

TRANSPORT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Regional Transport

Chapter 1: Regional Transport Partnerships

Section 1: Establishment of regional Transport Partnerships

11. **Section 1** places a duty on the Scottish Ministers to create regionally based Transport Partnerships by order.
12. **Section 1(1)** requires the Scottish Ministers to determine the boundaries of the Transport Partnerships so that every part of Scotland is within a Transport Partnership. It also obliges the Scottish Ministers to ensure that Transport Partnerships have a constitution to govern their activities and to provide as to their membership.
13. **Section 1(2)(a)** limits the total number of councillor members in any one Transport Partnership to a maximum of twenty. **Section 1(2)(b)** requires that the membership of each Transport Partnership includes at least one but not more than five councillors from each council whose area or any part of their area falls within the Transport Partnership's region. It defines the terms "councillor member" and "constituent council". A Transport Partnership's area may comprise the area of a single council.
14. **Section 1(2)(c)** requires the Scottish Ministers to appoint other members to each Transport Partnership. Under section 1(3) this requirement will only continue until the council elections of May 2007. Thereafter, under the terms of section 1(2)(c), these other members will be appointed by the Transport Partnership itself, and these appointments will be subject to the consent of the Scottish Ministers.
15. **Section 1(2)(e)** requires the Scottish Ministers to establish the decision-making rules for a Transport Partnership. Each councillor member will have one vote but, under section 1(4), councillor members shall have their votes weighted by making them count as one, two, three or four votes. **Section 1(2)(e)(i)** ensures that councillor members may always vote and that other members may vote on such matters as the Transport Partnership determines are appropriate. However, other members may never vote on the amount of funding to be provided by individual councils to a Transport Partnership, as provided for by section 3(2)(a) or on the making of a request to the Scottish Ministers to confer transport functions on a Transport Partnership by an order made under the provisions of section 10(1).
16. **Section 1(2)(f)** gives powers to the Scottish Ministers to determine that certain offices of the partnership, for example the chairperson or deputy chairperson, can be held only by councillor members and not by other members.
17. The Scottish Ministers will carry out their duties and powers in this section by orders that will, as stated in section 52(3), be laid in draft and subject to the affirmative resolution procedure.

Section 2: Dissolution of regional Transport Partnerships

18. **Section 2(1)** empowers the Scottish Ministers, by order, to dissolve one or more Transport Partnerships or all of them.
19. Under section 2(2) the Scottish Ministers can ensure, by making provision by order, that on the dissolution of a Transport Partnership any of its transport functions can be performed by the person who was responsible for those functions prior to their transfer to the Partnership. The inclusion of this subsection seeks to avoid the situation of an hiatus, in the delivering of transport functions, between the dissolution of a Transport Partnership and the creation of a new Transport Partnership required by section 1.
20. Before making any order under section 2, the Scottish Ministers are required to consult the Transport Partnership or Transport Partnerships in question, its or their constituent councils or council and any other individuals or bodies that the Scottish Ministers think it appropriate to consult. Any orders made under section 2 will, as stated in section 52(3), be laid in draft and subject to the affirmative resolution procedure.

Administration

Section 3: Regional Transport Partnerships: funding and borrowing

21. **Section 3** requires the constituent councils or council of each Transport Partnership to fund its net expenses, as defined in subsection (4). A Transport Partnership's income can come from a number of sources including from the Scottish Ministers.
22. Under section 3(2) the share of the expenses to be paid by each constituent council or where there is only one, that council, will be determined by the Transport Partnership having regard to its transport strategy (formulated under section 5) but if the Transport Partnership is unable to decide then the relevant shares will be determined by the Scottish Ministers by order.
23. **Section 3(3)** empowers the Scottish Ministers, by order, to make arrangements to ensure that each constituent council meets its obligation to provide the Transport Partnership with the share of its net expenses determined by Section 3(2).
24. **Sections 3(5)** gives to Transport Partnerships a general power to give grants and loans to any person for any purposes that will contribute to the implementation of the Partnership's transport strategy. **Section 3(6)** allows a Transport Partnership to impose such conditions as it decides on any grant or loan given under section 3(5). **Section 3(7)** enables a Transport Partnerships to borrow money for the purpose of its capital expenditure. This puts a Transport partnership into the same position as a local authority.

Section 4: Further provision about regional Transport Partnerships

25. **Section 4** introduces schedule 1 which makes further provision as to regional Transport Partnerships.

Regional transport strategies

Section 5: Formulation and content of regional transport strategies

26. **Section 5(1)** places a duty on each Transport Partnership to draw up a transport strategy for its region. These strategies will focus on transport within the region but should also, in line with section 5(2)(d)(vii), take into account transport to and from the region.
27. **Section 5(2)** outlines the matters that the Transport Partnerships should include in their strategies. **Section 5(2)(a)** requires the strategy to include an assessment of what needs to be done to provide, develop and improve transport in the region, subject to constraints of cost, funding and practicability. **Section 5(2)(e)** requires the strategy to

prioritise the different services, schemes and projects of provision, development and improvement that emanate from section 5(2)(a). Under section 5(2)(f) the strategy must describe how the Transport Partnership will use those functions that have already been conferred upon it to fulfil the strategy. It must also identify those other functions, if any, that the Transport Partnership needs in order to fulfil the strategy. Under section 5(2)(h) the strategy must consider how progress towards the objectives is to be measured and monitored. The Scottish Ministers may, under section 5(3), issue guidance about transport strategies and the Transport Partnerships are under a duty to have regard to that guidance and to any current national transport strategy established by the Scottish Ministers.

