (or, as the case may be, each) Transport Partnership in relation to which it is specified.
- (3) The Scottish Ministers shall, as respects each Health Board, specify by order which Transport Partnership's transport strategy is, or which Transport Partnerships' transport strategies are, for the purposes of subsection (2) above, the strategy or strategies consistently with which the Board is to perform its functions.
- (4) In subsection (2) above, "specified" in relation to a public body mentioned in paragraph (b) of that subsection means specified by order made by the Scottish Ministers and in specifying a public body for the purposes of that subsection, the Scottish Ministers shall specify the Transport Partnership or Partnerships in relation to which it is specified.

## **9 Joint regional transport strategies**

- (1) Two or more Transport Partnerships may together, in the discharge of their respective duties under sections 5 and 6(1) above, draw up a joint transport strategy for transport within their combined regions.
- (2) This Part of this Act applies in relation to the Transport Partnerships which draw up a joint transport strategy, to their combined regions and to that strategy as it applies to a Transport Partnership, its region and its transport strategy.

### *Regional transport functions*

## **10 Other transport functions of regional Transport Partnerships**

- (1) The Scottish Ministers may, as respects a Transport Partnership, and by order, provide for any statutory function relating to transport they think fit, to be carried out by that Transport Partnership—
  - (a) instead of the person who, immediately before it was so provided, was responsible for carrying it out; or
  - (b) concurrently with that person.
- (2) In making an order under subsection (1) above after the coming into effect of the Transport Partnership's transport strategy, the Scottish Ministers shall have regard to that strategy.
- (3) The person referred to in subsection (1) above may be the Scottish Ministers.
- (4) The functions which may be the subject of an order under subsection (1) above may, without prejudice to the generality of that subsection, include any of the following—
  - (a) those conferred on local transport authorities by or under Part 2 of the Transport (Scotland) Act 2001 (asp 2) (bus services) and Part 3 of that Act (road user charging);
  - (b) those conferred by or under any enactment and which relate to the management and maintenance of a bridge constructed in pursuance of functions conferred by, or by an order made under or confirmed by, any enactment;
  - (c) those conferred on traffic authorities by sections 1 to 4 of the Road Traffic Regulation Act 1984 (c. 27) (traffic regulation orders) and on local traffic authorities by section 19 of that Act (regulation of use of roads by public service vehicles);
  - (d) those conferred on councils by sections 63 and 64 of the Transport Act 1985 (c. 67) (securing the provision of passenger transport and related consultation and publicity).
- (5) The following are examples of the functions which may be the subject of an order under this section—
  - (a) entering into quality partnership schemes;
  - (b) entering into quality contract schemes;
  - (c) entering into ticketing arrangements and ticketing schemes;
  - (d) providing information about bus services;
  - (e) installing bus lanes;
  - (f) providing subsidised bus services;
  - (g) making and implementing road user charging schemes;
  - (h) operating ferry services;
  - (i) managing tolled bridges;
  - (j) operating airports and air services;
  - (k) entering into public service contracts.
- (6) A Transport Partnership which proposes to request the making of an order under subsection (1) above shall, before doing so, consult its constituent councils or council on what the order might do.

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- (7) In making such a request, a Transport Partnership shall have regard to any guidance given by the Scottish Ministers as to the form and content of such requests.
- (8) Before making an order under subsection (1) above, the Scottish Ministers shall consult—
  - (a) except where the order will be made at its request, the Transport Partnership to which the order will relate;
  - (b) its constituent councils or council; and
  - (c) such other persons as the Scottish Ministers think fit.
- (9) An order under subsection (1) above may modify any enactment.

## **11 Alteration of functions of regional Transport Partnerships**

- (1) The Scottish Ministers may, by order, provide for any function of a Transport Partnership to be carried out by the person who originally carried it out—
  - (a) instead of the Transport Partnership; or
  - (b) concurrently with the Transport Partnership.
- (2) In so providing, the Scottish Ministers shall have regard to the Transport Partnership's transport strategy.
- (3) Subsections (6) to (9) of section 10 above apply to an order under this section as they apply to one made under that section.
- (4) In subsection (1) above, the reference to the person who originally carried out a function is a reference to the person who carried out the function immediately before the coming into effect of—
  - (a) the order under section 10 above which transferred it to the Transport Partnership; or
  - (b) if there have been two or more orders under that section transferring that function, the first of those orders.

## **12 Manner of performance of functions of regional Transport Partnerships**

- (1) A Transport Partnership shall—
  - (a) carry out its functions so as to fulfil its transport strategy;
  - (b) in doing so—
    - (i) comply with any directions in that respect given to it or to Transport Partnerships generally by the Scottish Ministers; and
    - (ii) measure and monitor the achievement of the strategy.
- (2) Where a function of a Transport Partnership falls to be carried out before its transport strategy comes into effect, the Transport Partnership shall carry out the function in accordance with such directions as the Scottish Ministers may give it.



## CHAPTER 2

### TRANSPORT FUNCTIONS: FURTHER PROVISIONS

#### **13 Transfer to Scottish Ministers of certain rail provisions**

- (1) The Scottish Ministers may, by order, provide for any function of the kind specified in subsection (2) below which they think fit to be carried out by them—
  - (a) instead of the person who, immediately before it was so provided, was responsible for carrying the function out; or
  - (b) concurrently with that person.
- (2) That kind of function consists of any statutory function—
  - (a) which relates to the provision or regulation of rail services; and
  - (b) which was immediately before the provision referred to in subsection (1) above carried out by—
    - (i) the Strathclyde Passenger Transport Authority; or
    - (ii) the Strathclyde Passenger Transport Executive.
- (3) An order under subsection (1) above may modify any enactment.

#### **14 Arrangements for performance by regional Transport Partnership of certain transport functions etc.**

A Transport Partnership may enter into arrangements with the Scottish Ministers, a council or any other person having statutory functions relating to transport being arrangements under which the Partnership—

- (a) does, on behalf of the Scottish Ministers, the council or that other person, such things relating to transport as are specified in the arrangements;
- (b) provides such services for the purposes of, or in connection with, transport as are so specified.

## CHAPTER 3

### SUPPLEMENTARY AND CONSEQUENTIAL PROVISION

#### **15 Transfer of staff, property, rights and liabilities**

- (1) The TUPE regulations apply in relation to any function transferred by virtue of section 2, 10 or 13 above whether or not those regulations would so apply apart from this subsection.
- (2) Where, by virtue of the TUPE regulations, whether as applied by subsection (1) above or not, a member of staff (the “employee”) of a body, authority or other person (the “former employer”) becomes an employee of another body, authority or other person (the “new employer”) in consequence of the transfer of a function by virtue of section 2, 10 or 13 above, the employee’s period of employment by the former employer counts, for the purposes of the Employment Rights Act 1996 (c. 18), as a period of employment by the new employer and the change of employment does not break the continuity of the period of employment.

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- (3) For the purposes of subsections (1) and (2) above, a function is to be regarded as transferred by virtue of section 2, 10 or 13 above irrespective of how the transfer is described in that section or in the order made under it.
- (4) For the purposes of subsection (2) above, a function is to be regarded as transferred irrespective of whether arrangements relating to it are made under section 14 above.
- (5) Where, by virtue of section 2, 10 or 13 above, a function of one body, authority or other person (the “original”)—
  - (a) becomes that of another; or
  - (b) falls to be no longer carried out,
 the Scottish Ministers may, by order, provide for the transfer to that other body, authority or other person or, as the case may be, to such body, authority or other person as they think fit of such of the original’s property, rights and liabilities as are specified in or otherwise identified by the order.
- (6) Subsection (5) above has effect in relation to property, rights and liabilities specified in or identified by an order made under it despite any provision (of whatever nature) which would otherwise prevent or restrict its operation or that of the order; and any provision which would penalise that operation is disapplied.
- (7) In this section, the “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981 ([S.I. 1981/1794](#)) (or any regulations replacing those regulations) as from time to time amended.

## PART 2

### ROAD WORKS

#### *The Scottish Road Works Commissioner*

## **16      Creation, appointment, status and funding of Scottish Road Works Commissioner**

- (1) There is, by this Act, created an office, the holder of which is to be known as the Scottish Road Works Commissioner (in this Part, “the Commissioner”).
- (2) The Commissioner shall be appointed, on such terms and conditions as they determine, by the Scottish Ministers.
- (3) Those terms and conditions may include arrangements relating to the payment of pensions, allowances or gratuities to, or in respect of, persons who have ceased to hold office as the Commissioner.
- (4) The Commissioner is not a servant or agent of the Crown and has no status, immunity or privilege of the Crown.
- (5) The Scottish Ministers may make grants to the Commissioner in respect of the Commissioner’s expenses.

## **17 Functions of Commissioner**

- (1) The Commissioner has the general functions of—
  - (a) monitoring the carrying out of works in roads in Scotland;
  - (b) promoting compliance with the 1991 Act and obligations imposed under it; and
  - (c) promoting the pursuit of good practice by those persons who have functions conferred on or permissions granted to them by or under that Act,as well as the particular functions conferred upon the Commissioner by or under that or this Act.
- (2) In subsection (1) above, “works in roads” includes road works within the meaning given by section 107(3) of the 1991 Act, works for roads purposes within the meaning given by subsection (2) of section 145 of that Act and major works for roads purposes within the meaning given by subsection (3) of that section.
- (3) The Commissioner may, for the purposes of the discharge of the general functions referred to in paragraphs (b) and (c) of subsection (1) above, assess whether the persons referred to in subsection (1)(c) above are complying with the 1991 Act and any obligations imposed on them under it and are following good practice.
- (4) In this section “good practice” means compliance with—
  - (a) any code of practice issued or approved under the 1991 Act or any direction issued under that Act; and
  - (b) subject to such codes and directions, such practice in the doing by the persons referred to in subsection (1)(c) above of what they must or may do by or under the 1991 Act as appears to the Commissioner to be desirable.
- (5) Schedule 2 provides further as to the Commissioner.
- (6) The Commissioner may do anything calculated to facilitate the discharge of any of the Commissioner’s functions.

## **18 Duty of road works authority and undertakers to provide Commissioner with information**

- (1) A road works authority or an undertaker shall, on being required to do so by the Commissioner, provide the Commissioner with such information relevant to their respective functions and activities as the Commissioner reasonably asks for for the purposes of the performance of the Commissioner’s functions.
- (2) For the purposes of subsection (1) above, information is relevant to functions or activities if it is information which the authority or undertaker possesses or can reasonably be expected to acquire.
- (3) Where—
  - (a) a road works authority or an undertaker; and
  - (b) the Commissioner,do not agree as to whether information asked for by the Commissioner in pursuance of subsection (1) above is reasonably asked for, the matter shall be settled in such manner as may be prescribed by the Scottish Ministers by regulations.

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- (4) Where regulations under subsection (3) above prescribe that a matter is to be settled by arbitration, section 158 of the 1991 Act shall apply in relation to that matter as that section applies in relation to a matter which, under Part 4 of that Act, is to be so settled.

