

Cabinet

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Transport for the North – Incorporation as a Sub-National Transport Body



Report of Corporate Management Team

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Purpose of the Report

1. The purpose of this report is to seek consent from Cabinet to the making of Regulations by the Secretary of State to establish Transport for the North (TfN) as a Sub-National Transport Body under section 102J of the Local Transport Act 2008.
2. The consent of each Highway Authority within the area of each Combined Authority, which is a Constituent Authority of TfN, is required to the making of Regulations by the Secretary of State because the Regulations contain provisions giving TfN highway powers to be exercised concurrently with the Local Highway Authorities.

Background to Transport for the North

3. To address concerns about transport connectivity across the North, Local Transport Authorities and Local Enterprise Partnerships from the North of England came together in 2014 in partnership with the Department for Transport and the National Transport Agencies to form Transport for the North (TfN).
4. TfN have developed an ambitious pan-northern transport strategy to drive economic growth in the North. Getting transport right is central to achieving the Northern Powerhouse ambition, which is itself central to a successful UK industrial strategy. A world-class transport system linking towns and cities across the North will create a unified economic area, attracting new business, improving productivity in the North and helping to rebalance the UK economy.
5. The ambition of TfN over time is to achieve significant devolution of transport responsibilities for the North of England and specifically to:
 - a) Develop and deliver a multi-modal, integrated strategic transport plan that drives transformational economic growth in the North;

- b) Set the strategic outcomes, outputs and priorities for the North of England's rail infrastructure and strategic road network; and
- c) Determine specifications and contracts for future rail service franchises in the North of England.

Sub National Transport Body

- 6. In October 2016, with the agreement of the Constituent Authorities, TfN submitted a proposal to the Secretary of State for Transport that TfN should be established as the first sub-national transport body (STB) under the provisions of section 102E of the Local Transport Act 2008 as amended by the Cities and Local Government Devolution Act 2016.
- 7. The proposal submitted by the TfN requested the following powers and functions:
 - a) To prepare a Transport Strategy for the Combined Area in accordance with section 102I of the Local Transport Act 2008
 - b) To provide advice to the Secretary of State about the exercise of the transport functions in the Combined Area
 - c) To be a Statutory Partner with the Secretary of State in both road and rail investment processes and to be responsible for setting the objectives and priorities for strategic road and rail investments in the Combined Area
 - d) To be consulted in relation to rail franchise agreements for services to and from or within its area
 - e) To co-manage with the Secretary of State the TransPennine Express and Northern Rail Franchises
 - f) To co-ordinate the carrying out of specified transport functions that are exercisable by its different Constituent Authorities with a view to improving the effectiveness and efficiency of the carrying out of those functions;
 - g) To promote and co-ordinate road transport schemes;
 - h) To make proposals to the Secretary of State for the transfer of transport functions to TfN;
 - i) To make other proposals to the Secretary of State about the role and functions of TfN;
 - j) To undertake Smart Ticketing within the Combined Area;
 - k) To promote and oppose local or personal bills in Parliament;
 - l) To pay Capital Grants to support the funding and delivery of joint projects;
 - m) To exercise powers to construct highways and to acquire land for that purpose under section 8(1), 24 and 239 of the Highways Act 1980 concurrently with local Highway Authorities

The Secretary of State's Response

8. The Secretary of State has now formally responded to the Proposal and has indicated that he is minded to make Regulations creating TfN as the first Sub-National Transport Body with the following functions:
 - a) The preparation of a Northern Transport Strategy
 - b) The provision of advice on the North's priorities, as a Statutory Partner in the Department's investment processes;
 - c) The coordination of regional transport activities, (such as smart ticketing), and the co-management of the TransPennine Express and Northern rail franchises through the acquisition of Rail North Ltd.

Regulations and inclusion of Highway powers

9. Regulations have now been drafted to create TfN as a Sub-National Transport Body, which once passed will confer on TfN the majority of the functions and powers requested in the proposal.
10. In addition to Transport Authority powers, the proposal includes a number of Highway Authority powers. These powers relate to land acquisition for highways, the ability to enter into agreements to carry out certain highway works and the powers to construct new highways. This would allow TfN to play a coordination and commissioning role for strategic road schemes that span multiple administrative boundaries.
11. The highway powers are detailed in Appendix 3 and relate firstly to powers currently held by the Secretary of State in relation to the construction of trunk roads which may be delegated down to TfN, and secondly to powers under the Highways Act 1980, to be exercised by TfN concurrently with the local Highway Authority.
12. There is no intention that TfN will itself become a Highway Authority and the Regulations make it clear that before any highway powers may be exercised, TfN will need to obtain the express consent of the relevant Highway Authority to the manner in which the powers would be exercised.
13. The intention is that TfN will promote and facilitate partnership working to support effective delivery on cross Authority schemes, rather than dilute local decision-making. These powers would therefore only be exercised in circumstances where all the local Highway Authorities, through whose area the highway will pass, consider that there would be a benefit in TfN carrying out the work.
14. It is intended that before TfN exercises any transport powers or functions it holds concurrently with any of the Constituent Authorities or Highways Authorities within the TfN area, TfN will enter into a written Protocol with the

Constituent Authorities or the local Highway Authorities covering the way in which the functions will be exercised.