28. **Section 5(4)** provides that equal opportunities and equal opportunity requirements are as defined in the Scotland Act 1998. In that Act “equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions. The Scotland Act 1998 also states that “equal opportunity requirements” means the requirements of the law for the time being relating to equal opportunities.

Section 6: Procedure before and after the drawing up of regional transport strategies

29. **Section 6** places a duty on each Transport Partnership to submit its transport strategy to the Scottish Ministers. Section 6(1)(b) sets the deadlines for this; for the first set of strategies, produced by the Partnerships to be created by 31 March 2006, the strategies must be completed by 31 March 2007. In any other case the deadline is within 12 months of the establishment of the Partnership. The timing of subsequent strategies is covered by section 7. In line with section 6(1)(a), before submitting the strategy the Transport Partnership must consult its constituent councils, each Health Board covered wholly or partly by the region and other persons as it thinks fit.
30. **Section 6(2)** enables each Transport Partnership to request, within 8 months of their creation, an extension to the 12 month time limit to produce its regional transport strategy. Prior to granting an extension, the Scottish Ministers have the power at section 6(3) to require Transport Partnerships to produce reports or documentation which might, for instance, include details of progress made to date.
31. Under section 6(4) the transport strategy becomes effective when it is approved by the Scottish Ministers and when deciding, under section 6(5), whether to approve the strategy the Scottish Ministers will assess, amongst other factors, the extent to which it will assist with the realisation of their own transport policies.
32. **Section 6(7)(c)** places a duty on the Transport Partnerships to publish their completed strategies.

Section 7: Review, modification and renewal of regional transport strategies

33. Under section 7(1) each Transport Partnership must keep its strategy under review and may modify it or draw up a new one. The Scottish Ministers may direct any Transport Partnership to draw up a new strategy within such a period as they may specify. Subsection (2) applies certain of the provisions of sections 5 and 6 apply to modifying a strategy and the drawing up of a new one as they apply to the preparation of an existing strategy.

Section 8: Duty of constituent councils and other public bodies as respects regional transport strategies

34. **Section 8** obliges constituent councils to perform their transport-related functions consistently with the transport strategy of the Transport Partnership for their area.

Health Boards will also be placed under a duty to perform their functions and activities consistently with the transport strategy or transport strategies specified by the Scottish Ministers. The same duty can be placed on other public bodies as specified by order.

Section 9: Joint regional transport strategies

35. **Section 9** enables two or more Transport Partnerships to produce a joint transport strategy for their combined regions. Under section 9(2) a joint transport strategy is to be subject to all the same provisions in Part 1 that apply to a transport strategy.

Regional transport functions

Section 10: Other transport functions of regional Transport Partnerships

36. **Section 10(1)** gives the Scottish Ministers powers to confer, by order, transport functions on Transport Partnerships. This provision enables the Scottish Ministers to transfer a transport function from one body, such as a local authority, to a Transport Partnership so that the local authority can no longer directly exercise that function. It also enables the Scottish Ministers to confer a transport function on a Transport Partnership without taking it away from a local authority, or whichever body is currently exercising the function. In this case the transport function would be exercised concurrently by that local authority or body and the Transport Partnership.
37. **Section 10(2)** requires that the Scottish Ministers must, when conferring functions by order on a Transport Partnership, have regard to the Partnership's transport strategy, if one is in place.
38. **Section 10(3)** provides that the Scottish Ministers may, in the same way, transfer to or share their own transport functions with Transport Partnerships.
39. **Sections 10(4) and (5)** provide a list of certain functions that could be conferred on Transport Partnerships by order under section 10(1). The functions listed are not the only ones which may be so conferred.
40. **Sections 10(6) and (7)** requires a Transport Partnership proposing to request the making of an order conferring functions on them, prior to making that request, to consult with its constituent councils or council and also to make that request in line with guidance produced by the Scottish Ministers.
41. **Section 10(8)** requires the Scottish Ministers, before making an order under section 10(1), to consult the Transport Partnership to which the order will apply (except where the order is to be made at their request), that Partnership's constituent councils or council and such other persons as they think fit.
42. **Section 10(9)** enables an order under subsection (1) to modify any enactment. This means, for instance, that a function listed in subsection (4) such as road user charging may form part of an order and to enable that order to make sense it may require that the Transport (Scotland) Act 2001 is modified so as to include a regional Transport Partnership within the definition of local traffic authorities i.e. those bodies that may apply road user charges.

