

Draft Order laid before the Scottish Parliament under section 52(3) of the Transport (Scotland) Act 2005, for approval by resolution of the Scottish Parliament This draft supersedes the one laid on 23rd September 2005.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2005 No.

TRANSPORT

**The Transfer of Rail Functions To
The Scottish Ministers Order 2005**

Made - - - - 2005
Coming into force - - 2005

The Scottish Ministers, in exercise of the powers conferred by sections 13(1) and (3) and 52(4)(b) of the Transport (Scotland) Act 2005⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 52(3) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation and commencement

1. This Order may be cited as the Transfer of Rail Functions To The Scottish Ministers Order 2005 and shall come into force on the day after the day on which it is made.

Interpretation

2. In this Order “rail” has the same meaning as the meaning given to “railway” by section 67(1) of the Transport and Works Act 1992⁽²⁾.

Rail functions transferring to the Scottish Ministers

3. The functions of the Strathclyde Passenger Transport Authority or the Strathclyde Passenger Transport Executive relating to the provision and regulation of rail services conferred by Part II of the Transport Act 1968⁽³⁾ and sections 34 and 35 of the Railways Act 1993⁽⁴⁾ as specified in column 1 of Schedule 1 to this Order shall, subject to any restriction, exclusion or requirement in the corresponding entry in column 2 of that Schedule, be exercisable by the Scottish Ministers instead

(1) 2005 asp 12.
(2) 1992 c. 42.
(3) 1968 c. 73.
(4) 1993 c. 43.

of by whichever of the Strathclyde Passenger Transport Authority or the Strathclyde Passenger Transport Executive was responsible for carrying them out.

Modification of enactments

4. Schedule 2 to this Order (modification of enactments) shall have effect insofar as the modification relates to or is in consequence of the exercise of functions transferred to the Scottish Ministers by virtue of article 3.

Transitional and saving provision

5.—(1) The transfer, by virtue of this Order, of any function exercisable by the Strathclyde Passenger Transport Authority or the Strathclyde Passenger Transport Executive to the Scottish Ministers shall not affect the validity of anything done (or having effect as if done) by or in relation to the Strathclyde Passenger Transport Authority or the Strathclyde Passenger Transport Executive before the date on which the transfer takes effect.

(2) Anything (including legal proceedings) which, at the time when that transfer takes effect, is in the process of being done by or in relation to the Strathclyde Passenger Transport Authority or the Strathclyde Passenger Transport Executive may, so far as it relates to any function transferred, be continued by the Scottish Ministers.

(3) Anything done (or having effect as if done) by or in relation to the Strathclyde Passenger Transport Authority or the Strathclyde Passenger Transport Executive for the purposes of or in connection with any function transferred to the Scottish Ministers by virtue of this Order shall, if in force at the time when that transfer takes effect, have effect as if done by the Scottish Ministers in so far as that is required for continuing its effect after that time.

St Andrew's House,
Edinburgh
2005

A member of the Scottish Executive

SCHEDULE 1

Article 3

ENACTMENTS CONFERRING RAIL FUNCTIONS
TRANSFERRED TO THE SCOTTISH MINISTERS

<i>Column 1</i> <i>Enactment</i>	<i>Column 2</i> <i>Restrictions and Requirements</i>
The Transport Act 1968 (c. 73)	The rail functions contained in section 10 with the exception of section 10(1)(vi) and 10(1)(via) and only in so far as the function is exercised solely in relation to rail and not to any other services.
Section 10	
Section 20	
The Railways Act 1993 (c. 43)	
Sections 34 and 35	

SCHEDULE 2

Article 4

MODIFICATION OF ENACTMENTS

MODIFICATION OF THE TRANSPORT ACT 1968 (c. 73)

1.—(1) Section 10 of the Transport Act 1968 is modified as follows.

(2) In subsection (1)(vi) for “the Strategic Rail Authority or any wholly-owned subsidiary of the Strategic Rail Authority” substitute “the Scottish Ministers”.

(3) In subsection (1)(via)–

(i) for “Authority” substitute “Scottish Ministers”; and

(ii) after the word “into” insert “, make payments to”.

(4) In subsection (1)(viiiic) omit “with the approval of the Authority”.

(5) In subsection (1)(ix) omit “(but, in a case falling within sub paragraph (c) of this paragraph, only with the approval of the Authority)”.

(6) After subsection (1) insert–

“(1A) The power to enter into and carry out agreements referred to in subsection (1) (xv) of this section includes the power for the Executive to enter into agreements with the Scottish Ministers in respect of any functions transferred by virtue of the Transfer of Rail Functions To The Scottish Ministers Order 2005”(5).

MODIFICATION OF THE RAILWAYS ACT 1993 (c. 43)

2.—(1) Section 34 of the Railways Act 1993 is modified as follows.

(2) Subsection (11) is omitted.

(3) In subsection (22) after “section-” insert–

(5) S.S.I. 2005/ .

““the passenger transport area” means the Strathclyde Passenger Transport area as designated by the Strathclyde Passenger Transport Area (Designation) Order 1995(6);”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which is made under sections 13(1) and (3) and 52(4)(b) of the [Transport \(Scotland\) Act 2005 \(asp 12\)](#) provides for the transfer of functions of the Strathclyde Passenger Transport Authority and the Strathclyde Passenger Transport Executive relating to the provision and regulation of rail services conferred by Part II of the Transport Act 1968 (c. 73) and sections 34 and 35 of the Railways Act 1993 (c. 43) to the Scottish Ministers. The power to transfer these functions to the Scottish Ministers was brought within the competence of the Scottish Parliament by article 4(b) of the Scotland Act 1998 (Modifications of Schedule 5) Order 2004 (S.I.2004/3329).

This Order also makes modifications of the enactments referred to above as a consequence of the transfer of the rail functions (article 4). Article 5 makes transitional and saving provision.

(6) S.I. 1995/1971.