

TRANSPORT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

SCHEDULES

Schedule 1 Further provision about regional Transport Partnerships

133. [Schedule 1](#) applies various requirements and gives various administrative functions to Transport Partnerships to enable them to operate effectively. They will have some of the characteristics of local authorities and these provisions bring the Transport Partnerships into line with certain requirements of local government legislation.
134. [Paragraphs 1 to 5](#) apply to Transport Partnerships the rules on the appointment etc of staff that apply to local authorities. Paragraph 1 requires the Transport Partnerships to appoint staff to exercise their functions. Paragraph 2 empowers a Transport Partnership to indemnify its employees. Paragraph 3 applies to Transport Partnerships similar provision for security of money entrusted to their employees as it is already available to local authorities. Paragraph 4 requires employees of the Transport Partnerships to declare potential conflicts of interest. Paragraph 5 makes it an offence for any employee of a Transport Partnership to receive, through the exercise of their duties, any payment or reward other than remuneration and expenses due to them under their contract of employment. This offence is based on the one already applying to local government employees.
135. [Paragraph 6](#) confers on the Transport Partnerships certain powers related to the acquisition by agreement, compulsory purchase, and development of land. These are based on the powers already available to local authorities and may only be exercised by a Transport Partnership in the exercise of its transport functions.
136. [Paragraph 7](#) gives Transport Partnerships an additional power to develop land which they had previously acquired under paragraph 6 but no longer need to fulfil the purposes for which it was originally acquired. Whereas the provision at paragraph 6(5) only enables Transport Partnerships to develop land for the purposes of its transport functions, the provisions of paragraph 7 are not so restricted. However, land so developed must be for the use of persons other than the Transport Partnership and the development must be with a view to disposal of the land. Paragraph 8 ensures that the development functions conferred on Transport Partnerships by paragraph 7 cannot be regarded as a function for the purposes of paragraphs 6 and 7 – otherwise this would give Transport Partnerships wide-ranging powers to buy, sell and develop land unrelated to their transport functions.
137. [Paragraph 9](#) confers on the Transport Partnerships the powers to dispose of land that are already available to local authorities.
138. [Paragraph 10](#) provides that Transport Partnerships may promote or oppose private legislation in the Scottish Parliament. Sub-paragraphs (2) and (3) provide circumstances where a Transport Partnership can assume responsibility for the promotion or opposition of private legislation that was previously initiated by another body because the transport functions of that body were transferred either to the Transport Partnership

or the Scottish Ministers and the latter has then directed the Transport Partnership to continue the promotion or opposition of the private legislation.

139. [Paragraph 11](#) requires Transport Partnerships to participate in community planning in the same way as various other public bodies.
140. [Paragraph 12](#) ensures that Transport Partnerships have similar powers to councils to create companies, much in the same manner as, for example, that City of Edinburgh Council created *tie* (transport initiatives edinburgh).
141. [Paragraph 13](#) applies various miscellaneous local authority responsibilities to Transport Partnerships. These concern, in particular, provisions on legal proceedings. Sub-paragraph 2 requires each partnership to appoint one of its employees as its proper officer, in line with the existing requirement on local authorities. This post-holder is required for the purposes of legal proceedings.
142. [Paragraph 14](#) requires Transport Partnerships to prepare, publish and give to the Scottish Ministers, an annual report on the performance of its functions. It also requires Transport Partnerships to give to the Scottish Ministers, on request, any information about the performance of their functions.
143. [Paragraph 15](#) applies to Transport Partnerships certain of the rules governing finance that already apply to local authorities. Paragraph 11(2) adds Transport Partnerships to the list of bodies to which Part VII (Finance) of the Local Government (Scotland) Act 1973 applies. One consequence of this is that section 14 of the Local Government in Scotland Act 2003 applies Part 1 of that Act to those bodies to which Part VII of the 1973 Act applies. So the provisions of part 1 of the 2003 Act apply to Transport Partnerships: these include, notably, the duty to secure best value (sections 1 and 2).
144. [Paragraph 16](#) applies to Transport Partnerships various rules governing the entering into of contracts. These rules already apply to local authorities.
145. [Paragraph 17](#) amends the Ethical Standards in Public Life etc (Scotland) Act 2000 to add the Transport Partnerships to the list of devolved public bodies for which they are to be codes of conduct for their members.
146. [Paragraph 18](#) enables Transport Partnerships to reimburse observers their expenses.
147. [Paragraph 19](#) amends the Scottish Public Services Ombudsman Act 2002 to include Transport Partnerships in the list of bodies that the Ombudsman can investigate.
148. [Paragraph 16](#) amends the Freedom of Information (Scotland) Act 2002 so as to apply to Transport Partnerships the duty on public authorities to disclose information.

