Draft Order laid before Parliament under section 74(3) of the Railways and Transport Safety Act 2003 c. 20, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

TRANSPORT

The British Transport Police (Transitional and Consequential Provisions) Order 2004

Made - - - -	*2004*
Coming into force - -	*1st July 2004*

The Secretary of State, having consulted in accordance with paragraph 24(7) of Schedule 4 to the Railways and Transport Safety Act 2003(**1**), and in exercise of the powers conferred upon him by sections 73(2), (3) and (4) and 74(1) of, and paragraph 24 of Schedule 4 to, that Act, hereby makes the following Order, a draft of which has been laid before Parliament and approved by each House of Parliament:

Citation and commencement

1. This Order may be cited as the British Transport Police (Transitional and Consequential Provisions) Order 2004 and shall come into force on 1st July 2004.

Interpretation

2. In this Order—

"the 2003 Act" means the Railways and Transport Safety Act 2003;

"the British Transport Police Force Scheme" means the scheme for the organisation of the transport police contained in the British Transport Police Force Scheme 1963(**2**); and

"the old transport police committee" means the British Transport Police Committee constituted under paragraph 4 of the British Transport Police Force Scheme.

(**1**) 2003 c. 20.

(**2**) See the British Transport Police Force Scheme 1963 (Approval) Order 1964 (S.I.1964/1456), as amended by the British Transport Police Force Scheme 1963 (Amendment) Order 1992 (S.I. 1992/364) and the British Transport Police Force Scheme 1963 (Amendment) Order 1994 (S.I. 1994/609), the Schedule to which contains the scheme as amended. Following repeal of Section 69 of the Transport Act 1962 (1962 c. 46) the scheme continued to have effect as if made under Section 132 of the Railways Act 1993 (1993 c. 43), by virtue of the paragraph 3(2) of Schedule 10 to that Act.

[DfT 13307]

First meeting of the Authority

3.—(1) The first meeting of the Authority shall be convened, and held at a place appointed, by the Chairman of the Authority.

(2) Notice of the first meeting shall be published at the place where the meeting is to be held.

(3) The notice to each member of the Authority to attend the first meeting shall be signed by the Chairman of the Authority.

(4) At the first meeting of the Authority the Chairman of the Authority shall appoint a clerk to the Authority who shall exercise any functions falling to be exercised by the clerk of the Authority in relation to the meeting.

(5) The procedures for the first meeting shall be determined by the Chairman of the Authority at the commencement of the meeting and, once determined, shall as far as practicable, apply to the remainder of the meeting.

Transitional provision about budget requirements and planning

4.—(1) For the purposes of the financial year beginning 1st April 2004—

(a) the budget set by the old transport police committee for the financial year beginning 1st April 2004, in pursuance of its duties described in paragraph 4 of the British Transport Police Force Scheme, shall be deemed to have been set by the Authority in compliance with the requirements of paragraph 19 of Schedule 4 to the 2003 Act;

(b) the objectives for policing the railways set by the old transport police committee for the financial year beginning 1st April 2004, in pursuance of its duties described in paragraph 4 of the British Transport Police Force Scheme, shall be deemed to have been set by the Authority in compliance with the requirements of section 50 of the 2003 Act;

(c) the plan setting out the proposed arrangements for policing the railways issued by the old transport police committee for the financial year beginning 1st April 2004, in pursuance of its duties described in paragraph 4 of the British Transport Police Force Scheme, shall be deemed to have been issued by the Authority in compliance with the requirements of section 52 of the 2003 Act; and

(d) the strategic plan for the period 2003 to 2006 issued by the old transport police committee, in pursuance of its duties described in paragraph 4 of the British Transport Police Force Scheme, shall be deemed to have been issued by the Authority in compliance with the requirements of section 55 of the 2003 Act.

(2) The Authority shall make its first estimate of the likely ratio of customers' contributions referred to in paragraph 20 of Schedule 4 to the 2003 Act on or before 1st April 2006.

Transitional provision about the Chief Constable, the Deputy Chief Constable and Assistant Chief Constables

5.—(1) The person, having been appointed under paragraph 3(a) of the British Transport Police Force Scheme, who holds the office of chief constable of the old transport police on 30th June 2004 shall be treated as having been appointed Chief Constable of the Police Force by the Authority under sections 21(1) and (2) of the 2003 Act.