Consent to the Regulations

15. Before the Secretary of State can make the Regulations he must obtain consent from each of the nineteen Constituent Authorities (see Appendix 2). It is also necessary to gain consent to the granting of concurrent highway powers from each of the Highway Authorities within TfN's area.
16. It is anticipated that the Secretary of State will send a letter to each of these Highway Authorities requesting formal consent to the making of the Regulations. It is understood that the letter will request a response before the end of October 2017.
17. The North East Combined Authority (NECA) has already given its consent to the making of the Regulations. However, as NECA are not a Highway Authority it is necessary for each individual Highway Authority within the NECA area to give their consent to the granting of highway powers within the Regulations.

Recommendation

18. It is recommended that Cabinet formally consent under section 102J of the Local Transport Act 2008 to the making by the Secretary of State of Regulations to establish Transport for the North as a Sub-National Transport Body and giving TfN concurrent highway powers.

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Appendix 1 : Implications

Finance – There are no financial implications for the authority. TfN is currently funded by the Secretary of State and no decision to require financial contributions from Constituent Authorities can be made without the agreement of each Authority

Staffing – None

Equality and Diversity – None

Accommodation – None

Crime and Disorder – None

Human Rights – None

Consultation – None

Procurement – None

Disability Discrimination Act – None

Legal Implications – It is expected that the Secretary of State will write to the Council as Highway Authority seeking formal consent to the making of the Regulations.

Any use by TfN of transport or highway powers involving roads within County Durham will require further consent from the Authority and will be subject to a written protocol to be agreed with TfN

Appendix 2 : Constituent Authorities and operating principles

The Constituent Authorities of TfN:

- Greater Manchester Combined Authority
- Liverpool City Region Combined Authority
- The Durham, Gateshead, Newcastle on Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority
- Sheffield City Region Combined Authority
- Tees Valley Combined Authority
- West Yorkshire Combined Authority
- Cumbria County Council
- Lancashire County Council
- North Yorkshire County Council
- Blackburn with Darwen Borough Council
- Blackpool Borough Council
- Cheshire East Council
- Cheshire West and Chester Council
- Warrington Borough Council
- The Council of the City of York
- The East Riding of Yorkshire Council
- Kingston upon Hull City Council
- North Lincolnshire Borough Council
- North East Lincolnshire Council

Operating Principles of TfN:

- a. All Constituent Authorities are entitled to appoint a representative to TfN, such representative to normally be the Elected Mayor, Chair, Leader or Member with delegated responsibility for transport
- b. Decisions will be expected to be unanimous but where voting is required votes will be weighted in accordance with the populations of the Constituent Authorities
- c. Decisions in relation to the Budget, the adoption of a Transport Strategy and the Constitution will require a Super Majority
- d. Funding will be provided by the Secretary of State and no decision to require financial contributions from Constituent Authorities can be made without the agreement of each Authority
- e. There will be appropriate mechanisms for Scrutiny of TfN's decisions
- f. Rail North Limited will be wholly owned by TfN
- g. A wider Partnership Board including representatives of government bodies and the LEPs will be set up to inform TfN's decision making.

Appendix 3 : Proposed TfN Highway Powers

The highway powers that are contained in the Regulations are firstly the following powers of the Secretary of State in relation to the construction of trunk roads which may be delegated down to TfN:

- Section 6(5) Highways Act 1980 (power to enter into agreements for works relating to trunk roads)
- Sections 105A – 105C Highways Act 1980 (functions relating to environmental impact assessments)
- Sections 239 to 240 and 246 Highways Act 1980 (powers to acquire land in connection with highways)
- Section 250 Highways Act 1980 (powers relating to the acquisition of powers over land)

Secondly the following powers under the Highways Act 1980 are conferred on TfN concurrently with the local Highway Authority.

- Section 8(1) (power to enter agreements with local highways authorities etc for doing certain works)
- Section 24(2) (power of local highway authority to construct new highways)
- Section 25(i) (powers to enter into agreement for creation of footpath etc)
- Section 26 (i) (compulsory powers for creation of footpaths etc)
- Various functions in sections 239, 240, 246 and 250 relating to the acquisition of land for highway purposes