Schedule 2 Scottish Road Works Commissioner: further provision

149. [Schedule 2](#) of the Act sets out further provisions in respect of the Commissioner.
150. [Paragraph 1](#) relates to the terms and conditions, including pension and other allowances to staff, who have with the consent of the Scottish Ministers, been appointed.
151. [Paragraph 2](#) places a duty on the Commissioner to prepare, for each financial year and, in accordance with directions given by the Scottish Ministers, an account of income and expenditure which will be sent to the Scottish Ministers. The Scottish Ministers may also direct the time each financial year by which such accounts are to be sent to the Auditor General for Scotland.
152. [Paragraph 3](#) places a duty on the Commissioner to, at the end of each financial year, give to the Scottish Ministers, and publish, a report on performance during that year. The Commissioner shall also provide the Scottish Ministers with such information about the performance of those functions as may be required.

These notes relate to the Transport (Scotland) Act 2005 (asp 12) which received Royal Assent on 5 August 2005

153. Paragraph 4 makes the Commissioner subject to the duty to disclose information under the Freedom of Information (Scotland) Act 2002.

Schedule 3 Increase in maximum fines for certain summary offences under the 1991 Act

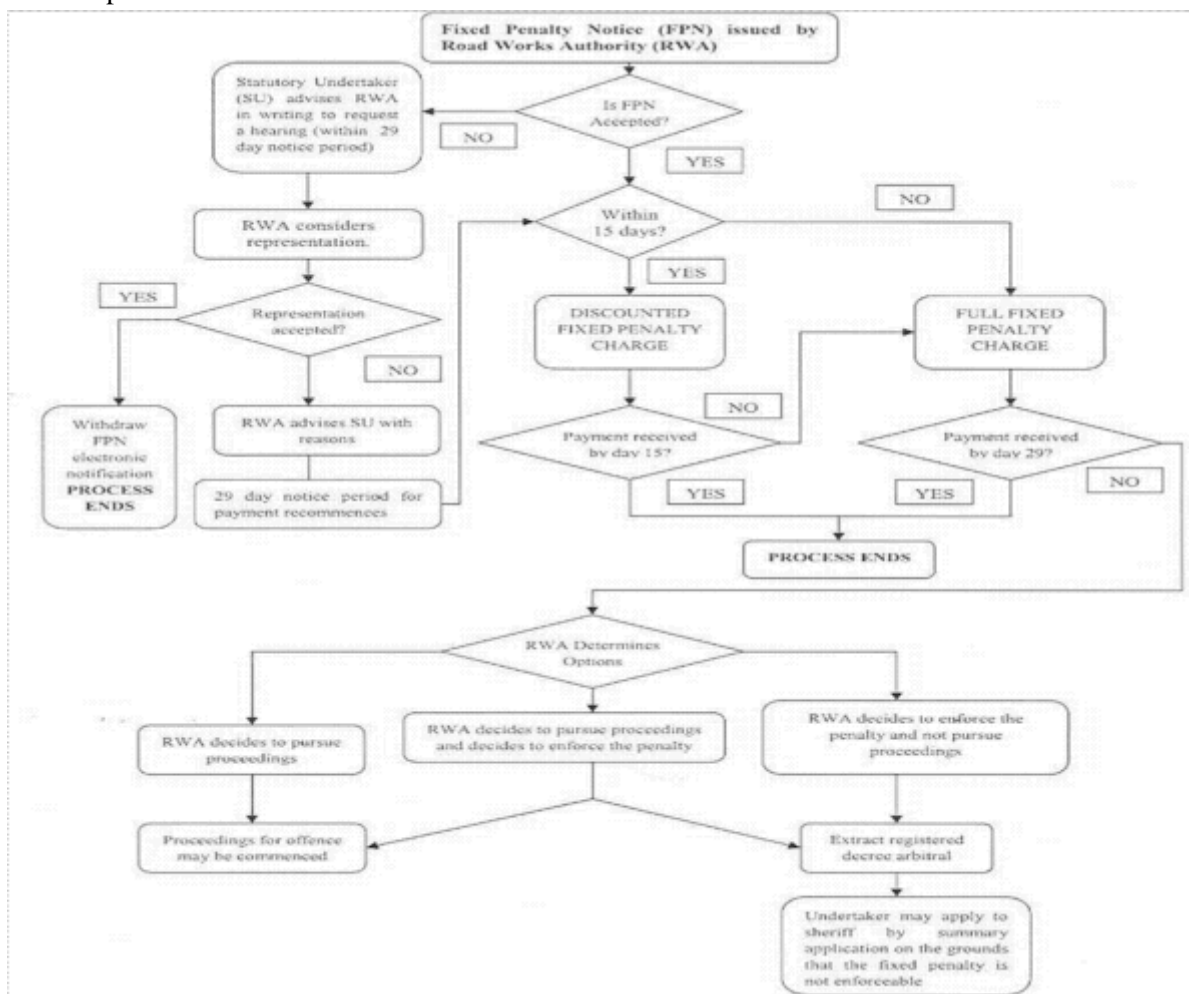
154. The schedule lists offences and their maximum fine levels as introduced by section 33.

