

Executive

31 August 2017

Report of the Corporate Director of Economy & Place
Portfolio of the Executive Member for Transport & Planning

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

Summary

1. The purpose of this report is for Members to consent to the making of Regulations by the Secretary of State to establish Transport for the North as a Sub –National Transport Body under section 102E of the Local Transport Act 2008. The consent of each Constituent Authority is required to the making of Regulations by the Secretary of State.
2. Members are also asked to approve in principle the transfer of Rail North Limited to TfN following its inauguration and the signing of a new Rail Franchise Management Agreement with TfN replicating as far as possible the arrangements entered into in respect of Rail North Limited.

Recommendations

1. The Executive is asked to:

Formally consent to:

- a) the making by the Secretary of State of Regulations under section 102E of the Local Transport Act 2008 to establish Transport for the North as a Sub-National Transport Body.
- b) The transfer of Rail North Limited to TfN so that it can be subsumed within TfN
- c) The signing of a new Rail Franchise Management Agreement with TfN replicating as far as possible the current Rail North Limited Members Agreement
- d) Continuation of the payment of the current funding for Rail North Limited to TfN after its inauguration.

Reason: To ensure that the City Council is fully engaged in the governance of the proposed Sub-National Transport body. As the City of York Council is a proposed Constituent Authority consent is required to the making of Regulations by the Secretary of State.

2. Background

- 2.1 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 thereby rebalancing the UK economy.
- 2.2 There has been long term underperformance of the Northern economy when compared with other parts of the UK. There is a significant economic performance gap between the North and the rest of the UK economy – a difference in income of £4,800 per person in 2014, compared with the national average, and £22,500 compared with London. Having been on a downward trend since the early 2000s, the gap has widened since the 2008/09 recession.
- 2.3 Productivity accounts for the largest proportion of the ‘performance gap’, driven by an underdeveloped skills base, under-investment by the private sector and low enterprise rates. This has worsened since the recession, in part due to out-migration of skilled workers to the southern regions where employment prospects are better.
- 2.4 Poor connectivity is central to understanding the economic challenges of the North. There is disproportionately low investment in the North compared with London and other city regions across Europe. A series of studies have shown how investing in transport infrastructure can unlock the economic potential of the North.
- 2.5 The Independent Economic Review of the Northern Powerhouse shows the scale of the benefits to the UK of closing the productivity gap. Advances in productivity, driven by key sectors of digital technologies, health innovation energy and advanced manufacturing have the potential to transform the North of England’s economy adding £97 billion and 850,000 jobs by 2050.
- 2.6 The North has had no way of agreeing strategic priorities, with the responsibility for transport divided over many organisations at different

geographical levels. This has made it hard to properly consider and prioritise the right strategic transport interventions to transform economic growth at the regional scale. As a result, the North has been unable to speak with one clearly evidenced voice to Government on its transport priorities in Spending Rounds or rail and road investment plans.

- 2.7 To address these concerns in 2014 Local Transport Authorities and Local Enterprise Partnerships across the North of England came together in partnership with the Department for Transport and the National Transport Agencies to form Transport for the North (TfN). Together they have developed an ambitious pan-northern transport strategy to drive economic growth in the North. The purpose of TfN is to transform the transport system of the North of England and the aim of TfN is to plan and deliver the improvements needed to truly connect the region with fast, frequent and reliable transport links, driving economic growth and creating a Northern Powerhouse.
- 2.8 The ambition of TfN over time is to achieve significant devolution of transport responsibilities for the North of England and specifically to:
- Develop and deliver a multi-modal, integrated strategic transport plan that drives transformational economic growth in the North;
 - Set the strategic outcomes, outputs and priorities for the North of England's rail infrastructure and strategic road network; and
 - Determine specifications and contracts for future rail service franchises in the North of England.
- 2.9 As part of this programme of improvements and devolution of transport strategy to a more local level the Local Transport Authorities came together to form Rail North Limited a company whose objects include the management of the TransPennine Express and Northern Rail Franchises on behalf of the Secretary of State for Transport.
- 2.10 On 25 August 2016 the Executive agreed to the submission to Government of the draft proposal for TfN to become a Sub-National Transport Body. The Executive raised a number of key areas of concern which needed further clarification prior to consenting to the making of the regulations. These queries are detailed in the following paragraphs with a summary of the response from TfN added. It is considered that TfN have provided the necessary clarification to the areas of concern raised by the Executive.

