
DRAFT STATUTORY INSTRUMENTS

2010 No.

The Passengers' Council (Non-Railway Functions) Order 2010

Citation and commencement

1. This Order may be cited as the Passengers' Council (Non-Railway Functions) Order 2010 and comes into force on the day after the day on which it is made.

New name for Rail Passengers' Council

2.—(1) The body corporate established under section 19(1) of the Railways Act 2005 is to be known as the Passengers' Council.

(2) The consequential amendments in the Schedule have effect.

(3) References in enactments, instruments or documents to the Central Rail Users' Consultative Council or to the Rail Passengers' Council have effect after the coming into force of this Order as references to the Passengers' Council.

Conferral of non-railway functions on the Passengers' Council

3.—(1) After section 112 of the Transport Act 1985(1) insert—

“PART 5A

PASSENGERS' COUNCIL: ROAD PASSENGER
TRANSPORT FUNCTIONS IN ENGLAND

112A Introductory

(1) “Road passenger transport service” means—

- (a) a local service(2), so far as operating in England;
- (b) a domestic coach service, so far as operating in England; or
- (c) a tramway passenger service, so far as operating in England.

(2) But a service is not a “road passenger transport service” if—

- (a) it is an excursion or tour(3); or
- (b) it is provided in a public service vehicle(4) used under a permit granted under section 19.

(3) “Road passenger transport facility” means a facility in England for road passenger transport services.

(1) 1985 c. 67.

(2) The term “local service” is defined in section 2 of the Transport Act 1985.

(3) The term “excursion or tour” is defined in section 137 of the Transport Act 1985.

(4) By virtue of section 137(2) of the Transport Act 1985, the term “public service vehicle” has the meaning given in section 1 of the Public Passenger Vehicles Act 1981 (c. 14).

- (4) This section has effect for the purposes of this Part.

112B Duty to keep road passenger transport services and facilities under review

- (1) The Passengers' Council must, so far as it appears expedient from time to time to do so—
- (a) keep under review matters affecting the interests of the public in relation to road passenger transport services and facilities; and
 - (b) make representations to, and consult, such persons as it considers appropriate about those matters.
- (2) The Council and any other public body may enter into an agreement for that other body to be responsible, in accordance with the agreement, for—
- (a) determining what is expedient for the purposes of subsection (1) in relation to an area specified in the agreement; and
 - (b) otherwise performing the Council's functions under subsection (1) in relation to that area.
- (3) So long as an agreement under subsection (2) is in force—
- (a) the duties of the Council under subsection (1) in relation to the area specified in the agreement fall on the other party to the agreement instead of on the Council; but
 - (b) the Council is not prevented from doing anything mentioned in subsection (1) in relation to that area.
- (4) An agreement under subsection (2)—
- (a) may be entered into on such terms and conditions as the parties to it may agree; and
 - (b) may contain provision for determining, for the purposes of this section, in what circumstances things done under or for the purposes of subsection (1) are to be treated as done in relation to the area specified in the agreement.
- (5) The written consent of the Secretary of State is required before the Council and another public body may enter into an agreement under this section.
- (6) In this section "public body" means any authority or other body on which functions are conferred by or under an enactment.

112C Duty to investigate road passenger transport services and facilities

- (1) The Passengers' Council must investigate any matter relating to the provision of road passenger transport services or facilities if—
- (a) the matter is the subject of a representation made to the Council by a user or potential user of road passenger transport services or facilities;
 - (b) the matter is the subject of a representation made to the Council by an organisation representative of users or potential users of road passenger transport services or facilities;
 - (c) the matter is referred to the Council by the Secretary of State for investigation; or
 - (d) it appears to the Council that the matter is one which the Council ought to investigate.
- (2) The Council is not required to investigate a matter in a case falling within subsection (1) (a) or (b) if the matter appears to the Council to be frivolous or vexatious.
- (3) The Council is not required to investigate a matter in a case falling within subsection (1) (a) or (b) if, or to the extent that, the Council refers the matter to another body under section 112D.