### *The Scottish Road Works Register*

## **19 The Scottish Road Works Register**

- (1) For section 112 (the road works register) of the 1991 Act there are substituted the following sections—

### **“112A The Scottish Road Works Register**

- (1) The Scottish Road Works Commissioner (in this Part, “the Commissioner”) shall keep a register, to be known as the Scottish Road Works Register (in this Part, “the SRWR”).
- (2) The SRWR shall be kept in such form and manner as may be prescribed.
- (3) The Commissioner shall make arrangements so as to enable any person who is required, by a provision of this Act, to enter particulars, information or a notice in the SRWR, to have access to the SRWR for that purpose.
- (4) The Scottish Ministers may by regulations—
  - (a) provide that the payment to the Commissioner of the prescribed fee is a condition of access to the SRWR as mentioned in subsection (3) (and different fees may be prescribed for access for different purposes), and
  - (b) make other provision as to the payment to the Commissioner by such persons as are prescribed of such amounts as are prescribed.
- (5) Amounts received by the Commissioner under subsection (4) are to be applied by the Commissioner to the keeping of the SRWR.
- (6) The Commissioner shall make the SRWR available, at all reasonable times and free of charge, for inspection—
  - (a) so far as it relates to restricted information, by any person having authority to execute works of any description in the road in respect of which that restricted information is kept in the SRWR or who, not being a person having that authority, nevertheless appears to the Commissioner to have a sufficient interest in that information,
  - (b) so far as it relates to information which is not restricted, by any person.
- (7) In subsection (6), “restricted” information is information of a prescribed description.

### **112B Duty to enter certain information in the Scottish Road Works Register**

- (1) A road works authority shall enter in the SRWR such particulars of each road for which the authority are responsible as may be prescribed.

- (2) A road works authority proposing to execute works in any such road shall, not later than such time before the date proposed for the start of the works as may be prescribed, enter in the SRWR such information relating to that matter (including such information about the start of the works) as may be prescribed.
- (3) A road works authority which has—
  - (a) under section 109, granted permission as regards apparatus and works,
  - (b) under section 115, given directions as to the timing of works, or
  - (c) under section 115A, given directions as to the placing of apparatus,shall enter in the SRWR such information relating to that matter as may be prescribed.
- (4) A local roads authority proposing to execute works in roads in pursuance of section 1 of the Roads (Scotland) Act 1984 (c. 54) (management and maintenance of certain public roads) shall enter in the SRWR such information relating to that matter as may be prescribed.
- (5) If the Scottish Ministers (as roads authority) propose to execute works in roads under section 2 of that Act (management and maintenance of trunk, special and certain other public roads) they shall enter in the SRWR such information relating to that matter as may be prescribed.
- (6) On the completion of works of the kind referred to in subsection (4) or (5) the roads authority which executed them shall enter in the SRWR such information about their completion as may be prescribed.
- (7) A roads authority which has—
  - (a) under subsection (2) of section 56 of the Roads (Scotland) Act 1984 (c. 54), given an applicant for consent for road works or excavations notice of affected statutory undertakers,
  - (b) under subsection (8) of that section, given notification of unlawful works removed or unlawful excavations filled in,
  - (c) under section 58(1) of that Act, given permission for the occupation of part of a road for the deposit of materials or for the erection of staging or scaffolding projecting over part of a road,
  - (d) under section 61(1) of that Act, given permission for the placing, leaving, retention, maintenance, repair or reinstatement of apparatus in or under a road or the breaking open of or having access to the road,
  - (e) under section 85 of that Act, given permission for the deposit of a skip on a road for which a road works authority are responsible,
  - (f) under subsection (2) of section 86 of that Act, required the removal or repositioning of a skip deposited on such a road or removed or repositioned such a skip,
  - (g) become aware that a constable has, under subsection (1) of that section, required or caused the removal or repositioning of such a skip,
  - (h) given notice under—
    - (i) section 87 of that Act requiring the removal of a structure from a road for which a road works authority are responsible and (where considered requisite under that section) the reinstatement of the road, or

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- (ii) section 88 of that Act requiring the removal or alteration of a projection affecting such a road,
  - (i) under section 90 of that Act, given consent for the fixing or placing of an overhead bridge, beam, rail or other apparatus along or across such a road,
  - (j) under section 91 of that Act, served notice requiring work to be done or carried out work in relation to such a road, or
  - (k) under section 92 of that Act, given consent to the planting of a tree or shrub near a carriageway or required its removal, where the carriageway is, or is part of, such a road,

shall enter in the SRWR such information relating to that matter as may be prescribed.
- (8) Information to be entered in the SRWR under this section shall be entered in such form and manner as may be prescribed.”.
- (2) In section 108(2) of the 1991 Act (roads authority to be regarded in certain circumstances as road works authority for purposes including those of section 112 of the Act) for “112” there is substituted “112B (duty to enter certain information in Scottish Road Works Register)”.
- (3) In section 113 of the 1991 Act (giving of advance notice of certain road works)—
  - (a) in subsection (1) “to the road works authority” is repealed; and
  - (b) for subsection (3) there is substituted—
 

“(3A) For the purposes of subsection (1) an undertaker gives notice by entering in the SRWR such information as may be prescribed.”.
- (4) In section 114 of the 1991 Act (notice of starting date of road works)—
  - (a) in subsection (1) the words from “to”, where thirdly occurring, to the end are repealed; and
  - (b) for subsection (3) there is substituted—
 

“(3A) For the purposes of subsection (1) an undertaker gives notice by—

    - (a) giving to any relevant authority (not being the road works authority) and to any other person having apparatus in the road which is likely to be affected by the works a notice—
      - (i) stating the date on which it is proposed to begin the works, and
      - (ii) containing such other information as may be prescribed, and
    - (b) entering in the SRWR a copy of that notice.”.
- (5) In section 116 of the 1991 Act (notice of emergency works)—
  - (a) in subsection (2) the words from “to” to the end are repealed; and
  - (b) for subsection (3) there is substituted—
 

“(3A) For the purposes of subsection (2) an undertaker gives notice by—

    - (a) giving to each person to whom notice would be required to be given under section 114 a notice—
      - (i) stating the undertaker’s intention, or as the case may be, the fact that he has begun to execute the works, and

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- (ii) containing such other information as may be prescribed, and
  - (b) entering in the SRWR a copy of that notice.”.
- (6) In subsection (2) of section 117 of the 1991 Act (restriction of works following substantial road works)—
- (a) for “published in the prescribed manner” there is substituted “entered in the SRWR”; and
  - (b) for “published”, where secondly and thirdly occurring, there is substituted “so entered”.
- (7) In section 165 of the 1991 Act (index for Part 4)—
- (a) after the entry for “carriageway” there is inserted—

|                   |                   |
|-------------------|-------------------|
| “the Commissioner | section 112A(1)”; |
|-------------------|-------------------|

- (b) after the entry for “special enactment” there is inserted—

|           |                   |
|-----------|-------------------|
| “the SRWR | section 112A(1)”. |
|-----------|-------------------|

### *Miscellaneous*

## **20 Directions as to timing of road works**

- (1) Section 115 of the 1991 Act (directions as to timing of road works) is amended in accordance with subsections (2) to (6) below.
- (2) In subsection (1)—
- (a) in paragraph (b) at the end there is added “or on certain days (or at certain times on certain days)”; and
  - (b) after “the times” there is inserted “or days (or both)”.
- (3) After that subsection there is inserted—
- “(1A) If it appears to a road works authority—
- (a) that subsisting road works are causing or are likely to cause serious disruption to traffic, and
  - (b) that the disruption would be avoided or reduced if the works were to continue to be carried out only at certain times or on certain days (or at certain times on certain days),
- the authority may give the undertaker such directions as may be appropriate as to the times or days (or both) when the works may or may not continue to be carried out.”.
- (4) After subsection (2) there is inserted—
- “(2A) The Scottish Ministers shall by regulations make provision for appeals against directions under this section, including provision as to the procedure to be followed on an appeal.”.
- (5) After subsection (3) there is inserted—

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“(3A) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, the failure is attributable to a direction under this section.”.

(6) In subsection (4), for “may” there is substituted “shall”.

## 21      **Directions as to placing of apparatus in roads**

(1) After section 115 of the 1991 Act there is inserted—

### **“115A Power to give directions as to placing of apparatus**

(1) Where—

- (a) an undertaker is proposing to execute road works consisting of the placing of apparatus in a road (the “proposed road”),
- (b) placing the apparatus in the proposed road is likely to cause disruption to traffic, and
- (c) it appears to the road works authority that—
  - (i) there is another road in which the apparatus could be placed (the “other road”), and
  - (ii) the conditions in subsection (2) are satisfied,

the authority may by directions require the undertaker not to place the apparatus in the proposed road (but shall not require the undertaker to place the apparatus in the other road).

(2) The conditions referred to in subsection (1)(c)(ii) are that—

- (a) disruption to traffic would be avoided or reduced if the apparatus were to be placed in the other road,
- (b) placing the apparatus in the other road would be a reasonable way of achieving the purpose for which the apparatus is to be placed, and
- (c) it is reasonable to require the undertaker not to place the apparatus in the proposed road.

(3) Directions under this section may be varied or revoked by further such directions.

(4) The procedure for giving directions under this section shall be as prescribed.

(5) The Scottish Ministers shall by regulations make provision for appeals against directions under this section, including provision as to the procedure to be followed on an appeal.

(6) An undertaker who executes works in contravention of directions under this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, the failure is attributable to a direction under this section.

(8) The Scottish Ministers shall issue or approve for the purposes of this section a code of practice giving practical guidance as to the exercise by road works



authorities of the power conferred by this section; and in exercising that power a road works authority shall have regard to the code of practice.”.

- (2) In section 116 of the 1991 Act (notice of emergency works in roads), in subsection (1), the word “or” is repealed and after “works”, where first occurring, there is inserted “or section 115A (power to give directions as to placing of apparatus)”.

## **22 Restriction on works following substantial road works**

- (1) In section 117 of the 1991 Act (restriction on works following substantial road works)

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- (a) in subsection (1)—
    - (i) for “twelve months” there is substituted “such period”; and
    - (ii) at the end there is inserted “as may be prescribed.”;
  - (b) in subsection (6), at the beginning of paragraph (b) there is inserted “if convicted of an offence under this subsection,”; and
  - (c) at end there is inserted—

“(9) The Scottish Ministers may issue or approve for the purposes of this section a code of practice giving practical guidance as to the performance by road works authorities of their functions under this section; and in carrying out those functions a road works authority shall have regard to the code of practice.”.

- (2) In section 114 of the 1991 Act (notice of starting date of works), in subsection (2), after “works” there is inserted “or in cases where the undertaker has been given notice under section 117(1)”.

## **23 Duty of road works authority to co-ordinate road works etc.**

- (1) Section 118 of the 1991 Act (road works authority’s duty to co-ordinate road works etc.) is amended in accordance with subsections (2) to (5) below.