- i. Full and final agreement of the voting arrangements for Members of TfN including the mechanisms and terms of reference for the suggested 'super majority'

Summary of TfN response - Voting will be on the basis of votes weighted according to the population of each Constituent Authority (1 vote per 200,000 population or part thereof) with York therefore having two votes. A decision to approve the Budget, to approve the Constitution or to adopt the Transport Strategy will require an increased majority of 75% of the weighted votes and a simple majority of the Members of TfN.

- ii. Full and final agreement of the mechanism and quantum of the proposal for raising statutory contributions from constituent authorities of TfN.

Summary of TfN Response - Any such contributions would need to be unanimously agreed by the TfN members appointed by the Constituent Authorities. Were this to occur, the quantum of the resultant contributions from each Constituent Authority would be calculated on the weighted voting basis.

- iii. Further clarification of the financial and other liabilities on both TfN and its individual constituent authorities of the proposed powers that TfN propose to take on.

Summary of TfN Response - Section 102E of the Local Transport Act 2008 makes it clear that an STB will be established as a body corporate. It follows that TfN will itself be responsible for any financial or other liabilities it incurs.

2.11 In October 2016 with the agreement of all 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.

2.12 The 19 Constituent Authorities of TfN are:

Greater Manchester Combined Authority
Liverpool City Region Combined Authority
North East 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 Unitary Authority
Blackpool Unitary Authority
Cheshire East Unitary Authority
Cheshire West and Chester Unitary Authority
Warrington Unitary Authority
City of York Unitary Authority
East Riding of Yorkshire Unitary Authority
Hull Unitary Authority
North Lincolnshire Unitary Authority
North East Lincolnshire Unitary Authority

3. Draft Constitution

3.1 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.

3.2 A Draft Constitution and draft Regulations have been drawn up which include provisions which reflect and implement the Submission Proposal. The draft Constitution contains the following Provisions:

3.3 **Articles**

3.3.1 The Articles sets out the statutory basis for TfN and its membership. TfN is made up of representatives from the 19 Constituent Authorities who are the Transport Authorities for the North of England. TfN will operate through a delegation to its Chief Officers of all its functions other than decisions in relation to the Constitution, the Budget and the statutory Transport Strategy and any other matters which are specifically reserved to TfN by statute.

3.3.2 The Articles contains an overview of the functions of TfN and the major partnerships through which it will exercise these functions, in particular its role as Statutory Partner in determining priorities for road (Highways North Board) and rail investment and its role in managing the TransPennine Express and Northern Rail Franchises.

3.3.3 TfN will establish a Partnership Board with representatives of all the Constituent Authorities, representatives of the other Authorities who were members of Rail North Limited, representatives of the 11 LEPs and representatives of the Department for Transport and of other Government Agencies. This Board will be responsible for setting the strategic agenda for transport in the North of England.

3.3.4 TfN will also engage with its partners in the Rail North Partnership Board setting the strategic priorities for rail investment and in the Highways North Board setting the strategic priorities for road investment.

3.3.5 TfN will co-manage the TransPennine Express and Northern Rail Franchises through a Committee which will include representatives of all the other Authorities who were members of Rail North Limited.

3.4 **Voting**

3.4.1 The Articles provide for weighted voting in accordance with a matrix which gives the representative of each Constituent Authority a vote which is weighted to reflect the population of the area of the Constituent Authority.

Schedule A

Transport for the North – Voting Metrics

TfN Constituent Authorities	Population	% of TfN area Population	200,000 Or part	RN Votes
Greater Manchester CA	2,756,162	18.14	14	223
West Yorkshire CA	2,281,718	15.02	12	209
North East CA	1,957,152	12.89	10	65
Liverpool CR CA	1,524,558	10.04	8	59
Sheffield CR CA	1,374,655	9.05	7	78
Lancashire CC	1,191,691	7.84	6	55
Tees Valley CA	667,469	4.39	4	33
North Yorkshire CC	602,277	3.97	4	32
Cumbria CC	497,996	3.28	3	40
Cheshire East	375,392	2.47	2	21
East Riding of Yorkshire	336,685	2.22	2	9
Cheshire W. and Chester	333,917	2.20	2	11
Hull City	258,995	1.71	2	13
Warrington	207,695	1.37	2	12
City of York	206,856	1.36	2	54
North Lincolnshire	169,820	1.12	1	4
NE Lincolnshire	159,570	1.05	1	6
Blackburn with Darwen	146,846	0.97	1	6
Blackpool	139,578	0.92	1	15
Non-Constituent Authorities				
Staffordshire	(862,562)			1
Nottinghamshire	(805,848)			3
Derbyshire	(782,365)			14
Lincolnshire	(736,665)			7
Nottingham	(318,901)			15
Stoke-on-Trent	(251,648)			8

Notes

(1) Column 1 authorities are CAs / LTAs on their existing boundaries

(2) Column 2 population figures are ONS 2015 mid-year estimates based on current CA / LTA boundaries

(3) Column 3 is the population of the CA / LTA as a percentage of the aggregate TfN area population (15,189,032)

(4) The proposed option in column 4 awards one vote to each CA/LTA for each 200,000 or part thereof of resident population.