(4) The Council must not investigate by virtue of subsection (1)(d) any matter which relates solely to the provision of London road passenger transport services or facilities.

(5) Subsection (4) does not prevent the Council from so investigating any such matter as part of an investigation of a matter which relates wholly or mainly to—

- (a) the provision of road passenger transport services or facilities other than London road passenger services or facilities; or
- (b) the provision of road passenger transport services or facilities in any part of England outside London.

112D Power to refer matters elsewhere instead of investigating

(1) This section applies in relation to a matter which is the subject of a representation made to the Passengers' Council under section 112C(1)(a) or (b).

(2) If the Council thinks that it would be more appropriate for the matter to be considered—

- (a) by an operator of road passenger transport services;
- (b) by a provider of road passenger transport facilities; or
- (c) by any body which does not fall within paragraph (a) or (b);

the Council may refer the matter to that person or body.

(3) The Council must refer the matter to the London Transport Users' Committee⁽⁵⁾ if, or in so far as, it appears to the Council to relate to the provision of London road passenger transport services or facilities.

(4) Subsection (3) does not require the Council to refer a matter to the Committee if, or in so far as, it appears to the Council to relate to the provision of a long distance coach service.

(5) Subsection (4) does not apply in the case of a matter if, or in so far as, it appears to the Council to relate to a London local passenger.

(6) Subsection (4) does not prevent the Council referring a matter under subsection (3) if, or in so far as, it considers it appropriate to do so.

(7) In this section—

“London local passenger” means a passenger making a journey which begins and ends at stopping places in London;

“long distance coach service” means a bus service—

- (a) which has one or more stopping places⁽⁶⁾ outside London; and
- (b) which would be a domestic coach service, if no account were taken of any London local passengers.

112E Investigations: power to obtain information

(1) This section applies if the Passengers' Council is carrying out an investigation under section 112C in relation to road passenger transport services or facilities.

(2) If the Council requests an operator of services, or a provider of facilities, to provide any information which the Council considers necessary for the purpose of carrying out the investigation, subsection (3) applies.

(3) A person who receives such a request must provide the information unless—

⁽⁵⁾ For the London Transport Users' Committee see in particular Chapter 10 of Part 4 of the Greater London Authority Act 1999 (c. 29).

⁽⁶⁾ The term “stopping places” is defined in section 137 of the Transport Act 1985 (c. 67).

- (a) the person does not have, and cannot reasonably obtain, it; or
- (b) the provision of the information would impose an unreasonable burden on the person.

(4) A person who relies on paragraph (a) or (b) of subsection (3) must notify the Council in writing of that fact, stating the reason why the paragraph in question applies.

(5) If the Council—

- (a) has requested information from an operator of local services or domestic coach services, and
- (b) considers that it has not received a satisfactory response to that request,

the Council may refer the matter to a traffic commissioner.

(6) If the Council—

- (a) has requested information from an operator of tramway passenger services, and
- (b) considers that it has not received a satisfactory response to that request,

the Council may refer the matter to the promoter.

(7) If a matter is referred by virtue of subsection (5) or (6), the traffic commissioner or, as the case may be, the promoter may require the recipient of the request mentioned in subsection (2) to provide such of the information as the traffic commissioner or promoter considers appropriate.

112F Investigations: protection of confidential information

(1) This section applies to any information provided to the Passengers' Council pursuant to section 112E(3) in the circumstances described in subsection (2).

(2) The circumstances are that—

- (a) the person who provided the information has requested that the information be held in confidence; and
- (b) a person would not be entitled to the information in response to a request made in accordance with the Freedom of Information Act 2000(7) by virtue of the exemptions in section 41 or 43 of that Act.

(3) Information to which this section applies must not—

- (a) be included in any investigation report published under section 112K; or
- (b) be disclosed by the Council to any other person.

