

# LOCAL TRANSPORT ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 5: Integrated Transport Authorities etc.**

209. The provisions in this Part extend to England and Wales, but, because they relate to passenger transport areas, in practice they have effect only in relation to areas in England.

#### ***Section 77: Change of name of passenger transport areas and PTAs***

210. This section provides for the passenger transport areas in England created under the Transport Act 1968 – that is, the six metropolitan counties in England – to be known in future as “integrated transport areas”. It also provides for the Passenger Transport Authorities in England established under the Local Government Act 1985 (one for each passenger transport area) to be known as “Integrated Transport Authorities” (“ITAs”). This section also provides that any reference in existing legislation to a “passenger transport area” or “Passenger Transport Authority” in England and Wales should be read respectively as a reference to “integrated transport area” or “Integrated Transport Authority”.
211. This section also introduces Schedule 4, which makes amendments to various enactments consequential on the change of name. The amendments reflect the fact that the change of name does not apply in Scotland, where the Strathclyde Passenger Transport Authority remains as a statutory entity.

#### ***Section 78: Power to establish a new ITA***

212. This section provides that, subject to certain conditions, the Secretary of State can make orders establishing new integrated transport areas in England and creating ITAs for those areas. *Subsections (2) and (3)* provide that the Secretary of State can make an order to establish an ITA only where a scheme has been published under the provisions of section 80 and 81 or a direction under section 81 to prepare and publish a scheme has not been complied with.

#### ***Section 79: Provision that may be made in an order under section 78***

213. This section sets out the provision that be made in an order under section 78. *Subsection (2)* provides that where an order is made creating a new ITA, it must provide that a majority of the ITA’s members must be elected members of the “constituent councils” (as defined in *subsection (3)*) that make up the integrated transport area, appointed by the council to which they were elected. It also provides that such an order must provide for each “representative council” (as defined in *subsection (4)*) to appoint at least one of its elected members to the ITA.
214. The effect of *subsections (5) and (6)* is that where ITA members are to be appointed otherwise than by a constituent council from among its elected members, the order must

provide for those members to be non-voting members of the ITA. The voting members of the ITA are then given a power to resolve to give a non-voting member a vote.

***Section 80: Authorities' review: new ITA***

215. This section provides that any two or more of the types of authorities listed in *subsection (1)* may review the effectiveness and efficiency of transport within a geographical area the extent of which complies with *subsections (2) and (3)*. The effect of this is that the area under review must consist of two or more local authority districts. If that review concludes that the establishment of an integrated transport area and ITA would improve the exercise of statutory transport functions in the area and the effectiveness and efficiency of transport in the area, then those authorities must publish a scheme for the establishment of the area and an ITA for it. *Subsection (5)* provides that the area of the proposed integrated transport area can be all or part of the area covered by the review or can also cover one or more additional counties or districts not covered by the review, as long as the authorities listed in *subsection (6)* have given their consent.

***Section 81: Secretary of State's power to direct a review: new ITA***

216. This section provides that the Secretary of State can direct any two or more of the authorities listed in *subsection (2)* to carry out a review of the effectiveness and efficiency of transport in the whole or part of their combined areas. *Subsection (4)* provides that such a direction may also require the authorities to produce a scheme to establish a new ITA. *Subsection (6)* lists the types of issues which a direction may require to be covered by a review and any scheme.

***Section 82: Authorities' review of arrangements***

217. This section provides that any one or more of the types of authorities listed in *subsection (2)* may review the effectiveness and efficiency of transport within one or more existing integrated transport areas. If that review concludes that the exercise of statutory transport functions in those areas would be improved by the making of an order under sections 84 to 91, changing the way in which statutory transport functions in that area are exercised, then those authorities must publish a scheme proposing how this should be done.