Section 11: Alteration of functions of regional Transport Partnerships

43. **Section 11** allows the Scottish Ministers to return the functions of a Transport Partnership to the person that previously undertook the function. The alteration may occur, for example, where in the light of operational experience or a change in strategic approach a Transport Partnership concludes that it would be appropriate for a particular function to be exercised by the person who was previously responsible (in most cases the constituent councils or the Scottish Ministers). Without this provision the Scottish Ministers would need to invoke the provisions within section 2 to dissolve a Transport

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Partnership (and re-create it under section 1) if they wished to transfer functions from a Transport Partnership back to a council.

Section 12: Manner of performance of functions of regional Transport Partnerships

44. **Section 12(1)** requires that a Transport Partnership carries out its functions in fulfilment of its strategy and in doing so complies with directions from the Scottish Ministers and measures and monitors progress in achieving its objectives.
45. **Section 12(2)** ensures that the application of section 12(1) does not prevent a Transport Partnership from performing its functions in advance of its strategy being drawn up and approved. It does this by enabling Ministers to give directions as to how functions should be exercised. It does not require Ministers to give such directions.

Chapter 2: Transport Functions: Further Provisions

Section 13: Transfer to Scottish Ministers of certain rail functions

46. **Section 13** gives a power to the Scottish Ministers, by order, to transfer rail transport functions from Strathclyde Passenger Transport Authority or Strathclyde Passenger Transport Executive to the Scottish Ministers.

Section 14: Arrangements for performance by regional Transport Partnership of certain transport functions etc.

47. **Section 14** enables a Transport Partnership to enter into arrangements to carry out such things relating to transport as specified in those arrangements on behalf of a council, the Scottish Ministers or any other person having statutory transport functions. It is expected that any arrangements would be explicit about the bounds on the extent of the Transport Partnership's discretion.

Chapter 3: Supplementary and Consequential Provision

Section 15: Transfer of staff, property, rights and liabilities

48. **Section 15** specifies that the regulations governing the protection of employment rights in the event of a transfer of undertaking, as defined in section 15(7), apply whenever the transfer of a function to a Transport Partnership or the Scottish Ministers takes place under sections 2, 10 or 13. These transfers have implications for those people currently engaged in exercising those functions.
49. **Section 15(5)** and **(6)** empower the Scottish Ministers, when a transfer of functions takes place, to require, by order, the transfer of any property, rights or liabilities linked to those functions.

Part 2: Road Works

50. This Part of the Act amends sections of Part IV of the New Roads and Street Works Act 1991. Part IV of the 1991 Act is attached for information with the deleted text scored out and new text inserted in italics.

The Scottish Road Works Commissioner

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

51. **Section 16** of the Act creates the office of a Scottish Road Works Commissioner ("the Commissioner"). The Commissioner will be appointed on terms and conditions determined by the Scottish Ministers. (4)The Commissioner is not a servant or agent of

the Crown and has no status, immunity or privilege of the Crown. The Scottish Ministers can make grants to the Commissioner in respect of the Commissioner's expenses.

Section 17 Functions of Commissioner

52. **Section 17** of the Act specifies the functions of the Commissioner. (Schedule 2 enables the Commissioner to appoint staff and makes provision about the preparation and submission of accounts). The purpose and functions of the Commissioner are:
- monitoring the carrying out of road works in Scotland by road works authorities and undertakers;
 - promoting compliance with the 1991 Act and the obligations imposed under it; and
 - promoting the pursuit of good practice by road works authorities and undertakers. "Good practice" means compliance with any code of practice issued under the 1991 Act; and, subject to that code, meeting any obligations set out in the 1991 Act and its associated codes of practice which the Commissioner thinks are required.
53. A definition for works in roads is provided at section (2) so as to include both road works and works for road purposes as defined in the 1991 Act. This ensures that works carried out in roads by both statutory undertakers and roads authorities will be caught within the Commissioner's role in monitoring activity. The term "works in roads" covers all the activities that are required to be recorded on the Scottish Road Works Register, which will be the principal tool by which the Commissioner will monitor the carrying out of works on Scotland's roads.

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

54. **Section 18** of the Act specifies the duties of road works authorities and undertakers to provide the Commissioner with information relevant to their responsibilities for road works. The Commissioner can require this information to be provided, providing the Commissioner needs it to fulfil the Commissioner's functions. For road works authorities and undertakers, this means information which the authority or undertaker has or can reasonably be expected to acquire – for example, details of training provision for staff involved in updating the Scottish Road Works Register. In the case of the road works authority, it might include information relating to its local road network, the use of that network by different kinds of traffic, or the effects of that use.
55. Any dispute between a road works authority or undertaker and the Commissioner as to information asked for by the Commissioner is to be settled in a manner that will be prescribed by the Scottish Ministers in regulations. Where regulations prescribe that the matter is to be settled by arbitration subsection (4) states that arbitration will be conducted as described in the 1991 Act i.e. that the arbiter will be appointed by agreement by the parties or where agreement can not be reached by the sheriff.