(4) Nothing in this section affects—

- (a) the power of the Council to refer a matter, including the confidential information, following investigation in accordance with section 112H or 112I; or
- (b) any obligation on the Council to disclose information in order to comply with an order of a court or a tribunal.

112G Investigations: representations

(1) Having investigated a matter under section 112C the Passengers' Council may, if it considers it appropriate to do so, make representations to—

- (a) an operator of road passenger transport services;
- (b) a provider of road passenger transport facilities;

- (c) a local traffic authority in England;
 - (d) the Highways Agency of the Secretary of State for Transport;
 - (e) a local transport authority in England.
- (2) If the Council makes representations to a person under this section—
- (a) the person must have regard to those representations; and
 - (b) the person must, within a reasonable time, send the Council a written statement describing any actions that the person has taken or intends to take in response to the representations.

112H Referrals following investigation

- (1) This section applies if the Passengers' Council—
- (a) has made representations under section 112G; and
 - (b) considers that it is unable to achieve a satisfactory outcome by that means.
- (2) If the representations were made to any operator of local services or domestic coach services, the Council may refer the matter to a traffic commissioner.
- (3) If the representations were made to any operator of tramway passenger services, the Council may refer the matter to the promoter.
- (4) If the representations were made to a local traffic authority and the Council considers that it may be appropriate for a traffic commissioner to exercise powers under section 27A (additional powers in relation to local traffic authorities where service not operated as registered)(**8**), the Council may refer the matter to a traffic commissioner.
- (5) If the representations were made to a local traffic authority and the Council considers that it may be appropriate for the Secretary of State to exercise powers under Part 2 of the Traffic Management Act 2004(**9**) (enforcement of network management duties), the Council may refer the matter to the Secretary of State.

112I Referrals in cases where investigation identifies other failings

- (1) This section applies if, on investigating a matter under section 112C, the Passengers' Council has reason to believe that—
- (a) an operator of local services has failed to operate a local service registered under section 6 or has operated a local service in contravention of that section; or
 - (b) the holder of a PSV operator's licence(**10**) is contravening, or is likely to contravene, any conditions or requirements of that licence.
- (2) The Council may refer a matter described in subsection (1) to a traffic commissioner.

112J Traffic commissioner's duty following referral

- (1) This section applies if the Passengers' Council refers a matter to a traffic commissioner under section 112E, 112H or 112I.
- (2) The traffic commissioner dealing with the matter must consider whether, in connection with the matter, it would be appropriate to exercise any of the powers of a traffic commissioner in respect of—

(8) Section 27A was inserted by section 63(1) of the Local Transport Act 2008 (c. 26).

(9) 2004 c. 18.

(10) By virtue of section 137 of the Transport Act 1985, the term "PSV operator's licence" means a PSV operator's licence granted under Part 2 of the Public Passenger Vehicles Act 1981.

- (a) an operator of local services;
- (b) a holder of a PSV operator's licence; or
- (c) a local traffic authority.

112K Investigation reports

(1) This section applies where the Passengers' Council has investigated a matter under section 112C.

(2) The Council may prepare a report of its findings (an "investigation report").

(3) The Council may send a copy of an investigation report to the Secretary of State and to such other persons as the Council thinks fit.

(4) The Council may publish an investigation report.

(5) In the case of an investigation report prepared following an investigation which is carried out as the result of a referral by the Secretary of State under section 112C(1)(c), the Council must obtain the Secretary of State's consent before—

- (a) sending the report to any person other than the Secretary of State; or
- (b) publishing the report.