(5) Column 5 shows the number of votes each CA/LTA has as a member of RNL, based on one vote for each 0.1% of passenger miles on the Northern / TPE franchises relating to their area (Tees Valley CA being a combined vote of their constituent councils)

(6) On the publication of the annual ONS mid-year estimates, the voting band of each authority would be reviewed and adjusted, if necessary.

- 3.4.2 A decision to approve the Budget, to approve the Constitution or to adopt the Transport Strategy will require an increased majority of 75% of the weighted votes and a simple majority of the Members of TfN.
- 3.4.3 It is proposed that TfN should be entitled to co-opt Members and that such co-opted Members should have voting rights. It is further proposed that those Authorities which are members of Rail North Limited but which will not be a Constituent Authority of TfN (the Rail North Authorities) should each be entitled to appoint a representative to be a co-opted Member of TfN with a right to speak and vote on rail franchise matters. The voting in relation to rail franchise matters shall be weighted in accordance with a voting matrix which reflects the voting arrangements for Rail North Limited.

3.5 Financial Contributions

- 3.5.1 TfN is funded through government grant and although future funding decisions will remain the responsibility of the government at the time, establishing TfN in statute ensures it has the stability and permanence to be confident of long term central Government support.
- 3.5.2 At present the Constituent Authorities and the Rail North Authorities make the Rail North Support Payment and the Authorities in receipt of rail administrative grant make the Rail North Supplemental Payment to support Rail North Limited. Upon TfN assuming the responsibilities and functions of Rail North Limited these payments will continue to be made to TfN to enable it to continue to support rail franchise management.
- 3.5.3 The Submission Proposal provides that the Constituent Authorities may all agree to contribute to the costs of TfN in the future. However a decision to raise such contributions and the amount would require a unanimous decision of the Constituent Authorities and could only be taken after written consent to the proposal has been received from each of the Constituent Authorities.
- 3.5.4 Unless unanimously agreed otherwise, the apportionment of any financial contributions would be determined on the basis of the Resident Populations of each of the Constituent Authorities.
- 3.5.5 TfN would be entitled to accept voluntary contributions towards its costs from any of the Constituent Authorities.

3.6 Powers and Functions

3.6.1 This section sets out the powers and functions which will be given to TfN.

3.6.2 These are as follows:

- 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 acquire land and to construct highways under sections Section 24.

3.6.3 In carrying out these functions, TfN will be a statutory partner of the Department for Transport, devolving responsibilities from the Secretary of State and speaking to the Department with a strong, single voice for the North. It is not intended that TfN should take responsibilities away from the Constituent Authorities, instead exercising a coordinating role in relation to specified transport functions and continuing to work in partnership with members. It is not the intention that TfN becomes a Highway Authority.

3.7 Concurrent Functions

3.7.1 Before exercising any transport powers or functions it holds concurrently with any of the Constituent Authorities or Highways Authorities within the TfN area, TfN will consult those Authorities and enter into a Protocol covering the way in which those functions will be exercised.

3.8 Responsibility for Functions

3.8.1 The Membership of TfN will together be responsible for approving the Budget, the Constitution and the Transport Strategy.

3.8.2 Officers of TfN will have delegated responsibility to carry out all of TfN's day to day functions and to implement the strategic decisions made by TfN.

3.8.3 In carrying out these functions TfN and its officers will have due regard to the views and advice of the Partnership Board, DfT and other Statutory Agencies.

3.9 Audit and Governance Committee

3.9.1 TfN will appoint an Audit and Governance Committee to provide independent review and assurance to Members on governance, risk management and control frameworks. It oversees financial reporting, the Annual Governance Statement process and internal and external audit, to ensure efficient and effective assurance arrangements are in place.

3.10 Scrutiny Committee

3.10.1 Each of the Constituent Authorities will be entitled to appoint a representative (and a substitute) to the Scrutiny Committee.