Schedule 4 Schedule 6A to the New Roads and Street Works Act 1991

155. The schedule lists fixed penalty offences as introduced by section 34.

Schedule 5 Schedule 6B to the New Roads and Street Works Act 1991

156. The chart below provides the detail, for illustrative purposes, of the provisions within schedule 5 (as well as schedule 7) in respect of the process associated with the payment of fixed penalties for certain offences.



157. Schedule 5 paragraph 1(1) provides power for an authorised officer to issue a fixed penalty notice.

158. Paragraph 2 provides the Scottish Ministers with the power to set via regulation a time limit between an offence being committed and an authorised officer being able to give a fixed penalty notice.

159. Paragraph 4 provides for the level of the financial limits of the fixed penalty notice and the period within which payment of the notice should be made. The road works authority has a power to extend the period of payment.

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160. **Paragraph 5** enables offenders to pay a lesser amount in respect of the fixed penalty notice if they make an earlier payment.
161. **Paragraph 7** enables a person in receipt of a fixed penalty notice to request a hearing in respect of the offence for which they have been given notice provided that that request is made within 29 days of receipt of the notice. The request must be made in writing to the designated person at the address shown on the fixed penalty notice. The road works authority will hold the meeting and the procurator fiscal will be notified that a hearing is to be held. The period between a person requesting a hearing and being notified of the hearing's decision will not count towards the 29 days for the payment of the penalty.
162. **Paragraph 8** provides for a power of the road works authority to withdraw notices, in cases where they have been erroneously issued or consider there are extenuating circumstances. Sub-paragraph (3) provides that a road works authority is bound to consider any representations made by or on behalf of a person given a notice, and that they must decide in all circumstances whether to withdraw the notice.
163. **Paragraph 9** ensures that where proceedings have commenced for an offence, in respect of which a fixed penalty notice has been given, that the fixed penalty notice is to be treated as withdrawn. This means that a person may be prosecuted for an offence but in such a circumstance cannot also be punished for non-payment of the fixed penalty notice associated with that offence.
164. **Paragraph 10** provides for the recovery of unpaid fixed penalty fines. After the expiry of 29 days the road works authority is able to enforce the unpaid penalty as if it were an extract registered decree arbitral. In practice this means that the unpaid penalty can be recovered in the same way as a sum of money due under a civil court decree.
165. **Paragraph 11** provides a mechanism under which disputes as to whether or not a fixed penalty has been paid or a hearing sought within the period for paying can be resolved by the courts. Sub-paragraph (1) enables a person who is in dispute with a road works authority to apply to the sheriff by summary application for a declaration that the fixed penalty cannot be enforced under paragraph 10 either because the fixed penalty has been paid or a request for a hearing has been made within the period for paying.
166. **Paragraph 11(2)** provides that the sheriff may declare that the person has or has not paid the penalty or requested a hearing within the period for paying and that the fixed penalty is or is not enforceable under paragraph 10.
167. **Paragraph 12** permits the road works authorities to retain a proportion of the monies raised from the application of fixed penalty notices raised to cover their costs in administering the fixed penalty notice process. All surplus monies will revert to the Scottish Ministers.
168. **Paragraph 13** provides the Scottish Ministers with powers to make regulations prescribing the circumstances in which a fixed penalty notice may not be given and the methods for the payment of penalties.
169. **Paragraph 14** allows the Scottish Ministers to issue or approve a code of practice giving guidance to road works authorities and their authorised officers as to the performance of their functions in relation to fixed penalty notices.
170. The schematic above provides the detail, for illustrative purposes, of the provisions within schedule 5 in respect of the process associated with payment of fixed penalties for certain offences.

Schedule 6 Schedule 8A to the Roads (Scotland) Act 1984

171. The schedule lists fixed penalty offences introduced by section 37.

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Schedule 7 Schedule 8B to the Roads (Scotland) Act 1984

172. [Schedule 7](#) contains similar provisions to those contained at [schedule 5](#).