- (2) After subsection (2) there is inserted—

“(2A) In discharging their duty under this section, a road works authority shall have regard to all information in the SRWR which relates to the functions of the authority.

(2B) A road works authority shall, so as to maximise the utility of that information for the purposes of subsection (2A)—

- (a) assist the Commissioner in complying with the duty imposed by subsection (1) of section 112A (as read with subsection (2) of that section), and
- (b) keep that information under surveillance.”.

- (3) In subsection (3), after “co-ordination”, there is inserted “and the specific duties imposed by subsections (2) to (2B)”.

- (4) After that subsection there is inserted—

“(3A) In discharging all the duties referred to in subsection (3), a road works authority shall have regard also to such guidance as is contained in the practice referred to in section 17(4)(b) of the Transport (Scotland) Act 2005 (asp 12).”.

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- (5) In subsections (4) and (5), for “Secretary of State”, in each place where it occurs, there is substituted “Commissioner”.

## **24 Duty of undertakers to co-operate with authorities and other undertakers**

- (1) Section 119 of the 1991 Act (undertakers' duty to co-operate) is amended in accordance with subsections (2) to (4) below.

- (2) After subsection (1) there is inserted—

“(1A) In discharging the duty under this section, an undertaker shall have regard to all information in the SRWR about matters which might affect, or be affected by, works being or proposed to be carried out by the undertaker.

(1B) An undertaker shall, so as to maximise the utility of that information for the purposes of subsection (1A)—

- (a) assist the Commissioner in complying with the duty imposed by subsection (1) of section 112A (as read with subsection (2) of that section), and
- (b) keep that information under surveillance.

(1C) In subsections (1A) and (1B), “undertaker” does not include a person having permission under section 109 to execute road works.”.

- (3) After subsection (2) there is inserted—

“(2A) In discharging the duties imposed by subsections (1) to (1B), an undertaker shall—

- (a) comply with any direction in that respect given to the undertaker by the Commissioner, and
- (b) have regard to such guidance as is contained in the practice referred to in section 17(4)(b) of the Transport (Scotland) Act 2005 (asp 12), and paragraphs (a) and (b) of subsection (2) shall apply in relation to any such direction as they apply in relation to the code of practice referred to in that subsection.

(2B) If it appears to the Commissioner that an undertaker is not properly complying with his duty under subsection (1), he may direct the undertaker to supply him with such information as he considers necessary to enable him to decide whether that is the case and, if so, what action to take.

The direction shall specify the information to be provided and the period within which it is to be provided.”.

- (4) After subsection (3) there is inserted—

“(4) A direction under this section may be varied or revoked by a further direction.”.

## **25 Enforcement of sections 118 and 119 of 1991 Act**

- (1) Subsection (3) of section 119 of the 1991 Act (which subsection makes it an offence for an undertaker executing road works to fail to use best endeavours to co-operate with the road works authority and other undertakers) is repealed.

- (2) After that section (which requires undertakers to co-operate with road works authorities and others in the execution of road works) there is inserted—

**“119A Enforcement of sections 118 and 119: imposition of penalties**

- (1) The Scottish Ministers may, by regulations, make provision for or in connection with—
- (a) the imposition by the Commissioner of penalties on road works authorities and undertakers who fail to comply with duties imposed on them by sections 118 and 119 respectively,
  - (b) the payment of such penalties.
- (2) The regulations may include provision for or in connection with—
- (a) the notification and enforcement of penalties,
  - (b) the level of penalties,
  - (c) appeals against the imposition of penalties including the appointment of persons to hear and determine such appeals.”.

**26 Qualifications of supervisors and operatives**

- (1) Section 126 of the 1991 Act (qualifications of supervisors and operatives) is amended in accordance with subsections (2) to (5) below.

- (2) After subsection (1) there is inserted—

“(1A) A road works authority may (unless the case is one excepted from subsection (1)) by notice require an undertaker executing road works—

- (a) to notify them of the name of—
  - (i) the person who is currently the qualified supervisor required under subsection (1), and
  - (ii) each person who has previously been the qualified supervisor so required, and
- (b) to provide them with such evidence of the requisite qualification of the person or, as the case may be, each person named as may be prescribed.”.

- (3) After subsection (2) there is inserted—

“(2A) A road works authority may (unless the case is one excepted from subsection (2)) by notice require an undertaker executing road works—

- (a) to notify them of the name of—
  - (i) a person whose presence on site at any time specified in the notice (being a time when the works were in progress) enabled the undertaker to comply with his duty under subsection (2), or
  - (ii) each person whose presence on site during the progress of the works enabled the undertaker to comply with his duty under subsection (2), and
- (b) to provide them such evidence of the requisite qualification of the or, as the case may be, each person named as may be prescribed.

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(2B) A notice under subsection (1A) or (2A) may be given at any time while the works are being executed or within such period after their completion as may be prescribed.

(2C) The undertaker shall comply with a notice under subsection (1A) or (2A) within such period and in such way as may be prescribed.”.

(4) In subsection (3), for “or (2)” there is substituted “, (2) or (2C)”.

(5) In subsection (4), after paragraph (b) there is inserted “and  
(c) the form of any document to be issued by an approved body to certify or otherwise show that a qualification has been conferred on any person.”.

## 27 **Duty of authorities, undertakers etc. to ensure competence of employees etc.**

After section 126 of the 1991 Act there is inserted—

### **“126A Duty of authorities, undertakers etc. to ensure competence of employees etc.**

Each of the authorities and other persons set out in the first column below shall use their or, as the case may be, his best endeavours to ensure that each of that authority’s or, as the case may be, that person’s employees or agents whose duty it is to carry out for that authority or person a function conferred on that authority or person by or under an enactment set out relative to that authority or person in the second column below is competent to perform that duty—

|                        |   |
|------------------------|---|
| A road works authority | Section 112B(1) and (3) of this Act; section 18 of the Transport (Scotland) Act 2005 (asp 12) (duty to provide Scottish Road Works Commissioner with certain information).              |
| A roads authority      | Section 112B(4) to (7) of this Act.   |
| An undertaker          | Sections 113(1), 114(1) and 116(2) of this Act; section 18 of the Transport (Scotland) Act 2005 (asp 12) (duty to provide Scottish Road Works Commissioner with certain information).”. |

## 28 **Duty of undertaker to notify completion of road works: form and procedure**

In section 129 of the 1991 Act (duty of undertaker to reinstate road after road works)—

- (a) in subsection (3), for “inform the road works authority” there is substituted “give the required notice”;
- (b) in subsection (4), for “notify the road works authority” there is substituted “give the required notice”;
- (c) after subsection (5) there is inserted—

“(5A) For the purposes of subsection (3) or (4) an undertaker gives the required notice by—

- (a) giving to the Commissioner a notice containing such information as may be prescribed, and
- (b) entering in the SRWR a copy of that notice.”.

## **29 Notices requiring remedial works relating to reinstatements**

(1) In section 131 of the 1991 Act (powers of road works authority in relation to reinstatement of roads)—

- (a) in subsection (3), for “of not less than 7 working days” there is substituted “, not being shorter than such period as may be prescribed,”; and
- (b) after that subsection there is inserted—

“(3A) Different minimum periods may be prescribed under subsection (3) for different descriptions of remedial works; and cases may be so prescribed in which no minimum period applies.”.

(2) In section 149 of the 1991 Act (which, among other things, enables the authorities responsible for sewers, drains and tunnels to require their reinstatement)—

- (a) in subsection (2), for “of not less than 7 working days” there is substituted “, not being shorter than such period as may be prescribed,”; and
- (b) after that subsection there is inserted—

“(2A) Different minimum periods may be prescribed under subsection (2) for different descriptions of remedial works; and cases may be so prescribed in which no minimum period applies.”.

### *Resurfacing*

## **30 Power of road works authority to require undertaker to resurface road**

(1) After section 132 of the 1991 Act there is inserted—

### *“Resurfacing*

#### **132A Power to require undertaker to resurface road**

(1) In prescribed circumstances, the road works authority may by notice (a “resurfacing notice”) require an undertaker within subsection (2) to execute such resurfacing works in a road as may be specified in the notice.

(2) An undertaker is within this subsection if—

- (a) he has given notice under section 113 or 114 of proposed road works,
- (b) he is executing road works, or
- (c) he has, within such period ending with the giving of the notice as may be prescribed (or if no period is prescribed, at any time), executed road works,

and the works will involve, involve or (as the case may be) involved the breaking up of any part of the road.

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- (3) The works specified in the resurfacing notice may relate to any part of the road (including any part not, and not to be, broken up by the undertaker); but regulations made by the Scottish Ministers may restrict the extent of the works that may be so specified.
- (4) The resurfacing notice relieves the undertaker to the extent (if any) specified in the notice of his duty under section 129 to reinstate the surface of the road; but regulations made by the Scottish Ministers may restrict the circumstances in which and the extent to which undertakers may be relieved of that duty.
- (5) The road works authority may by notice to the undertaker vary or withdraw a resurfacing notice; but regulations made by the Scottish Ministers may restrict the circumstances in which notices may be varied or withdrawn.
- (6) A road works authority may serve a resurfacing notice notwithstanding that the authority (in any capacity) are under a duty to undertake any of the works specified in the notice.
- (7) In this Part—
  - “resurfacing notice” has the meaning given by subsection (1),
  - “resurfacing works” means any works relating to the replacement of the surface of any part of a road,
  - “surface” includes a paved surface.

### **132B Power to specify timing etc. of resurfacing**

- (1) A resurfacing notice may require an undertaker to—
  - (a) execute the works specified in the notice in stages so specified,
  - (b) begin the execution of those works (or any stage of them) at or by a date and time so specified,
  - (c) execute those works (or any stage of them) at times or on days (or at times on days) so specified,
  - (d) complete the execution of those works (or any stage of them) by a date and time so specified.
- (2) The Scottish Ministers may by regulations make provision restricting, in some or all cases, the power to include requirements within subsection (1), including provision that—
  - (a) requires a road works authority to consult an undertaker before a prescribed description of requirement is included in a notice,
  - (b) provides that any date specified in a notice for the beginning, execution or completion of works shall not be earlier than a prescribed period from the date on which the notice is given.

### **132C Materials, workmanship and standard of resurfacing**

- (1) An undertaker who has been served with a resurfacing notice shall, when executing the works specified in the notice, comply with such requirements as may be prescribed as to the specification of materials to be used and the standards of workmanship to be observed.