(2) The person, having been appointed under paragraph 3(e) of the British Transport Police Force Scheme, who holds the rank of deputy chief constable of the old transport police on 30th June 2004 shall be treated as having been appointed Deputy Chief Constable of the Police Force by the Authority under sections 22(1) and (2) of the 2003 Act.

(3) A person, having been appointed under paragraph 3(e) of the British Transport Police Force Scheme, who holds the rank of assistant chief constable in the old transport police on 30th June

2004 shall be treated as having been appointed Assistant Chief Constable of the Police Force by the Authority under sections 23(1) and (2) of the 2003 Act.

Constables, special constables and civilian employees

6.—(1) Subject to paragraphs (5) and (6), every person including every constable—

(a) who immediately before 1st July 2004 is employed by the Strategic Rail Authority;

(b) whose employment is wholly or mainly concerned or connected with the policing of the railways; and

(c) who, but for the provisions of this Order, would continue to be so employed, shall transfer to and become an employee of the Authority on 1st July 2004.

(2) Subject to paragraph (5) and (7), every special constable—

(a) who immediately before 1st July 2004 is serving in the old transport police; and

(b) who, but for the provisions of this Order, would continue to so serve,

shall transfer to and become a special constable of the Authority on 1st July 2004.

(3) The contract of employment between the Strategic Rail Authority and a constable or other person who is transferred to the Authority in consequence of paragraph (1) shall be deemed to have effect from 1st July 2004 as if it had been made between the Authority and that constable or other person.

(4) The service of a special constable who is transferred in consequence of paragraph (2) shall be deemed to have effect from 1st July 2004 as if he had been appointed to be a special constable by the Authority.

(5) Where there is a dispute between the Strategic Rail Authority and the Authority as to whether a person transfers to the Authority pursuant to paragraph (1) or a special constable transfers to the Authority pursuant to paragraph (2), that person or that special constable shall not so transfer and—

(a) the Strategic Rail Authority and the Authority may jointly appoint a person to determine the dispute in accordance with article 8; or

(b) if the Strategic Rail Authority and the Authority are unable to agree that the dispute should be so determined, or on the person to be appointed, either of them may request the Secretary of State to appoint such a person to determine the dispute in accordance with article 8.

(6) The contract of employment between the Strategic Rail Authority and a constable or other person who is transferred to the Authority after a determination under article 8 shall be deemed to have effect from the date of that determination as if the contract of employment had been made between the Authority and that constable or other person.

(7) The service of a special constable who is transferred to the Authority after a determination under article 8 shall be deemed to have effect from the date of that determination as if that special constable had been appointed by the Authority.

(8) Where a person employed by the Strategic Rail Authority becomes an employee of the Authority by virtue of this article—

(a) for the purposes of Part XI of the Employment Rights Act 1996(**3**), he shall not be regarded as having been dismissed by the Strategic Rail Authority by virtue of the transfer; and

(b) for the purposes of that Act, his period of employment with the Strategic Rail Authority counts as a period of employment with the Authority and the change of employment does not break the continuity of the period of employment.

(**3**) 1996 c. 18.

Transfer of property, rights and liabilities from the Strategic Rail Authority to the Authority

7.—(1) On or as soon as practicable after 1st July 2004 the Strategic Rail Authority and the Authority shall use their best endeavours to agree in writing—

(a) which property, rights and liabilities, including rights and liabilities in connection with any pending legal proceedings, it is fair and reasonable to transfer from the Strategic Rail Authority to the Authority to enable the Authority to carry out its functions; and

(b) which of such property, rights and liabilities are to transfer on the date the agreement takes effect and which are to transfer on such later date as may be specified in the agreement.

(2) An agreement under this article may—

(a) indicate those matters about which agreement is still to be reached;

(b) provide for a variation in the transfer of property, rights and liabilities in circumstances specified in the agreement; and

(c) provide for the apportionment of property, rights and liabilities between the Strategic Rail Authority and the Authority.

(3) The property, rights and liabilities referred to in paragraph (1) shall transfer from the Strategic Rail Authority to the Authority on the date specified in the agreement referred to in that paragraph.