3.10.2 The role of the Scrutiny Committee will include:-

- a) reviewing the decisions of TfN and of officers of TfN under the scheme of delegations;
- b) making reports or recommendations to TfN with respect to the discharge of the functions of TfN and on transport matters that affect the TfN area.

3.11 The Rail North Committee

- 3.11.1 TfN will establish a Rail North Committee which will advise on TfN's Statutory Partner role in relation to rail investment and will have oversight of the management of the TransPennine Express and Northern Rail Franchises. This will replace the Association of Rail North Authorities and will include representatives of the six non-TfN Rail North Authorities as co-opted Members. Voting in the Rail North Committee will be on the basis of weighted votes which replicate the voting provisions of Rail North Limited.

3.12 The Rail North Sub-Committee

- 3.11.1 TfN will also establish a Rail North Sub-Committee that will be appointed according to provisions which replicate the provisions for appointing the Rail North Limited Board.
- 3.11.2 Rail North Area Sub-Committees - Where requested TfN will also establish Rail North Area Sub-Committees to take the place of the Regional Business Units permitted under the provisions of the Rail North Members Agreement.

3.12 Officers

- 3.12.2 TfN will appoint its 3 Statutory Officers, the Chief Executive as the Head of Paid Service, the Monitoring Officer and the Finance Director as its Chief Officers to whom it will delegate day to day operations of TfN.
- 3.12.3 Chief Officers will have due regard to the recommendations of the Partnership Board, the Rail Partnership Board and Highways North Board in carrying out their functions.

3.13 Procedure Rules

- 3.13.1 This section sets out the procedures which shall apply to meetings of TfN. The Rules of Debate reflect the nature of the business of TfN and that most decisions are expected to be consensual without the need for formal debating procedures.

3.14 Scrutiny Procedure Rules

3.14.1 These set out the role of Scrutiny within TfN.

3.14.2 The Scrutiny Procedure Rules provide for Scrutiny Committee to set up smaller Scrutiny Panels to review discreet topics and to allow these Panels to invite representatives of outside bodies to attend to inform their Reviews.

3.15 Financial Procedures

3.15.1 This section sets out the financial rules and controls which will govern all expenditure by TfN. It also contains the Contract Procurement Rules which will govern how TfN tenders and awards contracts.

3.15.2 It is expected that more detailed financial controls in relation to individual projects will be set out in the Funding Letter from the Secretary of State.

3.16 Codes and Protocols

3.16.1 It is not intended that TfN should have its own Code of Conduct for Members but Members will be expected to adhere to the Code of Conduct of their appointing Authority in the conduct of TfN's business and any Standards issue would be referred back to the appointing Authority by the Monitoring Officer.

3.16.2 The section includes the Codes of Conduct for Officers of TfN, the Protocol on Member/Officer Relations, the Code of Corporate Governance, the Anti-Fraud and Corruption Policy and the Whistleblowing Policy.

3.16.3 Although TfN is not required to adopt its own Code of Conduct for Members it will need to have a separate Disclosure of Interests by each Member in respect of their interests within the whole of the TfN geographical area.

3.16.4 The Code of Conduct for Officers sets out the standards of behaviour expected from TfN's officers.

- 3.16.5 The Protocol on Member/Officer Relations sets out guidance on the mutual respect which should exist between officers and Members and the way in which they should interact with each other.
- 3.16.6 The Code of Corporate Governance sets out the core principles and values which will govern the way in which TfN operates.
- 3.16.7 The Anti-Fraud and Corruption Policy sets out the measures that TfN will put in place to avoid and address fraud and corruption in any of its dealings.
- 3.16.8 The Whistle Blowing Policy sets out the ways in which whistle-blowers may bring their concerns to management and the protections that are in place to ensure that whistle-blowers are not victimised or discriminated against.

3.17 Role of the Partnership Board

- 3.17.1 TfN has evolved over the years from the inception of Transport for the North as a partnership representing all those with an interest in the improvement of transport in the North of England to the creation of TfN as the first Sub-National Transport Body. Although TfN as a corporate body will consist of the representatives of the 19 Constituent Authorities there is an aspiration that it will continue to operate through the Partnership Board taking decisions in partnership with the representatives of the 11 LEPs as representatives of the business community and with representatives of the Department for Transport and other Government Agencies and will continue to have an independent chair.
- 3.17.2 The Draft Constitution reflects the legal requirements for decision making within TfN as a corporate body but it will be open to TfN to operate these constitutional arrangements in a way that is consistent with continuing the present arrangements of the Partnership Board if Members so agree.

