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[AS INTRODUCED]

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 of each Transport Partnership.

(2) In carrying out the duty under subsection (1)(c) above, the Scottish Ministers—

(a) shall secure that the membership of a Transport Partnership includes a councillor (but only one councillor) appointed by and from each council the area or any part of the area of which falls within the Transport Partnership’s region (each such member of the Transport Partnership being a “councillor member” and each such council being, in relation to the Transport Partnership, a “constituent council”);

(b) 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;

(c) shall provide as to the duration and termination of membership of members of the Transport Partnership;

(d) 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 each member has a single vote;

(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;

(e) may provide that certain of the offices of the Transport Partnership may be held only by councillor members;

(f) may provide that councillor members (but only councillor members) may be represented and vote by proxies at meetings of the Transport Partnership;

(g) 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.

(3) The event referred to in subsection (2)(b) above is the holding of the poll at ordinary elections for councillors in 2007.

(4) For the purpose of subsection (2)(d)(ii) above, a vote shall be weighted by making it count as one, two, three or four votes.

2 Dissolution of RTPs

(1) The Scottish Ministers may, by order, dissolve any one or more Transport Partnerships or all of them.

(2) The Scottish Ministers shall, before making an order under this section, consult the Transport Partnership or Partnerships to be dissolved and its (or their) constituent councils.

(3) An order under this section may modify any enactment.
3 **Funding and borrowing**

(1) The net expenses of a Transport Partnership for each financial year shall be paid by its constituent councils.

(2) The share of the expenses to be paid by a constituent council under subsection (1) 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 borrow money for the purpose of its capital expenditure.

(6) In this section, “financial year” means the period of 12 months ending with 31st March.

4 **Administrative functions of RTPs**

Schedule 1 provides as to the administrative functions of Transport Partnerships.

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) The matters to which the Transport Partnership shall give consideration when carrying out that duty include—

   (a) the respects in which that transport needs to be developed or improved, including those respects which relate to future needs;

   (b) the respects in which the transport which is or might be provided or facilitated within the region affects or might affect the well-being (including the social and economic well-being) of persons there and the environment;

   (c) the respects in which the transport referred to in paragraph (b) above secures or will secure the needs of any parts of the region which the Partnership considers to be different from the remainder of the region by reason of their remoteness or their being sparsely populated;
(d) the respects in which the transport referred to in paragraph (b) above should integrate with transport which is or might be provided or facilitated elsewhere;

(e) the respects in which the transport referred to in paragraph (b) above will contribute to the realisation of the transport policies of the Scottish Ministers;

(f) what—

(i) might be done to achieve the development and improvement, social and economic well-being and integration respectively referred to in paragraphs (a), (b) and (d) above and the conservation and enhancement of the environment; and

(ii) having regard to cost, funding and practicability, is to be done to achieve them;

(g) how progress towards those achievements is to be measured and monitored;

(h) how the functions conferred by and under this Act on the Transport Partnership are to be exercised so as to fulfil its transport strategy and, where the Transport Partnership considers that the conferring of further functions is necessary for that purpose, what those functions are;

(i) the respects in which the Transport Partnership, so as to enable it to fulfil its transport strategy, is to seek to influence its constituent councils in the performance of their functions relating to transport and how the Transport Partnership would do so.

(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.

6 Procedure before and after the drawing up of transport strategies

(1) A Transport Partnership shall—

(a) before arriving at its transport strategy, consult its constituent councils and such other persons as it thinks fit;

(b) within 12 months of its creation under section 1 above, submit its transport strategy to the Scottish Ministers.

(2) A transport strategy has effect for the purposes of this Act when it is approved by the Scottish Ministers.

(3) 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.

(4) On approving its transport strategy, the Scottish Ministers shall inform the Transport Partnership of that fact.

(5) On being so informed, the Transport Partnership shall—

(a) inform its constituent councils that its transport strategy has effect, specifying the date when it took effect;

(b) send each of them a copy of the transport strategy; and

(c) publish the transport strategy in such manner as it thinks fit.
7 Review, modification and renewal of 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 (2) to (5) 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 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 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) In subsection (2) above, “specified” 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 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 RTPs

(1) The Scottish Ministers may, by order, provide for any function relating to transport, being a function under any enactment, which they, having regard to a Transport Partnership’s transport strategy, 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
( ) concurrently with that person.

(2) The person referred to in subsection (1) above may be the Scottish Ministers.