(4) Where there is a dispute between the Strategic Rail Authority and the Authority as to which property, rights and liabilities should be transferred—

(a) the Strategic Rail Authority and the Authority may appoint a person to determine the dispute in accordance with article 8; or

(b) if the Strategic Rail Authority and the Authority are unable to agree that the dispute should be so determined, or on the person to be appointed, either of them may request the Secretary of State to appoint such a person to determine the dispute in accordance with article 8.

(5) This article shall have effect and be binding on all other persons in relation to the property, rights and liabilities to which it applies in spite of any provision (of whatever nature) which would—

(a) prevent or restrict the transfer of the property, rights and liabilities otherwise than by this article; or

(b) require the consent or concurrence of another person.

(6) Where immediately before 1st July 2004 there is in force an agreement which confers or imposes on the Strategic Rail Authority rights or liabilities which are transferred to the Authority by virtue of this Order, that agreement shall have effect on and after that date as if—

(a) the Authority had been a party to the agreement;

(b) for a reference (in whatever terms and whether express or implied) to the Strategic Rail Authority there were substituted, in relation to anything falling to be done on or after that date, a reference to the Authority; and

(c) for a reference (in whatever terms and whether express or implied) to a particular officer or a particular employee of the Strategic Rail Authority, not being a party to the agreement and beneficially interested in it, there were substituted, in relation to anything falling to be done under the agreement on or after that date, a reference to such person as the Authority may appoint.

Determinations by appointed person

8.—(1) In this article the expression "the appointed person" means the person appointed under article 6(5) or article 7(4).

(2) Where a person has been appointed under article 6(5) he shall as soon as practicable after his appointment proceed to determine whether the person who is the subject of the dispute falls within article 6(1)(a), (b) and (c) or article 6(2)(a) and (b).

(3) Where a person has been appointed under article 7(4) he shall as soon as practicable after his appointment proceed to determine which (if any) transfers of property, rights and liabilities from the Strategic Rail Authority to the Authority it is fair and reasonable to make.

(4) Where a person appointed under article 7(4) determines that a transfer shall be made, he may —

(a) draw up an instrument to give effect to his determination; or

(b) order either or both parties to the dispute to draw up such instrument,

and any such instrument shall specify the date on which the transfer is to take effect.

(5) The appointed person shall not determine a dispute under this article unless—

(a) the parties to it have been afforded an opportunity to make written or, if a party to the dispute so requests, oral representations; and

(b) the appointed person has considered any such representations.

(6) Any oral representations shall be made at a hearing on a date fixed by the appointed person after consultation with the parties to the dispute.

(7) The parties to the dispute shall have the right to be legally represented.

(8) The rate of remuneration and expenses to be paid to the appointed person following his appointment—

(a) may be agreed between the appointed person and the parties to the dispute; or

(b) in the absence of such agreement, shall be determined by the Secretary of State.

(9) The appointed person may make such determination of costs against a party to the dispute as he considers appropriate.

(10) The appointed person shall record his determination in writing.

Transfer of pensions

9.—(1) In this article—

(a) "the British Transport Police Force Superannuation Fund" means the funds deemed under Section 31(1) of the British Railways Act 1982(**4**) to have been amalgamated on 30th December 1974 into one fund known as the British Transport Police Force Superannuation Fund by a trust deed made by the British Railways Board on that date, as amended by supplemental trust deeds dated 20th February 1978, 3rd July 1978 and 14th January 1987, and by paragraph 2 of Schedule 3 to the Railways Pensions (Transfer and Miscellaneous Provisions) Order 1994(**5**);

(b) "the trust deed and rules" means the trust deed and rules of the British Transport Police Force Superannuation Fund dated 30th December 1974, as amended by deeds dated 2nd November 1993, 16th October 1997, 3rd December 1997, 21st December 1998, 2nd March 1999, 22nd December 1999, 31st August 2000, 15th December 2000, 30th June 2003, 30th March 2004 and 5th May 2004; and

(c) the "Railways Pension Scheme" means the Railways Pension Scheme established by the Railways Pension Scheme Order 1994(**6**).

(**4**) c. xxiii
(**5**) S.I. 1994/2005.
(**6**) S.I. 1994/1433.