The Scottish Road Works Register

Section 19 The Scottish Road Works Register

56. **Section 19** of the Act substitutes section 112 ('the road works register') of the 1991 Act with section 112A and 112B. In addition to the functions set out in section 17, section 112A imposes on the Commissioner a duty to keep a register, to be known as the Scottish Road Works Register (SRWR). The SRWR must show any information required to enable the Commissioner to maintain a complete picture of road works and other works being carried out on roads. This information, and the format required for the SRWR, will be prescribed in regulations.
57. Subsection (4) enables the Scottish Ministers to require persons who are to enter information on the SRWR to pay a fee. It also enables the Scottish Ministers to require

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payments to the Commissioner by other persons. Subsection (5) requires any amounts received under subsection (4) to be applied by the commissioner to the keeping of the SRWR.

58. The Commissioner will make the SRWR available, at all reasonable times and free of charge, for inspection by anyone unless the information is restricted. This will assist, for instance, bus operators in planning possible changes to routes and journey times as a result of substantial and/or prolonged works. The Commissioner can also require that the information be made available to anyone with sufficient interest. The SRWR is essential for road authorities to fulfil their general duty, under section 118 of the 1991 Act, to co-ordinate road works. The reasons for restricting information (for example, national security) will be prescribed in regulations.
59. Section 112B of the 1991 Act places a duty on a road works authority to maintain and update the SRWR with:
 - details of each road for which the authority is responsible as may be prescribed in regulations;
 - all proposed works (the precise details will be set out in regulations);
 - permissions granted under section 109 of the 1991 Act. (This information should include details of the apparatus and works to which the permission relates);
 - details of restrictions relating to the timing of works and the placement of apparatus in certain roads timing;
 - the start date of works;
 - the completion date of works; and
 - for each road for which a road works authority are responsible, information about road works and other works (for example, the location of skips and scaffolding) which are carried out on the road. The Act refers to road works authorities' existing responsibilities under sections 113-115 of the 1991 Act, and the Roads (Scotland) Act 1984. The latter refers to information about skips and various other types of works on the road.
60. The content and format of information required by section 112B will be prescribed in regulations.
61. Subsection 19(2) amends section 108(2) of the 1991 Act to reflect the insertion of section 112B.
62. Subsection 19(3) amends section 113(1) of the 1991 Act to require undertakers to give advance notice of road works to the SRWR. and as a result of information being input directly to the register the relevant road works authority can access up-to-date information in order to co-ordinate road works and other works taking place on roads.
63. Subsection 19(4) introduces section 114(3A) to the 1991 Act and requires undertakers to give notice of start date of works to the SRWR, again by inputting information directly.
64. Subsection 19(5) introduces section 116(3A) to the 1991 Act and requires undertakers to give notice of emergency works to the SRWR, again by inputting information directly.
65. Subsection 19(6) amends section 117(2) of the 1991 Act to require information on the restriction of works to be entered by the road works authority into the SRWR.

Miscellaneous

Section 20 Directions as to timing of road works

66. Section 115 of the 1991 Act is amended to define and clarify the road works authority's powers to direct the timing of road works, by giving the road works authority the power to direct the time or days or both when road works can or cannot be carried out.
67. Subsection 20(3) introduces section 115(1A) to enable a road works authority to make a direction where works have already commenced.
68. Subsection 20(6) amends section 115(4) so as to place the Scottish Ministers under a duty to produce a code of practice giving practical guidance to road works authorities in the exercise of their powers. In drawing up the code of practice the Scottish Ministers will consider the statutory obligations of undertakers and for telecom operators any OFCOM approved codes of practice under which telecom operators deliver their services.

Section 21 Directions as to placing of apparatus in roads

69. **Section 21** of the Act introduces new powers for road works authorities to direct the placing of apparatus in the road, by the introduction of section 115A to the 1991 Act. Section 115A allows the road works authority, by directions, to refuse permission for an undertaker to place apparatus in a road where it appears likely to cause disruption, and where there is another road in which the apparatus could reasonably be placed.
70. Directions under this section may be varied or revoked by further directions. Subsection (4) provides for regulations prescribing the procedure for giving directions and subsection (5) places the Scottish Ministers under a duty to make regulations to make provision for appeals against directions. Subsection (8) places the Scottish Ministers under a duty to produce a code of practice giving practical guidance as to the exercise by road works authorities of the power conferred by section 115A, and provides that in exercising that the road works authorities must have regard to the code of practice.

Section 22 Restriction on works following substantial road works

71. **Section 22** of the Act amends section 117 of the 1991 Act which allows road works authorities to impose restrictions on works following substantial road works. Subsection 117(1) is amended so as to provide that the maximum length of a restriction on the execution of works is to be prescribed in regulations, rather than being a fixed period (such as 12 months) in the primary legislation.
72. A further minor amendment to section 114 of the 1991 Act is made, with reference to section 117(1), to impose a further restriction on the period of notice required before the starting date of works.