112L Interpretation of Part 5A

(1) In this Part—

"domestic coach service" means a bus service which—

- (a) carries passengers at separate fares; and
- (b) is not a local service;

"local traffic authority" has the meaning given by section 121A of the Road Traffic Regulation Act 1984⁽¹¹⁾;

"local transport authority" has the meaning given by section 108(4) of the Transport Act 2000⁽¹²⁾;

"London road passenger transport services or facilities" means road passenger transport services or facilities—

- (a) provided by Transport for London⁽¹³⁾ or any of its subsidiaries;
- (b) provided in pursuance of an agreement entered into by Transport for London or in pursuance of a transport subsidiary's agreement; or
- (c) otherwise authorised by Transport for London to be provided;

"promoter", in the case of any tramway passenger services, means the person authorised to secure the provision of those services with whom the operator of the services has entered into an agreement granting the operator the right to operate them;

"road passenger transport facility" has the meaning given by section 112A(3);

"road passenger transport service" has the meaning given by section 112A(1) and (2);

(11) 1984 c. 27. Section 121A was inserted by the New Roads and Street Works Act 1991 (c. 22), section 168(1) and Schedule 8, Part 2, paragraph 70. It was amended by the Greater London Authority Act 1999 (c. 29), section 271(1) to (3) and S.I. 2001/1400, article 2 and the Schedule, paragraph 1. There are other amendments but none is relevant.

(12) 2000 c. 38. Subsection 4(c) was substituted by the Local Transport Act 2008, section 77(5) and Schedule 4, Part 3, paragraphs 41 and 42.

(13) For Transport for London see in particular Chapter 2 of Part 4 of the Greater London Authority Act 1999.

“subsidiary”, in relation to Transport for London, has the same meaning as in the Greater London Authority Act 1999 (see section 424(1) of that Act⁽¹⁴⁾);

“tramway” has the meaning given by section 67(1) of the Transport and Works Act 1992⁽¹⁵⁾;

“tramway passenger service” means any service for the carriage of passengers by tramway;

“transport subsidiary’s agreement” has the same meaning as in the Greater London Authority Act 1999 (see section 169 of that Act).

(2) Where, by virtue of this Part, a person is required to submit information or documents to the Passengers’ Council, the information or documents may be transmitted to an electronic address and in an electronic form specified by the Council.”.

(2) During the period (if any) which—

- (a) begins with the day on which this Order comes into force, and
- (b) ends immediately before the coming into force of the amendments made by section 2 of the Local Transport Act 2008⁽¹⁶⁾ (traffic commissioners to be appointed nationally instead of for traffic areas),

any matter which is to be referred to a traffic commissioner by virtue of any provision of Part 5A of the Transport Act 1985⁽¹⁷⁾ is to be referred to the traffic commissioner for any traffic area in which the operator of the service, or (as the case may be) the holder of a PSV operator’s licence, to whom the matter relates has one or more operating centres for vehicles used under a PSV operator’s licence.

(3) In paragraph (2), the following expressions have the same meaning as in the Transport Act 1985 (see section 137 of that Act)—

“operating centre”;

“PSV operator’s licence”;

“traffic area⁽¹⁸⁾”;

“traffic commissioner”.

Members of the Passengers’ Council

4. In section 19(2)(e) of the Railways Act 2005⁽¹⁹⁾ (appointment of members) for “not more than twelve” substitute “not more than fourteen”.

Consequential amendments to Schedule 5 to the Railways Act 2005

5.—(1) Schedule 5 to the Railways Act 2005 (Rail Passengers’ Council established by section 19(1)) is amended as follows.

(2) In paragraph 16(2)—

- (a) omit “or” at the end of paragraph (a);
- (b) at the end of paragraph (b) insert—

“or

⁽¹⁴⁾ The definition was substituted by S.I. 2009/1941, article 2(1) and Schedule 1, paragraph 178(1) and (6).

⁽¹⁵⁾ 1992 c. 42.

⁽¹⁶⁾ 2008 c. 26.

⁽¹⁷⁾ 1985 c. 67. Part 5A is inserted by S.I. 2010/XXX, article 3.

⁽¹⁸⁾ This definition was amended by S.I. 1999/288, article 5(2).

⁽¹⁹⁾ 2005 c. 14.

(c) a traffic commissioner.”.

(3) In paragraph 18(1), after “in relation to the carrying out of” insert “any or all of”.

Signed by authority of the Secretary of State

2010

Minister of State
Department for Transport