(3) A Transport Partnership which proposes to request the making of an order under subsection (1) above shall, before doing so, consult its constituent councils on what the order might do.

(4) 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.

(5) 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; and
(c) such other persons as the Scottish Ministers think fit.

(6) An order under subsection (1) above may modify any enactment.

(7) Notwithstanding subsection (1) above, the Scottish Ministers may, if they consider it expedient to do so, by order, provide for any function of the kind specified in section 12(2) below to be carried out by a Transport Partnership.

(8) Subsections (3) to (6) above apply to an order made under subsection (7) above as they apply to one made under subsection (1) above.

11 Manner of performance of RTPs’ functions

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 progress towards the achievements referred to in section 5(2)(f) above.

12 Transport functions of Scottish Ministers

(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 function—
(a) which relates to transport; and
(b) which was carried out under any enactment 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.

CHAPTER 3
CONSEQUENTIAL PROVISION

13 Transfer of staff, property and liabilities

(1) The TUPE regulations apply in relation to any function transferred by virtue of section 2, 10 or 12 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 12 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.

(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 12 above irrespective of how the transfer is described in that section or in the order made under it.

(4) Where, by virtue of section 2, 10 or 12 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 and liabilities as are specified in or otherwise identified by the order.

(5) Subsection (4) above has effect in relation to property 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.

(6) 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

14 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.

15 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) 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.

(3) 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.

(4) Schedule 2 provides further as to the Commissioner.

(5) The Commissioner may do anything calculated to facilitate the discharge of any of the Commissioner’s functions.
16 **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.

(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.

17 **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 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.

(5) In subsection (4), “restricted” information is information of a prescribed description.
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 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.

(3) A road works authority which has—

(a) under section 85 of the Roads (Scotland) Act 1984 (c.54), given permission for the deposit of a skip on a road for which a road works authority are responsible,
(b) 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,
(c) become aware that a constable has, under subsection (1) of that section, required or caused the removal or repositioning of such a skip,
(d) 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
(ii) section 88 of that Act requiring the removal or alteration of a projection affecting such a road,
(e) 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,
(f) under section 91 of that Act, served notice requiring work to be done or carried out work in relation to such a road, or
(g) 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.

(4) 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 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.”.
(3) 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.”.

(4) 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

   (ii) containing such other information as may be prescribed, and

   (b) entering in the SRWR a copy of that notice.”.

(5) 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”.

(6) 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

18 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 (4) 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 (3) there is inserted—

“(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.”.

19 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 may 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 may 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)”.

20 Restriction on works following substantial road works

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

(a) in subsection (1), for “twelve months” there is substituted “3 years”; and

(b) in subsection (6), at the beginning of paragraph (b) there is inserted “if convicted of an offence under this subsection,”.

(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)”.

21 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 15(3)(b) of the Transport (Scotland) Act 2004 (asp 00).”.

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

22 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 15(3)(b) of the Transport (Scotland) Act 2004 (asp 00), 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.”.
23 Enforcement of section 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 section 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 undertakers who fail to comply with duties imposed on them by section 119,

(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.”.

24 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.

(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.”.

25 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 (2) of this Act; section 16 of the Transport (Scotland) Act 2004 (asp 00) (duty to provide Road Works Commissioner with certain information).

A roads authority Section 112B(3) of this Act.

An undertaker Sections 113(1), 114(1) and 116(2) of this Act; section 16 of the Transport (Scotland) Act 2004 (asp 00) (duty to provide Road Works Commissioner with certain information).”.

26 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.”.

27 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

28 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.

(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.

(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)”.

29 Resurfacing: regulations and guidance

After section 132C of the 1991 Act (as inserted by section 28 above) there is inserted—

“132D Resurfacing: regulations

(1) The Scottish Ministers may 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, 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 may, 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.”.

30 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

31 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).

32 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 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 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.”.

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

“fixed penalty offence section 154A(1)”.

(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.

33 Civil penalties for certain offences under 1991 Act

After section 154A of the 1991 Act (as inserted by section 32 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.”.

Resolution of disputes under 1991 Act

34 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

35 Fixed penalty offences under the Roads (Scotland) Act 1984

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

“130A Fixed penalties for certain offences

(1) A fixed penalty offence is any offence under this Act which—
   (a) is listed in the first column in Schedule 8A to this Act (and described in general terms in the second column); and
   (b) is prescribed in regulations made by the Scottish Ministers.