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

73. **Section 23** of the Act amends section 118 of the 1991 Act to strengthen the general duty of road works authorities to co-ordinate road works. New subsection (2A) requires the road works authority to have regard to all information in the SRWR which relates to their functions. Subsection (2B) requires them to assist the Commissioner in meeting the duty under section 112A (the keeping of the SRWR), by making best use of the information in fulfilling their functions, and keeping this information 'under surveillance'. In practice, this means that the road works authority should update and use the SRWR as its daily planning tool for co-ordinating road works and fulfilling its traffic management functions. The Commissioner can issue a direction to the road works authority on how the authority should discharge its duty. The Commissioner may also require the road works authority to provide information on how it is discharging its

duty. If it appears that the road works authority are not discharging their duty a further direction can be issued telling them how to comply with their statutory duty.

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

74. **Section 24** of the Act amends section 119 of the 1991 Act so as to augment the general duty on undertakers to co-operate with road works authorities in executing road works. It does this with five new subsections: (1A), (1B), (1C), (2A) and (2B).
75. Under subsection (1A), undertakers must have regard to all information in the SRWR relating to road works which they are carrying out, or plan to carry out.
76. Subsection (1B) requires undertakers to assist the Commissioner to fulfil the duty to keep the SRWR. It also requires the undertaker to keep this information ‘under surveillance’, which in practice means that the undertaker should update and use the SRWR as its daily planning tool when planning and carrying out road works.
77. Under subsection (1C) any persons granted consent by a road works authority under Section 109 of the 1991 Act are exempt from these requirements – the road works authority must do this on their behalf.
78. Subsection (2A) requires undertakers to comply with any direction given to them by the Commissioner in meeting the duties imposed on them by subsections (1A) and (1B), and in relation to the relevant code of practice.
79. If the Commissioner thinks that an undertaker is failing to do this, he can ask for more information from the undertaker by issuing a further direction under subsection (2B).

Section 25 Enforcement of sections 118 and 119 of the 1991 Act

80. **Section 25** of the Act repeals the current offence provision, relating to the failure of the undertaker to co-operate with the road works authority, and replaces it with a power given to the Commissioner to impose a financial penalty. It introduces section 119A allowing the Scottish Ministers by regulations to make provision in connection with the imposition by the Commissioner of penalty charges on statutory undertakers and road works authorities who have failed to comply with the duties imposed upon them, respectively, in sections 118 and 119. The circumstances in which a penalty charge can be imposed, the notification and enforcement of it, the level of charge and appeals against it will be set out in regulations.

Section 26 Qualifications of supervisors and operatives

81. **Section 26** amends section 126 of the 1991 Act to require undertakers executing road works to: notify road works authorities of the names of the qualified supervisor and operatives (and of any previous supervisors and operatives) working on site; and provide evidence of their qualifications. The road works authority can issue a notice requiring the provision of this evidence at any time while the works are in progress, or within such period after their completion as prescribed by regulation, and the undertaker must comply with this notice.

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

82. **Section 27** requires road works authorities, undertakers and other persons specified in regulations to use their best endeavours to ensure that their employees or agents who are responsible for maintaining and updating information on the SRWR are competent to perform this task.

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

83. **Section 28** of the Act changes the duty of undertakers to notify completion of road works following reinstatement of the road. It requires undertakers to provide notice that works have been completed, in a timescale and form to be set out in regulations. It also requires undertakers to provide this information directly to the SRWR.

Section 29 Notices requiring remedial works relating to reinstatements

84. **Section 29** makes amendments to sections 131 and 149 of the 1991 Act, to allow different notice periods for remedial works on the reinstatement of roads, sewers, drains and tunnels to be prescribed. This allows a road works authority, where reinstatement does not meet the required standard and requires remedial work which may be urgent, to shorten the minimum period for the remedial works to be completed by undertakers.

Resurfacing

Section 30 Power of road works authority to require undertaker to resurface road

85. **Section 30** of the Act gives road works authorities a new power to require undertakers to resurface a road in certain circumstances. It does this by introducing a new section 132A to the 1991 Act.
86. Undertakers affected by this new power are those who have given notice under section 113 or section 114 of the 1991 Act, are carrying out road works at the time the road works authority issues the requirement, or are still within the notice period for the completion of road works. The circumstances in which a road works authority can issue a notice (to be known as a resurfacing notice) will be set out in regulations, and will allow the road works authority to require a part of a road to be resurfaced which has not directly been broken up by the undertaker. Equally, the regulations may restrict the extent of the resurfacing works which undertakers are required to carry out.
87. New section 132B gives road works authorities a power to require undertakers to complete resurfacing within certain time periods. It also requires, through regulations, road works authorities to consult undertakers on required time periods, and does not allow the time period to be retrospective from the date when the notice is given. This is to ensure that the time periods allocated to undertakers for the completion of resurfacing are reasonable.
88. New section 132C allows road works authorities to specify the materials and standards of workmanship to be used by undertakers when completing resurfacing work.