3.18 Rail North Limited

- 3.18.1 One of the drivers for the creation of TfN as a Sub-National Transport Body was to create a body which could speak with one voice on all transport matters affecting the North of England. To achieve that, it is proposed that TfN should take over ownership of Rail North Limited and subsume all of its functions directly into TfN.

- 3.18.2 Rail North Limited would be replaced by a Committee of TfN on which the former Rail North Member Authorities would be represented and have the same voting rights as under the Memorandum and Articles of the Company.
- 3.18.3 Before this can be achieved all the current members of Rail North Limited will need to formally agree to the proposals for the transfer of Rail North Limited to TfN
- 3.18.4 The current Members Agreement with Rail North Limited will be replaced by a Rail Franchise Management Agreement between TfN and the current Members of Rail North Limited which will replicate as far as possible the provisions of the Members Agreement.

3.19 The Rail Partnership Board

- 3.19.1 A Rail Partnership Board will be set up which will replicate the existing Rail North Board and will include Members of TfN along with representatives of the Department for Transport. This Board will make recommendations in relation to strategic priorities for rail investment and in relation to existing and future rail franchises.

3.20 The Highways North Board

- 3.20.1 TfN will participate in the Highways North Board which will consist of the Members of TfN along with representatives of the Department for Transport and Highways England. The role of the Board will be to make recommendations in respect of the future Roads Investment Strategy and competitive major roads funding programmes.

3.21 The Chief Executives Meeting

- 3.21.1 The Chief Executives or their representatives will continue to meet to provide oversight of the activities of TfN and review draft Board papers and advise on policy and strategy proposals.

3.22 Consent to the Regulations

- 3.22.1 Regulations are being prepared to create TfN as a Sub-National Transport Body. A draft has been shared with the constituent authorities. These reflect the proposal as approved by the Secretary

of State and as set out in this report although they are still subject to drafting changes.

- 3.22.2 Before the Secretary of State may make these Regulations each of the Constituent Authorities must consent to the making of the Regulations. It is anticipated that the Secretary of State will send a letter to each of the Constituent Authorities requesting formal consent to the making of the Regulations to be provided by early September 2017. On the basis of the assurances given and the draft documents which have been shared Officers are content to recommend that consent should be given.

Consultation

4. The Council is a consultee along with other Northern transport authorities.

Options

5. The Executive has the option to either consent to the making by the Secretary of State of Regulations to establish Transport for the North as a Sub-National Transport Body or not.

Analysis

6. The setting up of the Sub-National Body will help to address the transport constraints which are a major cause of the productivity gap between the north and other areas of the country. It is considered that TfN have adequately addressed the concerns raised by the Executive in August 2016. The inclusion of York on the TfN Board will provide an opportunity to ensure that the key transport priorities of the city are considered in a wider forum and help to make the case for investment in the future. These opportunities will be lost if the Sub National Body is not formed.

Council Plan

7. The formation of TfN and the prioritisation of transport investment in the North of England will assist in the delivery of the Councils priority to provide 'A Prosperous City for All'.

Implications

Financial Implications

- It is considered that the concerns raised about potential future financial contributions and financial liabilities have been adequately addressed by the responses given by TfN. Any contributions to the TfN budget would need to be unanimously agreed by the TfN members appointed by the Constituent Authorities. Were this to occur, the quantum of the resultant contributions from each Constituent Authority would be calculated on the weighted voting basis. The STB will be established as a body corporate and it therefore follows that TfN will itself be responsible for any financial or other liabilities it incurs.

Human Resources implications

- There are no Human Resources implications.

Equalities Implications

- Consideration has been given to the potential for any adverse equalities impacts arising from the recommendations of this report. It is the view of officers that the recommendations included in this report do not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010.

Legal Implications

- The legal implications are set out within the body of the report. In summary TfN will be an independent corporate body established by Regulations issued by the Secretary of State with the consent of the Constituent Authorities. It will have the powers granted to it by Regulations and under the 2008 Act. Its proceedings will be partially governed by the Regulations and by a Constitution which TfN will adopt once formally established.

Crime and Disorder

- There are no crime and disorder implications to this report.

Information Technology (ICT)

- There are no information technology implications to this report.

Property

- There are no property implications to this report.

Risk Management

8. There are no known risks of the formation of Transport for the North however there would be concerns that the City would not be fully included in prioritisation of potential transport schemes if the Council were not members.

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Wards Affected: List wards or tick box to indicate all

All

For further information please contact the author of the report

Background Papers:

None

Annexes

None

Abbreviations

TfN - Transport for the North

STB - Sub-National Transport Body