(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) Schedule 8B to this Act (which makes provision about fixed penalties for fixed penalty offences) has effect.

(4) Regulations under subsection (1)(b) above may make transitional provision.”.

(2) After Schedule 8 to that Act there are inserted Schedules 8A and 8B as set out in schedules 6 and 7 to this Act.

(3) 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).”.

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

After section 130A of the Roads (Scotland) Act 1984 (as inserted by section 35 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 such offences under 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 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.”.
**Part 3—Miscellaneous**

**37 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.

**38 Abolition of requirement on local traffic authority to inform 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.

39 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”.

40 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.

(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.

41 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

(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.

### 42 Transitional provision for sections 40 and 41

Nothing in section 40 or 41 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.

### 43 Minor amendments of Transport (Scotland) Act 2001

(1) The Transport (Scotland) Act 2001 (asp 2) is amended in accordance with subsections (2) to (7) below.

(2) In section 48 (interpretation of Part 2 (bus services)), in the definition of “relevant general policies” for “and” there is substituted “or”.

(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.”.

(5) 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)”.

(6) 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)”;

(c) after “authority” there is inserted “; or

(b) a local traffic authority,”.

(7) 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**

**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 46(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), 10(1) or (7), 12(1) or 37(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.

45 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 14 above; and


(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.

46 Short title and commencement

(1) This Act may be cited as the Transport (Scotland) Act 2004.

(2) This Act (except this section and section 44 above) comes into force in accordance with provision made by order by the Scottish Ministers.
SCHEDULE 1  
(introduced by section 4)  
ADMINISTRATIVE FUNCTIONS OF RTPs

**Staff**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A Transport Partnership shall appoint such employees as it considers necessary for the carrying out of its functions.</td>
</tr>
</tbody>
</table>
| 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. |
| 5 (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**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Provisions</th>
</tr>
</thead>
</table>
| 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—

(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 purchase land compulsorily under sub-paragraph (1)(b) 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 shall not, without the consent of the Scottish Ministers, dispose of land for a consideration less than the best that could reasonably be expected to be obtained on the open market.

Private legislation

7 A Transport Partnership may, if it thinks fit, promote or oppose private legislation in the Scottish Parliament.

Participation in community planning

8 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 2004 (asp 00)”;

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)”.

Legal proceedings, notices etc.

9 (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

10 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.

11 (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 2004 (asp 00);”.

(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 2004 (asp 00)”.

(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 2004 (asp 00)”.

Contracts etc.

12 (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 2004 (asp 00),”.

(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 2004 (asp 00)”.

(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 2004 (asp 00);”.

Standards of members’ conduct

13 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—

“A Transport Partnership created under the Transport (Scotland) Act 2004 (asp 00)”.

Investigation

14 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 2004 (asp 00)”.

Freedom of information

15 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 2004 (asp 00)”.

SCHEDULE 2
(introduced by section 15)

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.

30 (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.

35 (3) Section 14(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.

SCHEDULE 3
(introduced by section 31)