Section 31 Resurfacing: regulations and guidance

89. New section 132D to the 1991 Act makes provision for detailed regulations on resurfacing, covering the following areas:
- information to be provided in a resurfacing notice;
 - the decision making process which a road works authority should follow where more than one undertaker has been working on the same area of road, but only one will be served with notice to complete resurfacing;
 - requirements for an undertaker to give notice of any additional events in relation to resurfacing;
 - circumstances when undertakers can pay a road works authority to complete the resurfacing itself, rather than the undertaker complete it directly; and
 - appeal mechanisms and dispute resolution.

90. The Scottish Ministers are placed under a duty to consult any relevant association of undertakers prior to the making of regulations under section 132D.
91. New section 132E to the 1991 Act makes provision for detailed guidance (in the form of a code of practice) on resurfacing which road works authorities and undertakers must follow in discharging their respective duties under this part of the 1991 Act.

Section 32 Contributions to costs of resurfacing by undertaker

92. **Section 32** of the Act inserts new section 137A in the 1991 Act which sets out how contributions to the costs of resurfacing should be made. It allows both the road works authority and undertakers involved in working on an area of road to make contributions to the undertaker on which notice has been served (under new section 30) to complete a resurfacing. Details of payments, exemptions, and dispute resolution will be set out in regulations.
93. **Section 32** also provides that 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 Part IV of the 1991 Act are to be treated as having been incurred unreasonably.
94. Subsection (3) of section 155 of the 1991 Act is amended in line with section 32.

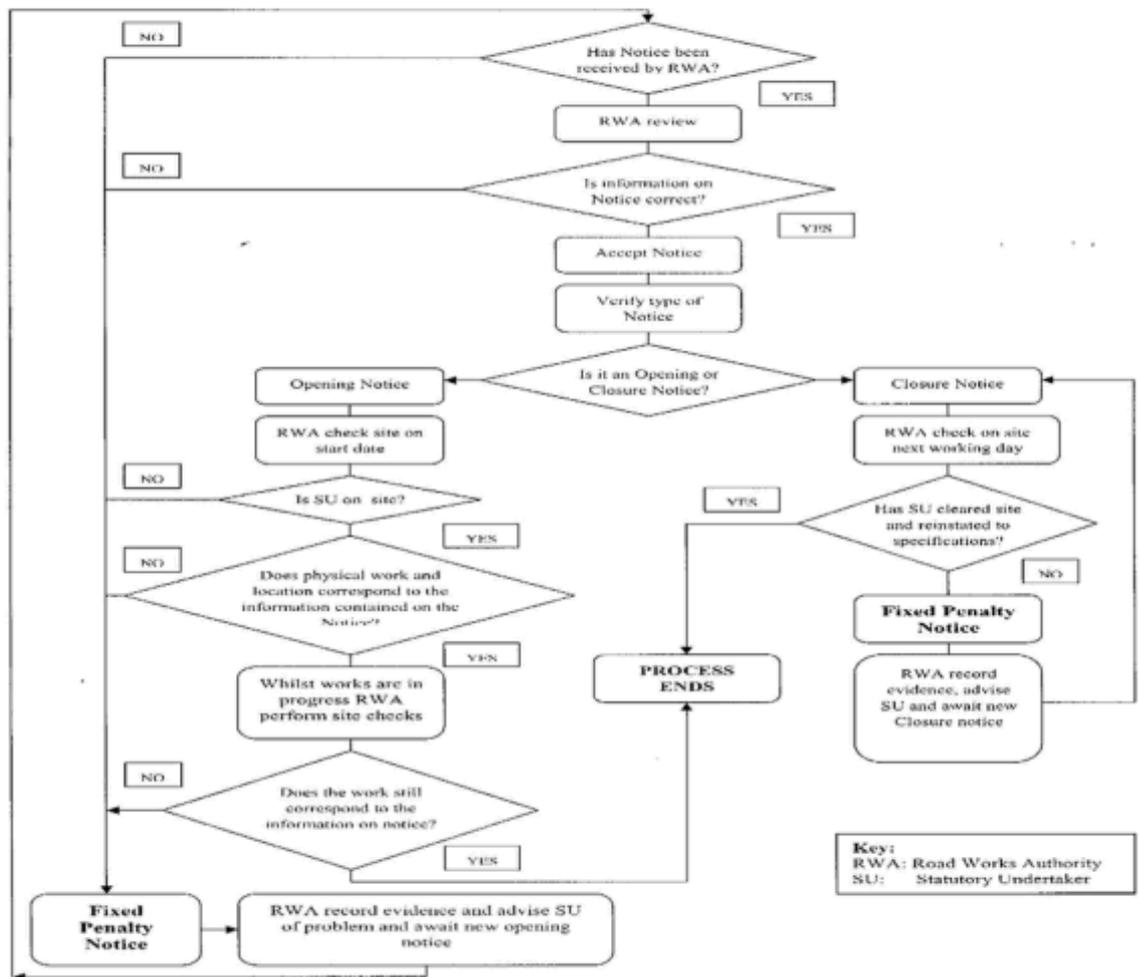
Enforcement of 1991 Act

Section 33 Increase in penalties for summary offences under the 1991 Act

95. **Section 33** introduces an increase in penalties for offences listed in column 1, schedule 2 to the Act. Some penalties are being raised to level 4 (£2,500) and others to level 5 (£5,000).