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- (2) The undertaker shall also ensure that, for the prescribed period after completion of the works, those works conform to such performance standards as may be prescribed.”.
- (2) In section 165 of that Act (index for Part 4)—
- (a) after the entry for “relevant authority (in relation to road works)” there is inserted—

|  |                   |
|--|-------------------|
| “resurfacing notice  | section 132A(7)   |
| resurfacing notice   | section 132A(7)”; |
| (b) after the entry for statutory right there is inserted— |                   |
| “surface   | section 132A(7)”. |

**31      Resurfacing: regulations and guidance**

After section 132C of the 1991 Act (as inserted by section 30 above) there is inserted—

**“132D Resurfacing: regulations**

- (1) The Scottish Ministers shall make regulations supplementing sections 132A to 132C.
- (2) The regulations may, in particular—
- (a) make provision about the information to be contained in a resurfacing notice (including the way in which resurfacing works are to be described),
  - (b) prescribe, for cases where a resurfacing notice may be served on more than one undertaker, the matters that a road works authority shall take into account when selecting the undertaker to be served with the notice,
  - (c) impose a requirement on an undertaker, in prescribed circumstances, to give notice to the road works authority of a prescribed event,
  - (d) prescribe circumstances in which an undertaker is entitled to pay a sum to the road works authority instead of executing the works specified in a resurfacing notice, and make provision about the manner in which such sums are to be calculated,
  - (e) confer a right of review or appeal against a resurfacing notice or any requirement contained in it, and make provision about the period within which and manner in which any such right may be exercised and about the determination of appeals and the persons who may determine them,
  - (f) require disputes of a prescribed description (including disputes as to the existence of circumstances prescribed under section 132A(1)) to be determined in such manner and by such persons as may be prescribed,
  - (g) apply, with or without modifications, any provisions of this Part or of the Roads (Scotland) Act 1984 (c. 54) in relation to works specified in a resurfacing notice (and provide that for those purposes the works are to be treated as road works or works of any other description).
- (3) The regulations may create, in respect of any breach of a requirement imposed by a resurfacing notice or of a duty imposed by section 132C,

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or any contravention of the regulations, an offence punishable on summary conviction—

- (a) where the offence consists of a failure to give a notice in accordance with the regulations, with a fine not exceeding level 4 on the standard scale,
  - (b) in any other case, with a fine not exceeding level 5 on the standard scale.
- (4) The first regulations for the purposes of each of this section and sections 132A to 132C shall not be made unless a draft of them has been laid before and approved by a resolution of the Scottish Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

### **132E Resurfacing: guidance**

- (1) The Scottish Ministers shall, for the purposes of sections 132A to 132D (including regulations under those sections), issue or approve a code of practice giving practical guidance as to the exercise of powers and the discharge of duties under those sections.
- (2) In exercising those powers and in discharging those duties, road works authorities and undertakers shall have regard to the code of practice.”.

## **32 Contributions to costs of resurfacing by undertaker**

- (1) After section 137 of the 1991 Act there is inserted—

### **“137A Contributions to costs of resurfacing by undertaker**

- (1) Where a road works authority have given a resurfacing notice to an undertaker—
  - (a) the authority shall pay to the undertaker a proportion, calculated in the prescribed manner, of the costs reasonably incurred by the undertaker in executing the works specified in the notice,
  - (b) an undertaker to whom subsection (2) applies shall pay to the undertaker referred to in paragraph (a) a proportion, calculated in the prescribed manner, of those costs.
- (2) This subsection applies to an undertaker if—
  - (a) the undertaker has, before the completion of the works specified in the notice, executed road works which involved the breaking up of any part of a road, and
  - (b) the works specified in the notice include the resurfacing of that part of the road.
- (3) The Scottish Ministers may by regulations prescribe exceptions to the duty imposed by subsection (1)(b).
- (4) The payments referred to in subsection (1) shall be made in such instalments and manner, and within such period, as may be prescribed.



- (5) The Scottish Ministers may by regulations make provision requiring disputes of a prescribed description (including disputes as to whether subsection (2) applies to an undertaker) to be determined in such manner and by such persons as may be prescribed.
  - (6) For the purposes of this section, any costs incurred by an undertaker (including any costs of a road works authority which are borne by the undertaker) in consequence of a failure by the undertaker to comply with any duty under this Part shall be treated as having been incurred unreasonably.
  - (7) The first regulations for the purposes of this section shall not be made unless a draft of them has been laid before and approved by a resolution of the Scottish Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”.
- (2) In section 155 of the 1991 Act, in subsection (3), after “road)” there is inserted “or 137A (contributions to costs of resurfacing by undertakers)”.

#### *Enforcement of 1991 Act*

### **33 Increase in penalties for summary offences under 1991 Act**

- (1) The maximum fine for each offence under a provision of the 1991 Act listed in column 1 of the table in schedule 3 is increased from level 3 on the standard scale to the level specified for that provision in column 3 of the table.
- (2) Accordingly, in each provision so listed, for “level 3” there is substituted “level 4” or “level 5” (as specified in column 3 of the table).

### **34 Fixed penalty offences**

- (1) After section 154 of the 1991 Act there is inserted—

#### **“154A Fixed penalties for certain offences under this Part**

- (1) Any offence under this Part relating to road works which is listed in the first column of Schedule 6A (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Part.
- (2) Offences listed in that Schedule which are committed by virtue of section 166 (offences by bodies corporate and partnerships) are not fixed penalty offences.
- (3) The Scottish Ministers may by order made by statutory instrument modify that Schedule so as to provide for offences under this Part relating to road works to become (or cease to be) fixed penalty offences.
- (4) No such order shall be made unless a draft of the statutory instrument containing it has been laid before and approved by resolution of the Scottish Parliament.
- (5) Schedule 6B (which makes provision about fixed penalties for fixed penalty offences) has effect.”.

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- (2) In section 165 of that Act (index for Part 4), after the entry for “expenses” there is inserted—

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|                        |                         |
|------------------------|-------------------------|
| “fixed penalty offence | section 154A(1)”. <hr/> |
|------------------------|-------------------------|

- (3) After Schedule 6 to that Act there are inserted Schedules 6A and 6B as set out in schedules 4 and 5 to this Act.

### **35 Civil penalties for certain offences under 1991 Act**

After section 154A of the 1991 Act (as inserted by section 34 above) there is inserted—

#### **“154B Civil penalties for certain offences**

- (1) The Scottish Ministers may, by regulations, make provision for or in connection with—
  - (a) the imposition by road works authorities of penalty charges in respect of such offences under this Part of this Act as are specified in the regulations,
  - (b) the payment of such charges.
- (2) The regulations shall include provision specifying the person or persons by whom a penalty charge in respect of an offence is to be paid (who may be or, as the case may be, include a person other than the person who committed the offence).
- (3) The regulations shall include provision—
  - (a) prohibiting criminal proceedings or the giving of a fixed penalty notice in respect of any description of conduct for which a penalty charge may be imposed, or
  - (b) securing that a penalty charge is not payable or is refunded where the conduct is the subject of criminal proceedings or of a fixed penalty notice.
- (4) The regulations shall include provision about the standard of proof required to establish the commission of an offence in respect of which a penalty charge may be imposed and may include other provision for or in connection with evidence and procedure.
- (5) The regulations may set different levels of penalty charges in respect of different offences and in respect of the same offences committed in different circumstances.
- (6) The regulations may include provision for and in connection with—
  - (a) the notification of penalty charges to persons appearing to be liable to pay them,
  - (b) the enabling and effect of the making of representations to road works authorities by persons who are or may be liable to pay those charges,
  - (c) appeals by those persons against the imposition of those charges.
- (7) Regulations shall not be made unless a draft of them has been laid before and approved by resolution of the Scottish Parliament.”.

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*Status: This is the original version (as it was originally enacted).*

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*Resolution of disputes under 1991 Act*

**36 Method of settlement of certain disputes under 1991 Act**

- (1) In each of the provisions of the 1991 Act mentioned in subsection (2) below, for “by arbitration” there is substituted “in the prescribed manner”.
- (2) Those provisions are—
  - (a) section 117(7) (consent to contravene restriction on works following substantial road works);
  - (b) section 120(6) (protected roads: consent as to placing of apparatus);
  - (c) section 121(5) (exercise of powers in relation to protected roads);
  - (d) section 133(2) (meaning of “reasonable period” for the purposes of charges for prolonged road works);
  - (e) section 143(3) (measures necessary where apparatus affected by major works);
  - (f) section 155(3) (disputes about costs and expenses); and
  - (g) in Schedule 6 (roads with special engineering difficulties), paragraph 2(1).
- (3) In section 143(4) of the 1991 Act (failure to comply with agreement or decision)—
  - (a) for “of the arbiter” there is substituted “made”; and
  - (b) after “subsection (3)” there is inserted “in settlement of a dispute”.
- (4) After section 157 of the 1991 Act (reckoning of time periods) there is inserted—

**“157A Regulations prescribing manner of settlement of disputes**

Regulations under this Part prescribing the manner in which any question or dispute is to be settled may in particular make provision for the question or, as the case may be, dispute to be settled—

- (a) by the Commissioner, or
  - (b) by arbitration.”.
- (5) In Schedule 6 (roads with special engineering difficulties)—
  - (a) in paragraph 10(1), for “arbiter” to “arbitration” there is substituted “person to whom it falls, by virtue of regulations made under paragraph 2(1), to settle a dispute under that paragraph”; and
  - (b) in paragraph 12—
    - (i) in sub-paragraph (2), for “arbitration” there is substituted “be settled in the prescribed manner”;
    - (ii) in sub-paragraph (3), for “arbiter” there is substituted “person to whom it falls to settle the matter”; and
    - (iii) in sub-paragraph (4), for “the arbiter” there is substituted “that person”.

*Enforcement of certain offences under the Roads (Scotland) Act 1984*

**37 Fixed penalty offences under the Roads (Scotland) Act 1984**

- (1) After section 130 of the Roads (Scotland) Act 1984 (c. 54) there is inserted—

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*Status: This is the original version (as it was originally enacted).*

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### **“130A Fixed penalties for certain offences**

- (1) Any offence under this Act which is listed in the first column of Schedule 8A to this Act (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Act.
- (2) Offences listed in that Schedule which are committed by virtue of section 130 of this Act (offences committed by bodies corporate, etc.) are not fixed penalty offences.
- (3) The Scottish Ministers may, by order, modify that Schedule so as to provide that an offence is to cease to be a fixed penalty offence.
- (4) Schedule 8B to this Act (which makes provision about fixed penalties for fixed penalty offences) has effect.
- (5) An order under subsection (3) above may make transitional provision.”.
- (2) In section 143 of that Act (which includes provision as to orders under the Act), in subsection (2)(b)(ii), after “section” there is inserted “130A or”.
- (3) After Schedule 8 to that Act there are inserted Schedules 8A and 8B as set out in schedules 6 and 7 to this Act.
- (4) In section 156 of the 1991 Act (service of notices etc.) after subsection (2) there is inserted—
  - “(3) References in this section to notices authorised to be given or served for the purposes of this Part include reference to notices under Schedule 8B to the Roads (Scotland) Act 1984 (c. 54) (fixed penalties for certain offences under that Act).”.