INCREASE IN MAXIMUM FINES FOR CERTAIN SUMMARY OFFENCES UNDER THE 1991 ACT

<table>
<thead>
<tr>
<th>Provision specifying fine</th>
<th>Brief description of offence or offences to which the fine relates</th>
<th>New maximum fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 110(2)</td>
<td>Offences under section 110(1) (prohibition of authorised road works)</td>
<td>level 5</td>
</tr>
<tr>
<td>Section 113(5)</td>
<td>Failure to comply with duties under section 113 (advance notice of certain works, etc.)</td>
<td>level 4</td>
</tr>
<tr>
<td>Section 114(5)</td>
<td>Beginning to execute works in contravention of section 114 (notice of starting date of works)</td>
<td>level 4</td>
</tr>
<tr>
<td>Section 115(3)</td>
<td>Execution of works in contravention of direction under section 115 (directions as to timing of road works)</td>
<td>level 5</td>
</tr>
<tr>
<td>Section 116(4)</td>
<td>Failure to give notice in accordance with section 116 (notice of emergency works)</td>
<td>level 4</td>
</tr>
<tr>
<td>Section 117(6)</td>
<td>Carrying out works in contravention of a restriction imposed under section 117 (restriction on works following substantial road works)</td>
<td>level 5</td>
</tr>
<tr>
<td>Section 124(4)</td>
<td>Failure to comply with section 124(1) or (2) (safety measures)</td>
<td>level 5</td>
</tr>
<tr>
<td>Section 124(6)</td>
<td>Interference with safety measures taken by undertaker</td>
<td>level 5</td>
</tr>
<tr>
<td>Section 125(2)</td>
<td>Failure to comply with section 125(1) (duty to carry on and complete certain road works with all reasonably practicable dispatch)</td>
<td>level 5</td>
</tr>
<tr>
<td>Section 126(3)</td>
<td>Failure to comply with section 126(1) or (2) (duties relating to the use of qualified supervisors and operatives)</td>
<td>level 5</td>
</tr>
<tr>
<td>Section 127(2)</td>
<td>Failure by undertaker to afford roads authority with reasonable facilities for ascertaining whether undertaker is complying with duties under Part 3</td>
<td>level 4</td>
</tr>
<tr>
<td>Provision specifying fine</td>
<td>Brief description of offence or offences to which the fine relates</td>
<td>New maximum fine</td>
</tr>
<tr>
<td>---------------------------</td>
<td>---------------------------------------------------------------</td>
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</tr>
<tr>
<td>Section 128(2)</td>
<td>Failure to comply with section 128(1) (requirements relating to road works likely to affect another person’s apparatus in the street)</td>
<td>level 4</td>
</tr>
<tr>
<td>Section 129(6)</td>
<td>Failure by undertaker to comply with duties under section 129(1) to (5) (reinstatement of road and information for road works authority)</td>
<td>level 5</td>
</tr>
<tr>
<td>Section 130(5)</td>
<td>Failure to comply with duties under section 130 (prescribed requirements as to materials and workmanship and performance standards for reinstatements)</td>
<td>level 5</td>
</tr>
<tr>
<td>Section 138(4)</td>
<td>Failure to comply with duties under section 138(1) to (3) (records of location of apparatus)</td>
<td>level 5</td>
</tr>
<tr>
<td>Section 139(4)</td>
<td>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)</td>
<td>level 4</td>
</tr>
<tr>
<td>Section 142(3)</td>
<td>Failure by authority to comply with section 142(2) (requirements relating to certain road works likely to affect apparatus in the road)</td>
<td>level 4</td>
</tr>
<tr>
<td>Section 147(6)</td>
<td>Failure by undertaker to comply with duties under section 147(4) or (5) (road works affecting structure of a bridge)</td>
<td>level 5</td>
</tr>
<tr>
<td>Schedule 6, paragraph 6</td>
<td>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)</td>
<td>level 5</td>
</tr>
<tr>
<td>Schedule 6, paragraph 12(5)</td>
<td>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)</td>
<td>level 5</td>
</tr>
<tr>
<td>Schedule 6, paragraph 13(2)</td>
<td>Failure to comply with paragraph 13(1) (requirement to execute works in such a road in accordance with plan or agreed modification)</td>
<td>level 5</td>
</tr>
</tbody>
</table>
SCHEDULE 4
(introduced by section 32)

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

“SCHEDULE 6A

FIXED PENALTY OFFENCES UNDER PART 4

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

SCHEDULE 5
(introduced by section 32)

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 (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 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

(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.

**Recovery of unpaid fixed penalties**

9 Subject to paragraph 8, 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

10 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 9 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

11 The Scottish Ministers may make regulations about—

(a) the application by road works authorities of fixed penalties paid under this Schedule,
(b) the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this Schedule.

12 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.”

SCHEDULE 6
(introduced by section 35)

SCHEDULE 8A TO THE ROADS (SCOTLAND) ACT 1984

“SCHEDULE 8A

FIXED PENALTY OFFENCES

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

SCHEDULE 7
(introduced by section 35)

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 (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.

5 (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.

5 (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.

6 (2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.

6 (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.

6 (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.

6 (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.

7 (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.

7 (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.

7 (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.

10 (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.

15 (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.

**Recovery of unpaid fixed penalties**

9 Subject to paragraph 8, 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**

10 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 9 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.

30 (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**

11 The Scottish Ministers may make regulations about—

(a) the application by roads authorities of fixed penalties paid under this Schedule;
(b) the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this Schedule.

12 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.”
Transport (Scotland) Bill
[AS INTRODUCED]

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.

Introduced by: Nicol Stephen
On: 27 October 2004
Bill type: Executive Bill


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