***Section 83: Secretary of State's power to direct a review of arrangements***

218. This section provides that the Secretary of State can direct any combination of the following to carry out a review:
- existing ITAs;
  - county or district councils in an existing integrated transport area; or
  - county or district councils which are not yet in an integrated transport area but could be included in one by virtue of a boundary change (see section 90).
219. The Secretary of State can direct that the review should consist of any of the matters covered by sections 84 to 91, namely:
- the constitutional arrangements (for example the membership) of the ITA;
  - the delegation of functions from the Secretary of State or individual local authorities to an ITA (or to a local transport authority for areas where there is no longer an ITA);
  - conferring on an ITA a power to give directions to local authorities on the exercise of their highway and traffic authority powers; and
  - changing the boundaries of, or dissolving, an integrated transport area.

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220. *Subsection (6)* provides that such a direction can also require the directed body or bodies to prepare and publish a scheme containing proposals which would require the making of an order by the Secretary of State to enable them to be implemented (for instance setting out how many representatives each authority in an integrated transport area would have on the ITA).
221. *Subsection (8)* sets out certain requirements which the direction can also impose, including the timetable for the review and the preparation and publication of the scheme, and certain issues which must be addressed in each of them (for instance, what would be the membership of the ITA).

#### ***Section 84: Constitutional arrangements***

222. This section allows the Secretary of State to make an order about the constitutional arrangements of an individual ITA.
223. *Subsection (2)* defines what is meant by “constitutional arrangements”. An order could, for instance, cover the membership of that ITA, executive arrangements within an ITA or the functions of any “executive body” of the ITA. (Under the existing legislation, each PTA has a Passenger Transport Executive, which is the executive body responsible for implementing the policies of the PTA.)
224. *Subsection (3)* defines what is meant by “executive arrangements” within the ITA, for instance the establishment of an executive and the arrangements by which that executive can exercise the powers of the ITA. These provisions mirror the provision made for local authorities by Part 2 of the Local Government Act 2000.
225. *Subsection (5)* provides that an order cannot provide that anyone other than the ITA has responsibility for agreeing its budget, so this function could not be delegated to an executive of the ITA.

#### ***Section 85: Provision that may be made in an order under section 84: membership of ITA***

226. This section describes the provision that may be made in an order under section 84. *Subsection (1)* provides that where an order is made in relation to the constitution of an existing ITA and that order includes provision about the ITA’s membership, it must provide that a majority of the ITA’s members must be elected members of the ITA’s “constituent councils” (as defined in *subsection (2)*), appointed by the council to which they were elected. It also requires such an order to provide for each of the “representative councils” (as defined in *subsection (3)*) to appoint at least one of its elected members to the ITA.
227. The effect of *subsections (4) and (5)* is that where some ITA members are to be appointed otherwise than by a constituent council from among its elected members, the order must provide for them to be non-voting members of the ITA. However, the voting members of the ITA may resolve that a non-voting member is to be able to vote.

#### ***Section 86: Delegation of functions of the Secretary of State***

228. This section provides that the Secretary of State can make an order delegating any of the Secretary of State’s own functions (for instance in relation to strategic roads or rail), to:
- an ITA; or
  - where an existing ITA is being dissolved or its boundary being contracted, a designated local transport authority.
229. **Section 86** does not allow the delegation of the Secretary of State’s powers to make secondary legislation or to set fees and charges.

***Section 87: Delegation of local authority functions***

230. This section allows the Secretary of State to include provision in an order to delegate the exercise of functions of a county council or district council to:
- an ITA; or
  - where an existing ITA has been dissolved or its boundary contracted, a designated local transport authority.
231. This power applies to such functions only in so far as they relate to the integrated transport area (or to a former such area), and only if the Secretary of State thinks it appropriate for the ITA or other authority to exercise that function.
232. *Subsection (3)* provides that an order made under section 87 may delegate functions of a “charging authority” to an ITA, but only where the conditions set out in that subsection are met. Functions of a charging authority include the power to make, vary or revoke a local road charging scheme under Part 3 of the TA 2000.