## **38 Civil penalties for certain offences under the roads (Scotland) Act 1984**

- (1) After section 130A of the Roads (Scotland) Act 1984 (as inserted by section 37 above) there is inserted—

### **“130B Civil penalties for certain offences**

- (1) The Scottish Ministers may, by regulations, make provision for or in connection with—
  - (a) the imposition by roads authorities of penalty charges in respect of the offences which, under section 130A of this Act, are fixed penalty offences;
  - (b) the payment of such charges.
- (2) The regulations shall include provision specifying the person or persons by whom a penalty charge in respect of an offence is to be paid (who may be or, as the case may be, include a person other than the person who committed the offence).
- (3) The regulations shall include provision—

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*Status: This is the original version (as it was originally enacted).*

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- (a) prohibiting criminal proceedings or the giving of a fixed penalty notice in respect of any description of conduct for which a penalty charge may be imposed; or
  - (b) securing that a penalty charge is not payable or is refunded where the conduct is the subject of criminal proceedings or of a fixed penalty notice.
- (4) The regulations shall include provision about the standard of proof required to establish the commission of an offence in respect of which a penalty charge may be imposed and may include other provision for or in connection with evidence and procedure.
- (5) The regulations may set different levels of penalty charges in respect of different offences and in respect of the same offences committed in different circumstances.
- (6) The regulations may include provision for and in connection with—
  - (a) the notification of penalty charges to persons appearing to be liable to pay them;
  - (b) the enabling and effect of the making of representations to roads authorities by persons who are or may be liable to pay those charges;
  - (c) appeals by those persons against the imposition of those charges.”.
- (2) In section 143 of that Act (which includes provision as to regulations under the Act), in subsection (2)(b)(i) after “17” there is inserted “or 130B”.

### **39 Consultation on regulations and codes of practice**

After section 163 of the 1991 Act there is inserted the following section—

#### **“163A Consultation on regulations and codes of practice**

- (1) Before—
  - (a) making, amending or revoking regulations under or for the purposes of any provision of this Part, or
  - (b) issuing, amending or revoking a code of practice under or for the purposes of any such provision or approving any such code of practice or its amendment or revocation,the Scottish Ministers shall consult the persons and authorities set out in subsection (2).
- (2) Those persons and authorities are such—
  - (a) persons considered by the Scottish Ministers to be representative of the interests of undertakers,
  - (b) road works authorities,
  - (c) other persons,as the Scottish Ministers think appropriate.”.

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## PART 3

### MISCELLANEOUS

#### 40 National travel concession schemes

- (1) The Scottish Ministers may, by order, make national travel concession schemes.
- (2) A national travel concession scheme is a scheme for the provision of travel concessions to eligible persons travelling on eligible services on eligible journeys.
- (3) A national travel concession scheme may operate throughout Scotland or only in a part or parts of Scotland; and, in any case, may provide differently for different areas.
- (4) A national travel concession scheme shall include provision—
  - (a) determining or for the determination of the rate or rates of travel concessions;
  - (b) specifying or for the specification of the days and times during which travel concessions are provided;
  - (c) requiring or enabling operators of eligible services to provide travel concessions;
  - (d) as to the reimbursement of those operators for providing travel concessions;
  - (e) for enforcement of and appeals against requirements under paragraph (c) above; and
  - (f) for such other matters connected with the scheme as the Scottish Ministers think fit.
- (5) A national travel concession scheme may provide for the modification or revocation of any travel concession scheme established under section 93 of the Transport Act 1985 (c. 67) (local authority travel concession schemes).
- (6) An operator of eligible services who fails to comply with an obligation imposed by or under a national travel concession scheme on the operator is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) In this section—
 

“eligible journey”, in relation to a national travel concession scheme, means a journey beginning at or ending in a place in which the scheme operates;

“eligible person” in relation to a national travel concession scheme, means a person who is of such description as the Scottish Ministers may by order specify;

“eligible service” means a service of such description as the Scottish Ministers may by order specify; and

“travel concession”, in relation to a journey, means—

  - (a) reduction of the fare (within the meaning of the Public Passenger Vehicles Act 1981 (c. 14)) for the journey below the amount applicable to an adult who is not entitled to any reduction; or
  - (b) waiver of such fare.

#### 41 Public Transport Users' Committee for Scotland

- (1) The Scottish Ministers shall, by order, establish a body corporate to be known as the Public Transport Users' Committee for Scotland (in this section, the “Committee”).
- (2) An order under this section may include provision—

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- (a) about the constitution and membership of the Committee (including how members and office-holders are to be appointed);
  - (b) about the proceedings of the Committee;
  - (c) about its staff;
  - (d) about the discharge of its functions (including provision for the discharge of functions by sub-committees with members who are not all members of the Committee);
  - (e) about the making of reports by the Committee to the Scottish Ministers;
  - (f) about the making of payments by way of—
    - (i) allowances to office-holders, other members of the Committee and members of sub-committees who are not members of the Committee;
    - (ii) remuneration to its staff;
    - (iii) the meeting of the expenses of the persons mentioned in subparagraphs (i) and (ii) above;
    - (iv) pensions and other payments to or in respect of former staff of the Committee;
  - (g) about the keeping of accounts by the Committee and their audit and submission to the Scottish Ministers.
- (3) The Scottish Ministers may—
- (a) make payments to the Committee of such amounts, at such times and on such conditions (if any);
  - (b) make available to the Committee such staff, accommodation, furniture and equipment,
- as they consider appropriate.
- (4) In Schedule 1 to the Freedom of Information (Scotland) Act [2002 \(asp 13\)](#) (public authorities subject to duty to disclose information), after the entry numbered 75 there is inserted the following entry—
- “75A      The Public Transport Users' Committee for Scotland.”.

## **42      Functions of the Committee**

- (1) The Committee may consider and make recommendations to the Scottish Ministers about any matter relating to public transport services in, from or to Scotland.
- (2) The Committee shall consider and make recommendations about any other matter if asked to do so by the Scottish Ministers.
- (3) The Scottish Ministers may, by order—
  - (a) confer further functions on the Committee;
  - (b) remove functions from the Committee;
  - (c) make changes to any function of the Committee;
  - (d) transfer any function of the Committee to another person (including the Scottish Ministers).
- (4) An order under subsection (3)(a) or (c) above may confer a function or change a function only if the new function or, as the case may be, the function as changed relates to public transport services in, from or to Scotland or facilities for those services.

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- (5) The Committee may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions.
- (6) In this section, “public transport services” means all those services (including ferry services used also for carrying freight) on which members of the public rely for getting from place to place when not relying on facilities of their own but does not include—
  - (a) services provided under permits under section 19 of the Transport Act 1985 (c. 67) (permits in relation to use of buses by educational and other bodies) other than services provided wholly or mainly to meet the needs of members of the public who are elderly or disabled;
  - (b) excursions or tours.

#### **43      Guidance and direction to the Committee**

The Committee shall—

- (a) have regard to any written guidance issued to it by the Scottish Ministers;
  - (b) comply with any written direction given to it by them,
- as to how it is to discharge its functions.

#### **44      Abolition of requirement on local traffic authority to inform the Scottish Ministers about certain pedestrian crossings**

In section 23(2) of the Road Traffic Regulation Act 1984 (c. 27)—

- (a) after paragraph (a) there is inserted “and”; and
- (b) paragraph (c) (duty of local traffic authority to inform the Scottish Ministers in writing before establishing, altering or removing a pedestrian crossing on a road other than a trunk road) and the word “and” which immediately precedes it are repealed.

#### **45      Modification of Highlands and Islands Shipping Services Act 1960 and loans for transport-related purposes**

- (1) The Highlands and Islands Shipping Services Act 1960 (c. 31) (financial and other assistance to those concerned with providing sea transport services for the Highlands and Islands), so far as relating to the provision of that assistance by the Scottish Ministers, ceases to have effect.
- (2) Nothing in subsection (1) above affects any undertaking given, advance made, contract or other obligation or transaction entered into or action entered upon before that subsection comes into force.
- (3) Section 70 of the Transport (Scotland) Act 2001 (asp 2) (grants for transport-related purposes) is amended in accordance with subsections (4) to (6) below.
- (4) In subsection (1), after “grants” there is inserted “or loans”.
- (5) In subsection (2)—
  - (a) after “Grants” there is inserted “and loans”;
  - (b) for “amount” there is substituted “amounts”;
  - (c) after “including” there is inserted “, in the case of grants,”.
- (6) In subsection (4)—



- (a) after “grants” insert “and loans”;
- (b) after “grant”, in both places where it occurs, there is inserted “or loan”.

#### **46 Amendment of procedure for dealing with applications for harbour orders**

(1) Paragraph 18 of Schedule 3 to the Harbours Act 1964 (c. 40) (“the 1964 Act”) (which provides for the holding of an inquiry or public hearing where an objection is made to an application for a harbour revision or empowerment order and is not withdrawn) shall be amended in accordance with subsections (2) to (4) below.

(2) For sub-paragraph (1) there is substituted—

“(1) This paragraph applies if an objection to the application was made to the Scottish Ministers and has not been withdrawn.

(1A) It does not apply, however, if—

- (a) the Scottish Ministers decide that the application is not to proceed further;
- (b) they consider the objection is frivolous or trivial;
- (c) the objection does not specify the grounds on which it is made; or
- (d) the objection was not made within the period allowed for making it.

(1B) Before making their decision under paragraph 19, the Scottish Ministers may—

- (a) cause an inquiry to be held; or
- (b) give to the person who made the objection referred to in sub-paragraph (1) an opportunity of appearing before and being heard by a person appointed by them.

(1C) Where—

- (a) the objection referred to in sub-paragraph (1) is made by a person within sub-paragraph (1D); and
- (b) the person informs the Scottish Ministers in writing that the person wishes the objection to be referred to an inquiry or dealt with in accordance with sub-paragraph (1B)(b),

the Scottish Ministers shall, before making their decision under paragraph 19, either cause an inquiry to be held or, if they so determine, cause the objection to be dealt with in accordance with sub-paragraph (1B)(b).

(1D) The persons within this sub-paragraph are—

- (a) any council constituted under the Local Government etc. (Scotland) Act 1994 (c. 39) for an area in which the harbour (or any part of it) is situated; and
- (b) if the order will authorise the compulsory acquisition of land, any person who is entitled to be served with notice under paragraph 11.”.

(3) In sub-paragraph (2), for “sub-paragraph (1)(a)” there is substituted “sub-paragraph (1B)(b)”.

(4) In sub-paragraph (3), paragraph (a) is repealed.

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- (5) In paragraph 19 of that Schedule (decisions on an application for a harbour revision or empowerment order), there is inserted at the end of sub-paragraph (1) “; and
- (f) any written representations submitted to the Scottish Ministers by the applicant or any objector in elaboration of the application or, as the case may be, objection.”,

and the word “and” occurring between sub-paragraphs (1)(d) and (e) is repealed.

**47 Amendment of procedure where harbour revision orders are made by the Scottish Ministers of their own motion**

- (1) For paragraph 28 of Schedule 3 to the 1964 Act there is substituted—

“28 (1) This paragraph applies if an objection to the proposal was made to the Scottish Ministers and has not been withdrawn.

