

# TRANSPORT (SCOTLAND) ACT 2019

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## EXPLANATORY NOTES

### THE ACT

#### Part 10 – Miscellaneous and General

##### **Health boards: duty to have regard to community benefit in non-emergency patient transport contracts**

Health boards: duty to have regard to community benefit in non-emergency patient contracts - [section 120](#)

545. Section 120 requires each health board entering into a contract for the provision of non-emergency patient transport services to have regard to the extent to which that contract will improve economic, social or environmental wellbeing in the board's area.

##### **Health boards: duty to work with community transport bodies**

Health boards: duty to work with community transport bodies – [section 121](#)

546. Section 121 requires health boards to work with providers of community transport services in the provision of non-emergency patient transport services. In this context, “community transport services” means community bus services within the meaning of section 22(1) of the Transport Act 1985 and such other transport services which are provided by a body concerned with the social and welfare needs of one or more communities, without a view to profit by that body or anybody else, as specified in regulations by the Scottish Ministers. In order to monitor compliance with that duty, section 121(3) requires health boards to publish a report for each financial year setting out how they have complied with the duty, whether non-emergency patient transport services in that year have been effective and cost-effective, and what, if any, further action they propose to take to comply with the duty in the future.

##### **Regional Transport Partnerships: finance**

Regional Transport Partnerships: finance – [section 122](#)

547. Section 122 of the Act amends section 3 of the Transport (Scotland) Act 2005 to adjust the basis on which Transport Partnerships are funded.
548. Section 3 of the 2005 Act currently provides that the constituent councils (or council) that make up a Transport Partnership must fund the balance of the Partnership's costs after grant and other income is taken into account.
549. Section 122(1) of the Act changes this so that constituent councils must fund the balance of the Transport Partnership's estimated costs rather than actual costs. In practice this means that a Partnership will be able to carry surplus funds from one year to the next where its actual costs for a year are less than its estimated costs. Paragraph (a) of subsection (1) alters the calculation of a Partnership's net expenses to take into account the possibility that the Partnership allocates surplus funds from a previous year to meet expenses in the current year and to require any outstanding expenses from a previous year to form part of the net expenses for the current year. Paragraph (b) adds a requirement on Transport Partnerships to prepare a forecast of its net expenses each

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year and provide it to constituent councils to aid them in meeting their duty under section 3(1) of the 2005 Act.

550. Section 122(2) of the Act extends the provisions of schedule 3 of the Local Government (Scotland) Act 1975 to Transport Partnerships. The effect of this is that Transport Partnerships can hold and operate capital funds, renewal and repair funds and insurance funds in a similar way to councils. Subsection (2)(b) inserts an additional provision into the schedule to prevent Transport Partnerships from using money held in these funds to meet the costs of any company set up by the Partnership.
551. Section 122(3) of the Act extends the provisions of section 165 of the Local Government etc. (Scotland) Act 1994 to Transport Partnerships. The effect of this is that regulations under section 165 will be able to confer on Transport Partnerships the power to borrow and lend money and to operate a loan fund, subject to the terms of the regulations. (Borrowing by Transport Partnerships will also be subject to regulations made under paragraph 5 of schedule 3 of the 1975 Act by virtue of the change in section 122(2).)

### **Scottish Canals**

#### **Canals – [section 123](#)**

552. Section 123 of the Act relates to the British Waterways Board which, following the transfer of the Board’s English and Welsh functions to the Canal and River Trust in 2012, now operates as Scottish Canals. In accordance with the Transport Act 1962, the Board currently comprises a Chair, Vice Chair and between one and four other members. This means that the Board as a whole must currently consist of between three and six members.
553. This section increases both the minimum and maximum number of other members of the Board: the minimum becomes four and the maximum becomes nine. Accordingly, the Board as a whole will be required to comprise at least six but no more than 11 people.

#### **Certain orders under the Roads (Scotland) Act 1984: objections – [section 124](#)**

554. Section 124 amends the Roads (Scotland) Act 1984 to introduce a new power to make regulations setting out the procedure to be followed in making redetermination orders under section 152(2) of the Roads (Scotland) Act 1984. These regulations can specify the content of the order and the manner in which the public are to be notified of any proposal to make an order.