***Section 88: Conferral of a power to direct***

233. This section enables the Secretary of State to make an order which confers a power to direct on (i) an ITA, or (ii) where an existing ITA is dissolved or its boundary contracted, a designated local transport authority.
234. Where the power to direct is conferred on it, an ITA or designated local transport authority would be able to issue a direction to a metropolitan district council, county council or unitary authority as to how the latter should exercise its functions as a local highway authority or local traffic authority. Such directions could include for instance a requirement to install traffic management measures (such as bus lanes) or traffic calming measures, or the carrying out of maintenance works on their roads.
235. *Subsection (6)* provides that the power to give such directions may only be conferred in relation to specific roads or descriptions of roads (for instance, major bus routes). *Subsection (7)* makes clear that directions cannot apply to roads covered by concession agreements under the New Roads and Street Works Act 1991.
236. *Subsections (8) and (11)* list the matters to which a direction can relate, which are:
- the provision of information about the exercise of local highway authority or local traffic authority powers;
  - that the directed authority must do certain things or obtain consent before using those powers;
  - imposing conditions on how the directed authority can make use of its powers in a particular case;
  - that the directed authority must not make use of certain of its powers in certain circumstances; and
  - that the directed authority must make use of its powers in a specific case, provided that the directing authority meets the cost of compliance with that direction.

***Section 89: Contravention of an order under section 88***

237. This section provides that if an authority to which the Secretary of State has granted the power to direct under section 88 issues a direction to a local highway authority or local traffic authority and the authority to which the direction is issued fails to comply with it – for instance it fails to take the necessary action to enable a bus lane to be installed on one of its roads – then the authority which issued the direction can take the necessary steps to rectify matters. This includes the ability to take over the relevant powers of the

directed authority for the purposes of putting matters right and to recoup the costs of doing so from that authority.

***Section 90: Changing the boundaries of an integrated transport area***

238. This section allows the Secretary of State to make an order changing the boundary of an existing integrated transport area. This would enable the order to either add to or take away from an integrated transport area the whole of the area of:
- a county;
  - a shire district; or
  - a metropolitan district.
239. Where the order removes an authority's territory from an integrated transport area, it must also designate an authority to take over as the local transport authority for that territory. The order may also transfer the former ITA's other functions – in so far as they relate to that territory – to that authority.

***Section 91: Dissolution of an integrated transport area***

240. This section allows the Secretary of State to make an order to dissolve an integrated transport area and abolish its ITA. However, where the Secretary of State does so the order must also designate one or more authorities – for instance the metropolitan district councils within the boundaries of the integrated transport area – to take over as the local transport authorities for the former area. The order may also transfer the former ITA's other functions to these authorities.

***Section 92: Orders under sections 84 to 91***

241. This section sets out several constraints on the Secretary of State's power to make orders under sections 84 to 91, including:
- before making the order the Secretary of State must consult representatives of the bodies listed under sections 82(2) and 83(2) and any other person the Secretary of State considers relevant (*subsection (4)*);
  - an order dissolving an ITA cannot be made unless a majority of the metropolitan district, county and unitary councils whose territory comprises the relevant integrated transport area have agreed to the dissolution (*subsection (6)*); and
  - an order changing the boundary of an integrated transport area cannot be made unless each of the metropolitan district, county and unitary councils whose territory is either added to or excluded from that integrated transport area have agreed to the boundary change (*subsection (8)*).

***Section 93: Incidental etc. provision***

242. This section provides that the Secretary of State may make such incidental, consequential, transitional or supplementary provision as the Secretary of State deems necessary in support of an order made under Chapter 2 of Part 5 of the Act. For instance, an order could provide for the transfer of property and assets to an ITA in consequence of an order under section 86 or 87 which has delegated certain functions to an ITA.
243. *Subsection (4)* also allows the Secretary of State to make orders making such amendments, modifications, repeals or revocations to other primary and subordinate legislation as appear to the Secretary of State to be appropriate in consequence of making an order, for instance to reflect the fact that a new ITA has been established.