- (2) It does not, however, apply if—

- (a) the Scottish Ministers decide that the proposal is not to proceed further;
- (b) they consider the objection is frivolous or trivial;
- (c) the objection does not specify the grounds on which it is made; or
- (d) the objection was not made within the period allowed for making it.

- (3) Before making their decision under paragraph 29, the Scottish Ministers may—

- (a) cause an inquiry to be held; or
- (b) give to the person who made the objection referred to in sub-paragraph (1) an opportunity of appearing before and being heard by a person appointed by them.

- (4) Where—

- (a) the objection referred to in sub-paragraph (1) is made by a council constituted under the Local Government etc. (Scotland) Act 1994 (c. 39) for an area in which the harbour (or any part of it) is situated; and
- (b) the council informs the Scottish Ministers in writing that it wishes the objection to be referred to an inquiry or dealt with in accordance with sub-paragraph (3)(b),

the Scottish Ministers shall, before making their decision under paragraph 29, either cause an inquiry to be held or, if they so determine, cause the objection to be dealt with in accordance with sub-paragraph (3)(b).

- (5) Where an objector is heard in accordance with sub-paragraph (3)(b), the Scottish Ministers shall allow such other persons as they think appropriate to be heard on the same occasion.”.

- (2) In paragraph 29 of that Schedule (decision on harbour revision order proposed by the Scottish Ministers)—

- (a) in sub-paragraph (1)(b), after “inquiry” there is inserted “and of any person appointed for the purpose of hearing an objector”; and
- (b) there is inserted at the end of sub-paragraph (1) “; and

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- (c) any written representations submitted to the Scottish Ministers by an objector in elaboration of the objection.”,

and the word “and” between sub-paragraphs (1)(a) and (b) is repealed.

#### **48 Transitional provision for sections 46 and 47**

Nothing in section 46 or 47 of this Act applies—

- (a) in relation to an application for an order under section 14 or 16 of the 1964 Act if the application was made before those sections of this Act come into force; or
- (b) in relation to a proposal by the Scottish Ministers to make a harbour revision order of the Scottish Ministers' own motion in respect of which a notice was published in the Edinburgh Gazette under paragraph 26(1)(a) of Schedule 3 to the 1964 Act before those sections of this Act come into force.

#### **49 Badges for vehicles used for disabled people: change of terminology**

In section 21(4) of the Chronically Sick and Disabled Persons Act 1970 ([c. 44](#)) (badges for display on motor vehicles used by institutions concerned with the care of disabled people) for “institution”, in both places where it occurs, there is substituted “organisation”.

#### **50 Extension of remit of Bus User Complaints Tribunal**

In section 41 of the Transport (Scotland) Act 2001 ([asp 2](#)) (Bus User Complaints Tribunal)—

- (a) in subsection (7), for “local” in both places where it occurs, there is substituted “bus”;
- (b) after that subsection there is inserted—

“(8) In subsection (7) above, “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.”.

#### **51 Minor amendments of Transport (Scotland) Act 2001**

- (1) The Transport (Scotland) Act 2001 ([asp 2](#)) is amended in accordance with subsections (2) to (9) below.
- (2) In section 48 (interpretation of Part 2 (bus services)), in the definition of “relevant general policies” in paragraph (a)—
  - (a) after second “authority” there is inserted “(i)”; and
  - (b) at the end there is inserted “; or
  - (ii) any policies formulated by them from time to time in accordance with that strategy which, were the area to which those policies relate not in a passenger

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transport area, could have been formulated by them under that provision and which relate to matters which may be the subject matter of a quality partnership scheme or a quality contract scheme;”.

- (3) In section 54(2) (road not to be subject to charges under more than one charging scheme) for “A road shall not” there is substituted “No part of a road shall”.
- (4) In section 64 (which enables regulations for, among other things, the determination of disputes and appeals against those determinations)—
  - (a) in subsection (1), in paragraph (a), for “relating to charging schemes” there is substituted “arising under this Part of this Act”; and
  - (b) after that subsection there is inserted—
 

“(1A) Provision may be made under subsection (1) above for the appointment of—

    - (a) persons to determine the disputes; and
    - (b) persons to hear and determine the appeals,

referred to in that subsection.

(1B) Provision made by virtue of subsection (1A) above may include provision for the payment by charging authorities of expenditure incurred in and in consequence of the making of appointments by virtue of that subsection.

(1C) Provision made by virtue of subsection (1A) above may—

    - (a) include provision conferring the functions referred to in paragraphs (a) and (b) of that subsection on persons appointed to carry out functions similar to those functions; and
    - (b) where it does so, may, so as to give the provision full effect, apply and modify any enactment.”.
- (5) In section 66(4) (application of Act to motor vehicles and persons in public service of the Crown), for “subsection (2)” there is substituted “subsection (3)”.
- (6) In section 79(1) (issue of guidance to local traffic and transport authorities), in paragraph (d), after “authorities” there is inserted “and local traffic authorities (or any one or more local traffic authorities)”.
- (7) In section 81(4)(b) (which specifies the regulations that are to be made by way of affirmative resolution procedure), after “Act” there is inserted “or which consist of or include provision made by virtue of section 64(1C) of this Act”.
- (8) In section 82(1) (interpretation) in the definition of “local transport strategy”—
  - (a) the words from “in” (where first occurring) to “Act” are repealed;
  - (b) after “by” there is inserted “(a)”; and
  - (c) after “authority” there is inserted “; or
  - (b) a local traffic authority,”.
- (9) In schedule 1, in paragraph 5 (application by charging authorities of proceeds of road user charging)—
  - (a) in sub-paragraph (1), sub-sub-paragraph (b) and the word “or” immediately preceding it are repealed; and

(b) after that sub-paragraph there is inserted—

“(1A) A charging authority may, for the purposes of sub-paragraph (1) above, pay money to any local traffic authority, local transport authority or other person.”.

## PART 4

### GENERAL

#### 52 Orders and regulations

- (1) Any power of the Scottish Ministers under this Act to make an order or regulations shall be exercisable by statutory instrument.
- (2) Subject to subsection (3) below, a statutory instrument containing an order (other than an order made under section 54(2) below) or regulations made under this Act shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) A statutory instrument containing an order made under section 1(1), 2(1) or (2), 10(1), 11(1), 13(1) or 40(1) above shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Scottish Parliament.
- (4) Orders and regulations under this Act may make—
  - (a) different provision for different purposes; and
  - (b) supplemental, incidental, consequential, transitory, transitional or saving provision.

#### 53 Interpretation

- (1) In Part 1 of this Act, “council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).
- (2) In Part 2 of this Act—

“the Commissioner” has the meaning given by section 16 above; and

“the 1991 Act” means the New Roads and Street Works Act 1991 (c. 22).
- (3) Expressions used in Part 2 of this Act and in the 1991 Act have, in this Act, the same meaning as in that Act.

#### 54 Short title and commencement

- (1) This Act may be cited as the Transport (Scotland) Act 2005.
- (2) This Act (except this section and section 52 above) comes into force in accordance with provision made by order by the Scottish Ministers.

## SCHEDULE 1

*(introduced by section 4)*

### FURTHER PROVISION ABOUT REGIONAL TRANSPORT PARTNERSHIPS

#### *Staff*

- 1 A Transport Partnership shall appoint such employees as it considers necessary for the carrying out of its functions.
- 2 If—
  - (a) proceedings are brought against an employee of a Transport Partnership in respect of—
    - (i) anything done by the employee in accordance or purportedly in accordance with an enactment; or
    - (ii) anything not done by the employee which it is alleged should have been done by the employee in accordance with an enactment; and
  - (b) the Transport Partnership is satisfied that the employee honestly believed—
    - (i) that the act or omission was within the scope of the employee's employment; and
    - (ii) that the employee was, under the enactment, required or entitled to do what was done or omit to do what should have been done,then the Transport Partnership may indemnify all or any part of any damages or expenses which the employee might have been ordered to pay or might have or has incurred.
- 3 A Transport Partnership—
  - (a) shall obtain an appropriate guarantee for the accounting for all money and property which is or is likely to be in the custody or under the control of its employees;
  - (b) may obtain such a guarantee for all money and property which is or is likely to be in the custody or under the control of any person other than one of its employees.
- 4 If it comes to the knowledge of a person who is an employee of a Transport Partnership that a contract in which the person has a direct or indirect pecuniary interest (not being a contract to which that person is a party) has been or is proposed to be entered into by the Transport Partnership, that person shall, as soon as practicable, give written notice of that fact to the Transport Partnership.
- 5 (1) An employee of a Transport Partnership who, under colour of the employment, accepts any fee or reward other than remuneration and expenses commits an offence.  
(2) A person who commits such an offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

#### *Land*

- 6 (1) For the purposes of its functions, a Transport Partnership may—
  - (a) acquire by agreement; or
  - (b) if authorised by the Scottish Ministers, purchase compulsorily, any land.
- (2) Sub-paragraph (1)(b) above—

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- (a) does not apply in relation to Crown land (within the meaning of section 242 of the Town and Country Planning (Scotland) Act 1997 (c. 8)); and
  - (b) is subject to any other enactment conferring on the Transport Partnership power to acquire land compulsorily.
- (3) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applies in relation to the compulsory purchase of land under sub-paragraph (1)(b) above as if—
  - (a) that provision were contained in an Act in force immediately before the commencement of that Act; and
  - (b) the Transport Partnership were a local authority.
- (4) The power to acquire or purchase land under sub-paragraph (1) above includes power to acquire a servitude or other right in or over land by the creation of a new right.
- (5) A Transport Partnership may develop its land for the purposes of its functions in such manner as it thinks fit.
- 7 (1) A Transport Partnership may—
  - (a) develop, for use by other persons, any of its land no longer required for the purposes of its functions; or
  - (b) develop for use wholly or partly by other persons any of its land the use of which for the purposes of its functions (not including those conferred by this paragraph) can be combined with that other use,with a view to selling or otherwise disposing of the land (or any right or interest in or over it) after the development is carried out.
- (2) A Transport Partnership may acquire land adjacent to its own for the purposes of developing it under sub-paragraph (1) above together with its own.
- 8 In paragraphs 6 and 7 above, references to the functions of a Transport Partnership do not include those conferred by paragraph 7 above.
- 9 (1) A Transport Partnership may dispose of land; and section 74(2) to (2H) of the Local Government (Scotland) Act 1973 (c. 65) (disposal for best consideration) applies in relation to a Transport Partnership as it applies in relation to a local authority.
- (2) The power to dispose of land under sub-paragraph (1) above includes power to dispose of a servitude or other right in or over the land by the creation of a new right.