Section 34 Fixed penalty offences

96. **Section 34** introduces new section 154A which provides for fixed penalties for certain offences as set out in schedules 4 and 5 to the Act. The table identifying the offences to which fixed penalties apply is in schedule 4 of the Act (which inserts a new Schedule 6A to the 1991 Act). The details of how the fixed penalty system will operate are contained in schedule 5 to the Act (which inserts a new Schedule 6B to the 1991 Act).
97. Subsection (1) of section 154A of the 1991 Act provides that any offence which is listed in the first column of the new Schedule 6A to the 1991 Act is a fixed penalty offence.
98. Subsection (2) of section 154A of the 1991 Act provides that offences committed by virtue of section 166 of the 1991 Act are not fixed penalty offences. In general terms, the effect of section 166 is that in cases where an offence by a body corporate is committed with the connivance or consent, or is attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body, then that officer is also guilty of an offence and is liable to be prosecuted.
99. To aid comprehension a chart illustrating the circumstances that may lead to a fixed penalty notice being issued is shown below. The chart would apply only to offences relating to a failure to give the prescribed starting date for road works (opening notice) or a failure to give the prescribed notice for completion of a reinstatement (closure notice). Other fixed penalty offences such as failure to give the prescribed advance notice or prescribed notice for emergency works will follow a process. Similar procedures will apply when skips and scaffolding are placed on the road without the permission of the relevant roads authority.



Section 35 Civil penalties for certain offences under the 1991 Act

100. Section 35 introduces section 154B which provides that the Scottish Ministers may make regulations that will enable road works authorities to impose penalty charges for breaches of the 1991 Act that are considered appropriate for civil enforcement.

Resolution of disputes under 1991 Act

Section 36 Method of settlement of certain disputes under the 1991 Act

101. Section 36 introduces a new section 157A, which provides for the settlement of certain disputes in a manner to be prescribed by regulations. In the 1991 Act disputes were settled by arbitration. This section allows regulations to be made permitting the Commissioner or arbitration to settle disputes.

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

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

102. Section 37 introduces new section 130A to the 1984 Act which provides for fixed penalties for certain offences as prescribed in schedules 6 and 7 to the Act. The table identifying the offences to which fixed penalties apply is in schedule 6 of the Act (which inserts a new Schedule 8A to the 1984 Act). The details of how the fixed penalty system

will operate are contained in schedule 7 to the Act (which inserts a new Schedule 8B to the 1984 Act).

Section 38 Civil penalties for certain offences under the Roads (Scotland) Act 1984

103. **Section 38** introduces section 130B to the 1984 Act which provides that the Scottish Ministers may make regulations that will enable road authorities to impose penalty charges for breaches of the 1984 Act that are considered appropriate for civil enforcement.

Section 39 Consultation on regulations and codes of practice

104. **Section 39** introduces section 163A to the 1991 Act, this places a duty on the Scottish Ministers to consult prior to the making, amending or revoking of regulations or issuing, amending, revoking or approving a code of practice. Such a provision ensures that secondary legislation is informed by practitioners.

Part 3: Miscellaneous

Section 40 National travel concession schemes

105. **Section 40** enables the Scottish Ministers, by order, to make national concessionary travel schemes. A national travel concession scheme provides travel concessions to 'eligible persons' travelling on 'eligible services' on 'eligible journeys'. These terms are defined in subsection (7). The schemes may be new or they may modify or revoke existing local authority concessionary schemes established under section 93 of the Transport Act 1985.
106. **Section 40(4)** outlines elements which must be included in a national scheme. These include: the rate of the concession; when the concession is available; the right of operators to take part in the scheme and the corresponding right of the Scottish Ministers to require them to take part; payments to operators for providing concessions; the enforcement of participation by operators in the scheme; and appeals against compulsory participation.
107. **Section 40(6)** makes it a criminal offence punishable by a fine not exceeding level 3 (£1000) on the standard scale if an operator fails to comply with an obligation imposed under a scheme.

Section 41 Public Transport Users' Committee for Scotland

108. **Section 41** places a duty on the Scottish Ministers to establish a Public Transport Users' Committee for Scotland. Subsection (2) provides details of what may be contained within the order establishing the Committee and subsection (3) enables the Scottish Ministers to provide the funding, staff and accommodation to enable the committee to perform its duties. Subsection (4) amends the Freedom of Information (Scotland) Act 2002 so as to apply to the Public Transport Users' Committee the duty to disclose information.

Section 42 Functions of the Committee

109. **Section 42(1)** permits the Committee to consider and make recommendations to the Scottish Ministers on any matter relating to public transport services.
110. **Section 42(2)** places the Committee under a duty to consider and make recommendations about any other transport matter when asked to do so by the Scottish Ministers. It is conceivable that the Scottish Ministers will request that the Committee investigates a particular transport concern with a view to producing for the Scottish Ministers a report with recommendations.