***Section 94: Procedure for orders under this Chapter***

244. This section provides that any order made under Chapter 2 of Part 5 would be a statutory instrument and subject to affirmative resolution in each House of Parliament. *Subsection (3)* provides that such an order shall not be subject to hybrid instrument procedures in either House of Parliament.

***Section 95: Further provision about directions***

245. This section provides that directions given by the Secretary of State must be in writing. Their contents can also be varied or revoked by further directions.

***Section 96: Guidance***

246. This section provides that the Secretary of State can issue guidance about anything which could be done by an authority under Chapter 2 of Part 5. Authorities must have regard to this guidance in exercising any function under that Chapter.

***Section 97: Change of name of ITA***

247. This section provides that an existing ITA can make a resolution to change its name. *Subsection (2)* sets out conditions which must be followed in making that resolution. The ITA must notify the Secretary of State that it has changed its name. The Secretary of State can also direct the ITA that it must publish this notification and in what manner.

***Section 98: Amendment of power to reorganise functions***

248. Section 42 of the Local Government Act 1985 allows the Secretary of State to make orders providing, amongst other things, for the dissolution of a passenger transport area or removing the territory of one or more metropolitan district councils from that passenger transport area. Sections 90 and 91 provide revised powers to dissolve such transport areas or amend their boundaries. Given that, this section repeals the provisions in the Local Government Act 1985.

***Section 99: Power to promote well-being***

249. ITAs operate within a framework laid down by statute. They have no powers to act other than where they are expressly or impliedly authorised by law to do so. There is a range of statutory duties which they are required to fulfil, and a wider range of permissive powers enabling them to undertake defined activities if they so wish.
250. This section provides ITAs with a power to take any steps which they consider likely to promote or improve the economic, social or environmental well-being of their local community. These powers have already been granted to local authorities by means of Part 1 of the Local Government Act 2000. This section would allow ITAs to undertake a wide range of activities for the benefit of their local area and to improve the quality of life of local residents, businesses and those who commute to or visit the area.
251. *Subsection (3)* provides that this power enables ITAs to work in partnership with other bodies. For example, it allows ITAs to assist other statutory bodies to discharge their functions, or to exercise those functions on their behalf. *Subsections (6) and (7)* enable an ITA to delegate its power to take action under these well-being powers to a PTE or other executive body created by an order under this Part.

***Section 100: Limits on power to promote well-being***

252. *Subsection (1)* limits the power established in section 99 by preventing an ITA from taking any action that is prevented by a statutory prohibition, restriction or limitation. *Subsection (2)* prevents ITAs from using the well-being power in section 99 to raise money. *Subsection (3)* allows the Secretary of State to prevent one or more ITAs from

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using the power to do anything which the Secretary of State specifies by order that they should not do, subject to the consultation requirements in *subsection (5)*.

253. *Subsection (7)* permits the Secretary of State to issue guidance to ITAs on the exercise of the power, subject to the consultation requirements in *subsection (8)*. *Subsection (10)* provides that any order made under the preceding subsections will be a statutory instrument subject to the affirmative resolution procedure.

***Section 101: Power to amend or repeal enactments***

254. *Section 99* provides ITAs with a broad power to act. They will be able to use the power except where there are specific prohibitions, restrictions or limitations in other legislation. *Section 101* allows the Secretary of State, by order, to amend, repeal, revoke or disapply any such enactment which obstructs ITAs from taking steps to promote the well-being of their areas. This power could be exercised in relation to one or more ITAs.
255. *Subsection (5)* provides that any order made under *subsection (1)* is a statutory instrument subject to the affirmative resolution procedure.

***Section 102: Procedure for orders under section 101***

256. This section sets out the procedure to be followed by the Secretary of State in making orders under section 101. It provides for detailed scrutiny of any such orders. Before laying any orders before Parliament, the Secretary of State is required to consult representatives of local government and others. The Secretary of State must make available to Parliament the results of that consultation, together with an explanation of the purpose of the order.