

Item:

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Report to Partnership Meeting of 1 February 2008

Transfer of Employees from Highland Rail Partnership

SUMMARY

The Report provides details of proposals to transfer employees from the Highland Rail Partnership to HITRANS at the end of this financial year.

RECOMMENDATIONS

The Board is asked to:

1. agree to the transfer of Highland Rail Partnership employees to HITRANS from 1 April 2008
2. to delegate authority from the Board to the Chair and Vice-chair to execute any transfer agreement and any other documentation required in connection with the transfer.

DETAIL

HITRANS is committed to working with all sectors and interests within transport in adding value to the transport sectors across the region. It has identified 8 key sectors in which it would wish to engage with stakeholders on a regular basis, one of which is Rail. Highland Rail Partnership (HRP) has developed an exemplary approach to engaging with stakeholders in the rail sector, and their efforts have resulted in positive improvement in rail services across the mainland area and serving a number of our island communities.

HITRANS has previously supported the work of HRP making a significant contribution to their ongoing costs. With the changing role of HITRANS, moving from a voluntary to a statutory Partnership, it is felt that greater benefit can be achieved by integrating the efforts of HRP through its employees within HITRANS, thus ensuring the closest working between transport sectors, optimum use of resources, and the further development of rail service improvements across the region.

To create such a change, a transfer agreement must be agreed and executed with the Highland Rail Partnership. This agreement will outline the terms of the transfer itself. Terms will be agreed in draft form between our Legal advisors and the legal representatives of the Highland Rail Partnership. It will be necessary to identify all assets and liabilities that will be transferred to HITRANS at the date of transfer, as well ensuring that all licenses regulating the use of any office equipment are carried forward (i.e. software licences) and to determine if assignments of any contracts are required.

The two employees of the Highland Rail Partnership will be subject to transfer namely Frank Roach (Rail Development Manager) and Chris Kendall. Our Legal advisors have indicated that the proposed transfer would be likely to fall within the provisions of the Transfer of Undertakings (Protection of Employment Rights) Regulations. The applications of the TUPE regulations would mean the automatic assignation of the contracts of employment and associated rights and liabilities from the Highland Rail Partnership to HITRANS on the date of the transfer. The only rights and liabilities that do not assign on transfer would be criminal liabilities and provision of occupational pension schemes which relate to benefits for old age, invalidity or survivors. The new employer (i.e. HITRANS) would inherit those employees of the old employer who were employed immediately before the transfer on their existing terms and conditions.

The new employer inherits all accrued rights and liabilities connected with the contracts of employment of the transferred employees (including liability for negligence and breach of statutory duties).

There are various obligations for both the Highland Rail Partnership and HITRANS in relation to consultations with transferring staff. The consultation process has already begun in that HITRANS HR and Legal advisors have met with the two transferring employees and detailed discussions are ongoing regarding transfer arrangements.

It will as part of the process, be necessary to consider the structure in which the transferring employees will operate within HITRANS. Any variation between their existing terms and conditions and the terms and conditions which HITRANS wish to apply will be the subject of consultation and agreement with the employees.

To ensure that all the necessary processes and agreements are completed by 1 April 2008 it is recommended that the Board delegate authority to the Chair and Vice-chair to execute any transfer agreement and any other documentation required in connection with the transfer.

Report by: Dave Duthie
Designation: Partnership Director
Date: 24 January 2008