### **General**

#### ***Section 125 – Individual culpability where offending by an organisation***

555. This section makes provision in relation to corporate offending. By virtue of subsections (1) and (2), where an offence is committed under the Act by a company, partnership or other body, and is proved to have been committed with the consent or the connivance of a “relevant individual” or an individual acting as such – or because of any neglect by the “relevant individual” – that individual, as well as the body corporate, partnership or other unincorporated association, will be guilty of the offence and liable to punishment.
556. Subsections (2) and (3) define a “relevant individual” in relation to a company as a director, manager, secretary or other similar officer (i.e. with managerial responsibility for the body under company law), or a member (where the affairs of the body are managed by its members). In relation to a limited liability partnership, it is a member; in relation to other kinds of partnership, a partner; and in relation to any other body or association, it is a person who is concerned with the management or control of that body or association.

### **Section 126 – Crown application**

557. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Act applies to the Crown in Scotland. However, subsection (1) of this section absolves the Crown of any criminal liability, should it be in contravention of any provision of the Act or regulations made under it. Instead, subsection (2) provides power for the Court of Session to declare such an act to be unlawful.

### **Minor and consequential amendments and repeals: section 127 and the schedule**

558. Section 127 introduces a schedule which contains a variety of minor and consequential amendments repeals.
559. The schedule contains amendments and repeals which are of a minor nature or which are required in consequence of other more substantive provisions in the Act.

#### **Part 1: Bus services**

560. Part 1 of the schedule makes consequential amendments and repeals which relate to the changes made in Part 3 of the Act (bus services).

#### **Part 2: Road Works**

561. Part 2 of the schedule makes consequential amendments and repeals which relate to the changes made in Part 9 of the Act (road works). In addition, it makes two minor amendments connected to road works which are highlighted here.
562. Paragraph 6 of the schedule deals with the New Roads and Street Works Act 1991.
563. Sub-paragraph (2) corrects an error which occurred in the drafting of the Transport (Scotland) Act 2005. Section 117 of the 1991 Act permits a roads authority, in cases where substantial works are to be carried out, to restrict any further work on a road for a period of 12 months. The provision adjusts section 117 to change the period from 12 months to such period as the Scottish Ministers may prescribe in regulations. This was also the intention of section 22 of the Transport Act 2005 but there was a mistake made in the way that it was done. (The relevant provision of section 22 of the 2005 Act is repealed by paragraph 7(2) of the schedule.)
564. The regulations under section 117 of the 1991 Act may make different provision for different purposes. This means that the Scottish Ministers may specify different time periods by reference to the types of circumstances that may exist. This will interact with the ability of the Scottish Ministers in the existing power under section 117(1) to set out what constitutes substantial works for the purposes of the restriction. Accordingly, the Scottish Ministers will have some flexibility around the periods for which restrictions may be imposed.
565. Regulations made under section 117 are subject to the negative procedure.
566. Paragraphs 6(7) and (8) and 7(3) remove a series of provisions which have never come into force. The provisions in question were intended to provide a new mechanism for imposing requirements on undertakers to resurface roads. Agreement on the operation of the provisions was never reached and they have been superseded by a different approach. These provisions are therefore being repealed as redundant.

### **Regulations – section 128**

567. Section 128(1) allows regulations under the Act to include ancillary provision and to make different provision for different purposes and for different areas.
568. Subsections (2) to (5) make provision about the parliamentary procedure which applies to different sets of regulations. This section does not apply to exemption orders made under section 43(1) as they are in the form of orders rather than regulations (and they are not subject to parliamentary procedure as they are not Scottish statutory instruments

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(as defined in section 27(1) of the Interpretation and Legislative Reform (Scotland) Act 2010)).

**Ancillary provision – section 129**

- 569. Section 129 allows the Scottish Ministers, by regulations, to make “standalone” ancillary provision in relation to the Act or any provision made under it.
- 570. By virtue of section 128(5) any ancillary provision amending primary legislation will be subject to the affirmative procedure, otherwise ancillary provision will be subject to the negative procedure.

**Commencement – section 130**

- 571. This section makes provision in relation to the commencement of the Act. By virtue of section 128(6), commencement regulations made by the Scottish Ministers are subject to the “laid only” procedure. The sections on commencement, regulations and the short title commence automatically on the day after the Act receives Royal Assent. The other substantive provisions will come into force in accordance with regulations made by the Scottish Ministers.