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(asp 12) which received Royal Assent on 5 August 2005*

111. **Section 42(3)** permits the Scottish Ministers by order to confer, remove, amend or transfer the functions of the committee.
112. Subsection (6) provides a definition of public transport services. School transport and any excursions and tours are excluded from the remit of the Committee.

Section 43 Guidance and direction to the Committee

113. **Section 43** places a duty on the Committee to have regard to guidance as well as complying with any written direction of the Scottish Ministers in relation to the discharge of its functions.

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

114. This section amends section 23 of the Road Traffic Regulation Act 1984 by removing the requirement in section 23(2)(c) for a local traffic authority to inform the Scottish Ministers in writing before establishing, altering or removing a pedestrian crossing.

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

115. **Section 45** modifies the effect of the Highlands & Islands Shipping Services Act 1960 as regards devolved purposes for Scotland. The Act is not affected for reserved purposes. Subsections (3) to (6) amend section 70 of the Transport (Scotland) Act 2001 so as to permit the Scottish Ministers to make loans as well as grants for transport-related purposes.

Section 46 Amendment of procedure for dealing with applications for harbour orders

116. **Section 46** amends paragraph 18 of Schedule 3 to the Harbours Act 1964 so as to give the Scottish Ministers greater discretion to determine whether objections raised to an application for a harbour order should be dealt with by means of a public inquiry, a hearing or by written representations.

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

117. **Section 47** amends paragraph 28 of Schedule 3 to the Harbours Act 1964, in relation to harbour revision orders made by the Scottish Ministers of their own motion, in the same way as section 46 amends the procedure for ‘applied for’ harbour orders.

Section 48 Transitional provision for sections 46 and 47

118. **Section 48** ensures that the amendments to the harbour orders procedure will not apply to pre-existing applications.

Section 49 Badges for vehicles used for disabled people: change of terminology

119. **Section 49** changes the word ‘institution’ to ‘organisation’ in the legislation relating to the disabled person’s badge (known as the Blue Badge Scheme). The change of wording will be reflected on the badge that is affixed to vehicles used for disabled people. The Scottish Executive supported a recommendation, from the Blue Badge review carried out by the Department of Transport. It was felt that “institution” was stigmatising and that “organisation” was preferable.

Section 50 Extension of remit of Bus User Complaints Tribunal

120. **Section 50** extends the remit of the Bus User Complaints Tribunal. The Tribunal currently provides users of local bus services (i.e. those bus services which are available

to the general travelling public) with a voice in improving local services by the means of a statutory complaints mechanism, for instance where a bus operator has failed to resolve a complaint in a satisfactory manner. The section extends the remit so as to include scheduled services such as Express and long-distance coach services. This now means that all bus services that are available to the general travelling public are able to be considered.

Section 51 Minor amendments of Transport (Scotland) Act 2001

121. **Section 51(2)** amends section 48 of the Transport (Scotland) Act 2001 to enable local authorities to operate quality partnerships, quality contracts and joint ticketing schemes in the area covered by Strathclyde Passenger Transport Authority.
122. **Section 51(3)** amends section 54(2) of that Act to ensure that the same physical section of a road cannot be subject to more than one road user charging scheme at the same time.
123. **Section 51(4)** amends section 64 of that Act to introduce subsection (1A) to enable the appointment of persons (adjudicators) to determine disputes relating to road user charging and subsection (1B) to provide that local authorities will pay for the adjudicators.
124. **Section 51(5)** rectifies a faulty cross-reference within the Transport (Scotland) Act 2001.
125. **Section 51(6)** amends section 79(1) of that Act so that any guidance issued by the Scottish Ministers, in relation to local transport strategies, can apply to local traffic authorities as well as to local transport authorities.
126. **Section 51(7)** amends section 81(4)(b) of the Transport (Scotland) Act 2001 as a consequence of the changes made to section 64 of that Act as introduced by section 51(4) of this Act.
127. **Section 51(8)** amends section 82(1) of that Act so that guidance, under section 79 of the 2001 Act does not have to be issued before a local transport strategy can be prepared by local traffic authorities as well as by local transport authorities.
128. **Section 51(9)** amends paragraph 5 of schedule 1 to that Act to enable a charging authority to distribute net proceeds from road user charging to any local traffic authority, local transport authority or other person for the purpose of directly or indirectly facilitating the achievement of the policies in the charging authority's local transport strategy.

Part 4 General

Section 52 Orders and regulations

129. **Section 52** makes provision about orders and regulations under the Act. Subsection (1) requires them to be made by statutory instrument. Generally, they are subject to annulment (subsection (2)), but subsection (3) specifies some which require to be approved by the Parliament before being made. Orders under section 54 (commencement orders) are not subject to any parliamentary procedure.

Section 53 Interpretation

130. **Section 53** defines "council", "the Commissioner" and "the 1991 Act" for certain purposes of the Act.

Section 54 Short title and commencement

131. **Section 54(1)** provides the short title, which is the name by which the Act may be cited.

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132. Subsection (2) deals with commencement. It is for the Scottish Ministers to make provision commencing the Act. Such provision is to be made by order. By virtue of section 52(4)(b), different provision may be made for different purposes.