#### *Private legislation*

- 10 (1) A Transport Partnership may, if it thinks fit, promote or oppose private legislation in the Scottish Parliament.
- (2) The power conferred by sub-paragraph (1) above on a Transport Partnership includes power to continue the promotion or opposition of private legislation in the circumstances set out in sub-paragraph (3) below.
- (3) Those circumstances are—
  - (a) where the function in pursuance of which the legislation was first promoted or opposed was transferred to the Transport Partnership under section 10 above after the introduction of the Bill for the legislation;
  - (b) in a case where that function was transferred to the Scottish Ministers under section 13 above after the introduction of that Bill, where the Scottish

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- Ministers have directed that the Transport Partnership specified in the direction is to continue the promotion or opposition of that legislation; or
- (c) a combination of the circumstances set out in sub-sub-paragraphs (a) and (b) above.

*Participation in community planning*

- 11 In the Local Government in Scotland Act 2003 (asp 1)—
- (a) in section 16 (participation of public bodies in community planning)—
- (i) in subsection (1), after paragraph (h) there is inserted—
- “(i) a Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12);  
and
- (ii) in subsection (2), for “(h)” there is substituted “(i)”; and
- (b) in section 17 (reports etc. on implementation of community planning), in subsection (3), for “(h)” there is inserted “(i)”.

*Forming companies*

- 12 A Transport Partnership may (whether alone or with others, who need not be Transport Partnerships) form or promote companies within the meaning of the Companies Act 1985 (c. 6).

*Legal proceedings, notices etc.*

- 13 (1) Sections 189 to 193, 195 and 197 to 199 (legal proceedings, notices etc.) of the Local Government (Scotland) Act 1973 (c. 65) apply in relation to a Transport Partnership as they apply in relation to a council.
- (2) A Transport Partnership shall appoint one of its employees as its proper officer for the purposes of sections 190, 191 and 193 of the Local Government (Scotland) Act 1973.

*Reporting and information*

- 14 A Transport Partnership shall—
- (a) as soon as practicable after the end of each financial year, give the Scottish Ministers and publish a report on the performance of its functions during that year;
- (b) provide the Scottish Ministers with such information about the performance of those functions as they may require.

*Finance etc.*

- 15 (1) The Local Government (Scotland) Act 1973 (c. 65) is amended in accordance with sub-paragraphs (2) and (3) below.
- (2) In section 106(1) (application of Part VII (finance) to bodies other than local authorities) after paragraph (b) there is inserted—
- “(ba) a Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12);”.



- (3) In section 118(5) (authorities required to make local financial returns), after “authorities” there is inserted “or any Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12)”.
- (4) A Transport Partnership shall appoint one of its employees as its proper officer for the purposes of Part VII of the 1973 Act.
- (5) In section 61(c) of the Local Government in Scotland Act 2003 (asp 1) (meaning of “local authority” for purposes of Act), in sub-paragraph (iv), after “board”, where secondly occurring, there is inserted “, a Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12)”.

*Contracts etc.*

- 16 (1) The following enactments apply in relation to a Transport Partnership as they apply in relation to a council—
  - (a) the Local Authority (Goods and Services) Act 1970 (c. 39);
  - (b) the Local Government Contracts Act 1997 (c. 65); and
  - (c) sections 78 to 81 (building, contracts etc.) of the Local Government (Scotland) Act 1973 (c. 65).
- (2) The Local Government Act 1988 (c. 9) is amended in accordance with sub-paragraphs (3) and (4) below.
- (3) In section 1(1) (defined bodies) after paragraph (g) there is inserted—
  - “(ga) a Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12),”.
- (4) In Schedule 2 (bodies to which Part 2 of the Act applies), after the entry for a National Park Authority in Scotland there is inserted the following entry—
  - “A Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12)”.
- (5) In section 61(c) of the Local Government in Scotland Act 2003 (asp 1) (meaning of “local authority” for purposes of Act)—
  - (a) in sub-paragraph (iii), the words “and sections 51 and 52 above” are repealed; and
  - (b) after paragraph (iv) there is inserted—
    - “(iva) in sections 51 and 52 above, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), a joint fire board, a joint police board and a Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12),”.

*Standards of members' conduct*

- 17 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) (devolved public bodies for the members of which there are to be codes of conduct under the Act), after the entry for the State Hospitals Board for Scotland there is inserted the following entry—

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“A Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12)”.

#### *Expenses of observers*

- 18 A Transport Partnership may pay to persons appointed, as respects the Partnership, as observers under section 1(2)(i) above such expenses as the Partnership determines.

#### *Investigation*

- 19 In Part 1 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (asp 11) (authorities liable to investigation and not subject to removal from that liability), after the entry numbered 11 there is inserted the following entry—
- “11A Any Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12)”.

#### *Freedom of information*

- 20 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (asp 13) (public authorities subject to duty to disclose information), after the entry numbered 24 there is inserted the following entry—
- “24A A Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12)”.

## SCHEDULE 2

*(introduced by section 17)*

### SCOTTISH ROAD WORKS COMMISSIONER: FURTHER PROVISION

#### *Staff*

- 1 (1) The Commissioner may, with the consent of the Scottish Ministers as to numbers and terms and conditions, appoint staff.
- (2) The Commissioner may, with the approval of the Scottish Ministers, make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of the staff of the Commissioner and may, in particular—
- (a) make contributions or payments towards provision for such pensions, allowances or gratuities;
  - (b) establish and administer one or more pension schemes.
- (3) Section 16(4) of this Act applies to staff appointed under this paragraph as it applies to the Commissioner.

#### *Accounts*

- 2 The Commissioner shall—

- (a) prepare, for each financial year and in accordance with directions given by the Scottish Ministers, an account of the Commissioner’s income and expenditure; and
- (b) send the account, by such time as the Scottish Ministers may direct, to the Auditor General for Scotland for auditing.

Reports and information

- 3       The Commissioner shall—
- (a) as soon as practicable after the end of each financial year, give the Scottish Ministers and publish a report on the performance of the Commissioner’s functions during that year;
  - (b) provide the Scottish Ministers with such information about the performance of those functions as they may require.

Freedom of information

- 4       In schedule 1 to the Freedom of Information (Scotland) Act 2002 (asp 13) (public authorities subject to duty to disclose information), after the entry numbered 97 there is inserted the following entry—
- “97A       The Scottish Road Works Commissioner.”.

| SCHEDULE 3  |  |                  |
|---|--|------------------|
| (introduced by section 33)  |  |                  |
| INCREASE IN MAXIMUM FINES FOR CERTAIN SUMMARY OFFENCES UNDER THE 1991 ACT |  |                  |
| Provision specifying fine   | Brief description of offence or offences to which the fine relates   | New maximum fine |
| Section 110(2)  | Offences under section 110(1) (prohibition of authorised road works)                                       | level 5          |
| Section 113(5)  | Failure to comply with duties under section 113 (advance notice of certain works, etc.)                    | level 4          |
| Section 114(5)  | Beginning to execute works in contravention of section 114 (notice of starting date of works)              | level 4          |
| Section 115(3)  | Execution of works in contravention of direction under section 115 (directions as to timing of road works) | level 5          |
| Section 116(4)  | Failure to give notice in accordance with section 116 (notice of emergency works)                          | level 4          |

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| <i>Provision specifying fine</i> | <i>Brief description of offence or offences to which the fine relates</i>  | <i>New maximum fine</i> |
|----------------------------------|--|-------------------------|
| Section 117(6)                   | Carrying out works in contravention of a restriction imposed under section 117 (restriction on works following substantial road works)                 | level 5                 |
| Section 124(4)                   | Failure to comply with section 124(1) or (2) (safety measures)   | level 5                 |
| Section 124(6)                   | Interference with safety measures taken by undertaker  | level 5                 |
| Section 125(2)                   | Failure to comply with section 125(1) (duty to carry on and complete certain road works with all reasonably practicable dispatch)                      | level 5                 |
| Section 126(3)                   | Failure to comply with section 126(1) or (2) (duties relating to the use of qualified supervisors and operatives)                                      | level 5                 |
| Section 127(2)                   | Failure by undertaker to afford roads authority with reasonable facilities for ascertaining whether undertaker is complying with duties under Part 3   | level 4                 |
| Section 128(2)                   | Failure to comply with section 128(1) (requirements relating to road works likely to affect another person's apparatus in the street)                  | level 4                 |
| Section 129(6)                   | Failure by undertaker to comply with duties under section 129(1) to (5) (reinstatement of road and information for road works authority)               | level 5                 |
| Section 130(5)                   | Failure to comply with duties under section 130 (prescribed requirements as to materials and workmanship and performance standards for reinstatements) | level 5                 |
| Section 138(4)                   | Failure to comply with duties under section 138(1) to  | level 5                 |

| <i>Provision specifying fine</i> | <i>Brief description of offence or offences to which the fine relates</i>  | <i>New maximum fine</i> |
|----------------------------------|--|-------------------------|
|                                  | (3) (records of location of apparatus)   |                         |
| Section 139(4)                   | Failure to comply with section 139(1) (duty to inform other undertaker of location of certain apparatus) or requirements imposed under section 139(2) (duties applicable where ownership of certain apparatus cannot be ascertained)             | level 4                 |
| Section 142(3)                   | Failure by authority to comply with section 142(2) (requirements relating to certain road works likely to affect apparatus in the road)  | level 4                 |
| Section 147(6)                   | Failure by undertaker to comply with duties under section 147(4) or (5) (road works affecting structure of a bridge)   | level 5                 |
| Schedule 6, paragraph 6          | Execution of works in road with special engineering difficulties in contravention of paragraph 2 (requirement for agreed plan and section before executing works) or paragraph 3 (requirement to furnish plan and section after emergency works) | level 5                 |
| Schedule 6, paragraph 12(5)      | Failure to execute works in such a road in accordance with a direction under paragraph 12 (direction as to alteration of works or removal of apparatus)  | level 5                 |
| Schedule 6, paragraph 13(2)      | Failure to comply with paragraph 13(1) (requirement to execute works in such a road in accordance with plan or agreed modification)  | level 5                 |

*Status: This is the original version (as it was originally enacted).*

SCHEDULE 4

*(introduced by section 34)*

SCHEDULE 6A TO THE NEW ROADS AND STREET WORKS ACT 1991

“SCHEDULE 6A  
FIXED PENALTY OFFENCES UNDER PART 4

| <i>Offence</i>   | <i>Brief description</i>  |
|--|---|
| An offence under section 113(5)  | Failure to comply with duties under section 113 (advance notice of certain works, etc.) |
| An offence under section 114(5)  | Beginning to execute works in contravention of section 114 (notice of starting date)    |
| An offence under section 116(4)  | Failure to give notice in accordance with section 116 (notice of emergency works)       |
| An offence under section 129(6) consisting of a failure to comply with subsection (3) or (4) | Failure to comply with requirements to give notice of completion of reinstatement.”     |

SCHEDULE 5

*(introduced by section 34)*

SCHEDULE 6B TO THE NEW ROADS AND STREET WORKS ACT 1991

“SCHEDULE 6B  
FIXED PENALTIES FOR CERTAIN OFFENCES UNDER PART 4

**Power to give fixed penalty notices**

- 1

(1)

An authorised officer of a road works authority may, if having reason to believe that a person is committing or has committed a fixed penalty offence, give that person a fixed penalty notice in relation to that offence.

