POLICY NOTE

THE BUS SERVICES IMPROVEMENT PARTNERSHIPS (MULTI-OPERATOR TRAVEL CARDS) (SCOTLAND) REGULATIONS 2024

SSI 2024/243

The above instrument was made in exercise of the powers conferred by section 3C of the Transport (Scotland) Act 2001 ("the 2001 Act"). The instrument is subject to the negative procedure.

Summary Box

This instrument defines the term "multi-operator travel cards" for the purpose of setting the pricing of multi-operator travel cards as a potential standard in a Bus Services Improvement Partnership.

Policy Objectives

The purpose of the Transport (Scotland) Act 2019 ("the 2019 Act") is to provide local transport authorities with access to a range of flexible tools that they can use to revitalise their local bus networks according to their own needs. The 2019 Act amends the 2001 Act, building on, and in some cases replacing, existing powers that were available to local transport authorities under that Act. In particular, the 2019 Act replaces Quality Partnership and Quality Contract schemes under the 2001 Act with Bus Services Improvement Partnerships ("BSIPs") and Franchising Frameworks.

BSIPs are a type of statutory partnership between local transport authorities and bus operators. BSIPs provide for a true form of partnership working between local transport authorities and bus operators, with both sides working together to develop a partnership plan and related partnership schemes to improve services in their area, jointly taking responsibility for delivery.

Section 3C of the 2001 Act (as amended) sets out what may be agreed by a BSIP in relation to service standards for inclusion in a partnership scheme. These standards may relate to any aspect of the service ranging from the buses used to provide the service to setting a maximum fare that may be charged in certain cases and the design of tickets used. Qualifying operators of local services in a scheme's area will be bound by the scheme and the service standards contained in it.

One of the operational service standards that may be imposed on qualifying operators within a partnership scheme is the pricing of multi-operator travel cards. Section 3C(6) of the 2001 Act sets out that the Scottish Ministers can by regulations define the term "multi-operator travel cards" for the purpose of this operational standard.

This instrument defines the term "multi-operator travel card" in line with the definition of that term for the purposes of the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 ("the Block Exemption Order"). This definition is well understood by bus operators and local transport authorities. While it is not considered that the Block Exemption Order applies to BSIPs, utilising this familiar concept is intended to provide clarity and certainty as regards the scope of the power to set prices for multi-operator travel cards in that context.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Bus Services Improvement Partnerships (Multi-Operator Travel Cards) (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not considered to be relevant to the Scottish Government's policy to maintain alignment with the EU. Local transport authorities have since 2001 been subject to the competition test in section 37 of the 2001 Act rather than EU-derived law on anti-competitive practices when making partnership arrangements with bus operators. That will continue to be the case in relation to BSIPs. Multi-operator travel cards are being defined by this instrument in line with the definition in the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 for ease of understanding and consistency with existing industry practice rather than to maintain alignment with any underlying EU law.

Consultation

A public consultation on the implementation of the bus provisions contained in Part 3 of the 2019 Act took place between 14 July to 6 October 2021. A wide range of stakeholders were consulted, including local transport authorities, regional transport partnerships, CoSLA, trade unions, representatives of bus operators, the third sector, and bus user representatives. There were 42 organisations who responded to the consultation and commented on the information questions within the document.

The consultation asked one question about the proposed definition of multi-operator travel cards. The main theme from the public consultation on the multi-operator travel cards related to the definition. Responses from some of the local authorities and regional transport partnerships who answered the question noted that the definition as consulted on follows the definition in the Block Exemption Order which was felt to be a logical approach. This is because it is a legally recognised and accepted definition and would be consistent not only with existing legislation but all industry understanding. To adopt a different definition would cause confusion, although a few local authorities noted reservations about the restrictions imposed by the definition on use as a through ticket.

However, a few respondents disagreed and suggested that the cards need to be valid across the network, with one suggesting that fares should be time-based as in London. A local authority who had neither agreed nor disagreed with the definition also noted that there needs to be maximum flexibility in the use of multi-operator travel cards and as few restrictions as possible within the context of competition law. While a trade union/campaigning organisation commented that the multi-operator ticket cannot in any way prevent competition on the variety or number of routes, nor competition on single-operator pricing and zonal structures which further highlighted the need to ensure that the definition adopted is aligned with competition law.

Other comments from individual respondents who neither agreed or disagreed with the definition suggested that the definition needs to be read in conjunction with Competition and Market Authority (CMA) guidelines. Comments also suggested that tickets should not be digital by default to ensure accessibility to all individuals, and the benefits of multi-operator travel cards need to be promoted across a range of formats.

The analysis report published in March 2022 is available on the Transport Scotland website[1] and contains fuller analysis of the responses received.

Following the consultation, we have had subsequent discussions with key stakeholders including Association of Transport Coordinating Officers (ATCO), Convention of Scottish Local Authorities (CoSLA), Bus Users Scotland, and Confederation of Passenger Transport (CPT) to obtain views to inform the development of these regulations. Officials also engaged with public sector organisations, including the Office of the Traffic Commissioner for Scotland and the Competition and Markets Authority, on technical elements of the regulations.

Impact Assessments

These regulations provide a definition of multi-operator travel cards the pricing of which may form part of the service standards specified in a BSIP under section 3C of the 2001 Act (inserted by section 35 of the 2019 Act), and do not seek to change the policy intent of that section of the 2001 Act.

The following impact assessments were conducted in relation to the implementation of the bus provisions contained in Part 3 of the 2019 Act (including the multi-operator travel cards to which these regulations relate):

- An Equalities Impact Assessment
- A partial Business and Regulatory Impact Assessment
- A Child Rights and Wellbeing Impact Assessment
- An Islands Screening Assessment
- A Fairer Scotland Duty Impact Assessment

There are no significant equalities or rights impacts that require further consideration in relation to these regulations.

In line with legislative changes a further CRWIA was carried out prior to laying these regulations and the statement of compatibility is published separately.

Financial Effects

As stated above, a partial Business and Regulatory Impact Assessment ("BRIA") was completed for the implementation of Part 3 of the 2019 Act. This concluded that the financial impacts of implementing the service standards that include the pricing of multi-operator travel cards for BSIP plans and schemes likely to be minimal because the process is designed to make the BSIP an active collaboration.

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[1] Implementing Part Three of the Transport (Scotland) Act 2019: Bus Services - Analysis of Consultation Responses | Transport Scotland - https://www.transport.gov.scot/publication/implementing-part-three-of-the-transport-scotland-act-2019-bus-services-analysis-of-consultation-responses/

A BRIA has not been completed for this instrument as it has no financial effects on the Scottish Government, local government, or business.

Scottish Government
Transport Scotland
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