(2)

In this Schedule “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty.
- 2

A fixed penalty notice for an offence may not be given after such time relating to the offence as may be prescribed.

**Contents of fixed penalty notice**

- 3

(1)

A fixed penalty notice shall identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.

- (2) A fixed penalty notice shall also state—
- (a) the amount of the penalty and the period within which it may be paid,
  - (b) the discounted amount and the period within which it may be paid,
  - (c) the person to whom and the address at which payment may be made,
  - (d) the method or methods by which payment may be made,
  - (e) the person to whom and the address at which any representations relating to the notice may be made,
  - (f) the consequences of not making a payment within the period for payment.
- (3) The person specified under sub-paragraph (2)(c) must be the road works authority or a person acting on their behalf.

#### **The amount of the penalty and the period for payment**

- 4
- (1) The penalty for a fixed penalty offence is (subject to paragraph 5) such amount, not exceeding 30 per cent. of the maximum fine for that offence, as may be prescribed.
  - (2) The period for payment of the penalty is the period of 29 days beginning with the day on which the notice is given.
  - (3) The road works authority may extend the period for paying the penalty in any particular case if they consider it appropriate to do so.

#### **The discounted amount**

- 5
- (1) A discounted amount is payable instead of the amount prescribed under paragraph 4(1) if payment is made before the end of the period of 15 days beginning with the day on which the notice is given.
  - (2) The discounted amount for a fixed penalty offence is such amount, not exceeding 25 per cent. of the maximum fine for the offence, as may be prescribed.
  - (3) If the last day of the period specified in sub-paragraph (1) does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.

#### **Effect of notice and payment of penalty**

- 6
- (1) This paragraph applies where a person is served with a fixed penalty notice in respect of a fixed penalty offence.
  - (2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.
  - (3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the road works authority after that time.
  - (4) Payment of the discounted amount counts for the purposes of sub-paragraph (3) only if it is made before the end of the period for payment of the discounted amount.
  - (5) In proceedings for the offence a certificate which—
    - (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the road works authority, and

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- (b) states that payment of an amount specified in the certificate was or was not received by a date so specified,  
is sufficient evidence of the facts stated.

### **Request for hearing**

- 7
- (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.
  - (2) A notice requesting a hearing under sub-paragraph (1) shall be in writing and shall be sent by post or delivered to the person specified under paragraph 3(2)(c) in the fixed penalty notice at the address so specified.
  - (3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.
  - (4) Where a person has requested a hearing in accordance with this section—
    - (a) the road works authority shall hold the hearing,
    - (b) a person authorised for the purpose by the road works authority in whose area the offence was committed shall notify the procurator fiscal of the request, and
    - (c) the period for payment of the fixed penalty shall be calculated so that the period beginning with the giving of the notice under this paragraph and ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

### **Power to withdraw notices**

- 8
- (1) If the road works authority consider (whether after holding a hearing under paragraph 7 or not) that a fixed penalty notice which has been given ought not to have been given, they may give to the person to whom it was given a notice withdrawing the fixed penalty notice.
  - (2) Where a notice under sub-paragraph (1) is given—
    - (a) the road works authority shall repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice, and
    - (b) no proceedings shall be commenced or continued against that person for the offence in question.
  - (3) The road works authority shall consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

### **Effect of prosecution on notice**

- 9
- Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.



### **Recovery of unpaid fixed penalties**

- 10 Subject to paragraphs 8 and 9, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it shall be enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

### **Judicial determination of enforcement of fixed penalty**

- 11 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 10 may apply to the sheriff by summary application for a declaration that the fixed penalty is not enforceable on the ground that—
- (a) the fixed penalty was paid before the expiry of the period for paying, or
  - (b) the person has made a request for a hearing in accordance with paragraph 7 and no hearing has been held within a reasonable time after the request.
- (2) On an application under sub-paragraph (1), the sheriff may declare—
- (a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty,
  - (b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 7,
  - (c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request, and
- accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

### **General and supplementary**

- 12 (1) The road works authority shall, subject to sub-paragraph (2), remit the money received by them by way of fixed penalties under this Schedule to the Scottish Ministers.
- (2) The Scottish Ministers may, by regulations, provide that the road works authority may retain as much of that money as is sufficient to meet such of their expenditure as is described in the regulations.
- (3) The Scottish Ministers may make regulations about the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this Schedule.
- 13 (1) Fixed penalty notices may not be given in such circumstances as may be prescribed.
- (2) The method or methods by which fixed penalties may be paid may be prescribed.
- (3) The Scottish Ministers may by regulations modify paragraph 4(2) or 5(1) so as to substitute a different period for the period for the time being specified there.
- 14 The Scottish Ministers may issue or approve for the purposes of this Schedule a code of practice giving guidance to road works authorities and their authorised officers as to the performance of their functions under this Schedule; and in performing those functions those authorities and officers shall have regard to that code of practice.”.

*Status: This is the original version (as it was originally enacted).*

SCHEDULE 6

*(introduced by section 37)*

SCHEDULE 8A TO THE ROADS (SCOTLAND) ACT 1984

“SCHEDULE 8A  
FIXED PENALTY OFFENCES

| <i>Offence</i>                                  | <i>Brief description</i>  |
|---|---|
| An offence under section 58(1)                  | Deposit of building materials in in or erection of scaffolding over road without or other than in accordance with permission.   |
| An offence under section 85(3) as read with (4) | Deposit of builder’s skip on road without permission of roads authority.<br><br>Failure of owner of skip or other person to ensure conditions of permission complied with.” |

SCHEDULE 7

*(introduced by section 37)*

SCHEDULE 8B TO THE ROADS (SCOTLAND) ACT 1984

“SCHEDULE 8B  
FIXED PENALTIES FOR CERTAIN OFFENCES

**Power to give fixed penalty notices**

- 1
- (1) An authorised officer of a roads authority may, if having reason to believe that a person is committing or has committed a fixed penalty offence, give that person a fixed penalty notice in relation to that offence.

(2) In this Schedule “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty.
- 2
- A fixed penalty notice for an offence may not be given after such time relating to the offence as the Scottish Ministers may by regulations prescribe.

**Contents of fixed penalty notice**

- 3
- (1) A fixed penalty notice shall identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.

(2) A fixed penalty notice shall also state—

(a) the amount of the penalty and the period within which it may be paid;

(b) the discounted amount and the period within which it may be paid;

- (c) the person to whom and the address at which payment may be made;
  - (d) the method or methods by which payment may be made;
  - (e) the person to whom and the address at which any representations relating to the notice may be made;
  - (f) the consequences of not making a payment within the period for payment.
- (3) The person specified under sub-paragraph (2)(c) must be the roads authority or a person acting on their behalf.

### **The amount of the penalty and the period for payment**

- 4
- (1) The penalty for a fixed penalty offence is (subject to paragraph 5) such amount, not exceeding 30 per cent. of the maximum fine for that offence, as the Scottish Ministers may by regulations prescribe.
  - (2) The period for payment of the penalty is the period of 29 days beginning with the day on which the notice is given.
  - (3) The roads authority may extend the period for paying the penalty in any particular case if they consider it appropriate to do so.

### **The discounted amount**

- 5
- (1) A discounted amount is payable instead of the amount prescribed under paragraph 4(1) if payment is made before the end of the period of 15 days beginning with the day on which the notice is given.
  - (2) The discounted amount for a fixed penalty offence is such amount, not exceeding 25 per cent. of the maximum fine for the offence, as the Scottish Ministers may by regulations prescribe.
  - (3) If the last day of the period specified in sub-paragraph (1) does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.

### **Effect of notice and payment of penalty**

- 6
- (1) This paragraph applies where a person is served with a fixed penalty notice in respect of a fixed penalty offence.
  - (2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.
  - (3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the roads authority after that time.
  - (4) Payment of the discounted amount counts for the purposes of sub-paragraph (3) only if it is made before the end of the period for payment of the discounted amount.
  - (5) In proceedings for the offence a certificate which—
    - (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the roads authority; and
    - (b) states that payment of an amount specified in the certificate was or was not received by a date so specified,

is sufficient evidence of the facts stated.

### **Request for hearing**

- 7 (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.
- (2) A notice requesting a hearing under sub-paragraph (1) shall be in writing and shall be sent by post or delivered to the person specified under paragraph 3(2)(c) in the fixed penalty notice at the address so specified.
- (3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.
- (4) Where a person has requested a hearing in accordance with this section—
- (a) the roads authority shall hold the hearing;
  - (b) a person authorised for the purpose by the roads authority in whose area the offence was committed shall notify the procurator fiscal of the request; and
  - (c) the period for payment of the fixed penalty shall be calculated so that the period beginning with the giving of the notice under this paragraph and ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

### **Power to withdraw notices**

- 8 (1) If the roads authority consider (whether after holding a hearing under paragraph 7 or not) that a fixed penalty notice which has been given ought not to have been given, they may give to the person to whom it was given a notice withdrawing the fixed penalty notice.
- (2) Where a notice under sub-paragraph (1) is given—
- (a) the roads authority shall repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice; and
  - (b) no proceedings shall be commenced or continued against that person for the offence in question.
- (3) The roads authority shall consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

### **Effect of prosecution on notice**

- 9 Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

### **Recovery of unpaid fixed penalties**

- 10 Subject to paragraphs 8 and 9, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it shall be enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

### **Judicial determination of enforcement of fixed penalty**

- 11 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 10 may apply to the sheriff by summary application for a declaration that the fixed penalty is not enforceable on the ground that—
- (a) the fixed penalty was paid before the expiry of the period for paying; or
  - (b) the person has made a request for a hearing in accordance with paragraph 7 and no hearing has been held within a reasonable time after the request.
- (2) On an application under sub-paragraph (1), the sheriff may declare—
- (a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty;
  - (b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 7;
  - (c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request, and accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

### **General and supplementary**

- 12 (1) The roads authority shall, subject to sub-paragraph (2), remit the money received by them by way of fixed penalties under this Schedule to the Scottish Ministers.
- (2) The Scottish Ministers may, by regulations, provide that the roads authority may retain as much of that money as is sufficient to meet such of their expenditure as is described in the regulations.
- (3) The Scottish Ministers may make regulations about the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this Schedule.
- 13 The Scottish Ministers may by regulations—
- (a) prescribe circumstances in which fixed penalty notices may not be given;
  - (b) modify paragraph 4(2) or 5(1) so as to substitute a different period for the period for the time being specified there;
  - (c) prescribe the method or methods by which penalties may be paid.
- 14 The Scottish Ministers may issue or approve for the purposes of this Schedule a code of practice giving guidance to roads authorities and their authorised officers as to the performance of their functions under this Schedule; and in performing those functions those authorities and officers shall have regard to that code of practice.”.