SCOTTISH STATUTORY INSTRUMENTS

2024 No. 229

TRANSPORT

The Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024

Made - - - -	*3rd September 2024*
Laid before the Scottish Parliament	*5th September 2024*
Coming into force - -	*1st November 2024*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 13J(5)(c) and section 13T(1) of the Transport (Scotland) Act 2001(**a**) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024 and come into force on 1 November 2024.

(2) In these Regulations—

"the 2001 Act" means the Transport (Scotland) Act 2001,

"panel" means a panel convened by the traffic commissioner under section 13J(2) or 13O(2) of the 2001 Act(**b**), as the case may be,

"proposal" means a proposal by a local transport authority to make, vary or revoke a franchising framework.

Notice given by the traffic commissioner

2.—(1) Notice given by the traffic commissioner under section 13J(2)(a) or 13O(2)(a) of the 2001 Act must include—

(a) the name of the local transport authority seeking approval for their proposal,

(b) a description of that proposal,

(c) where the proposal is to make a franchising framework, a link in electronic form to the documents specified in section 13I(3) of the 2001 Act(**c**),

(d) where the proposal is to vary or revoke a franchising framework, a link in electronic form to the application provided by the local transport authority under section 13N(2)(b) of the 2001 Act(**d**) (including any documents specified in section 13N(5)(b)),

(**a**) 2001 asp 2. Sections 13J and 13T were inserted by section 38 of the Transport (Scotland) Act 2019 (asp 17) ("the 2019 Act"). Section 13T(5) contains a definition of "prescribed" relevant to the exercise of the powers under which these Regulations are made.
(**b**) Section 13O was inserted by section 38 of the 2019 Act.
(**c**) Section 13I was inserted by section 38 of the 2019 Act.
(**d**) Section 13N was inserted by section 38 of the 2019 Act.

(e) a statement explaining that a panel will be formed to consider whether to approve the proposal and that persons may ask to present oral evidence to this panel, and

(f) a statement explaining that a request to present oral evidence must—

(i) be made in writing within the period of 28 days beginning with the day after the day on which the notice is issued by the traffic commissioner, and

(ii) include a summary of the oral evidence which the person wishes to present.

(2) Where notice is given by the traffic commissioner under section 13J(2)(a) or, as the case may be, section 13O(2)(a) of the 2001 Act that a local transport authority is seeking approval for a proposal, any representations in respect of the application for such approval must be made within the period of 28 days beginning with the day after the day on which that notice is given.

Eligibility criteria for a panel member

3.—(1) The traffic commissioner may appoint as a panel member any person the traffic commissioner considers to have knowledge or experience relevant to a panel's functions.

(2) A person is not eligible to be appointed as a panel member if that person is—

(a) employed by an operator who, in the opinion of the traffic commissioner, is likely to be affected by the proposal,

(b) a member of—

(i) the Scottish Parliament,

(ii) the House of Commons,

(iii) the House of Lords,

(c) an elected member of a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(**a**),

(d) appointed under paragraph 7 of schedule 2 of the Public Passenger Vehicles Act 1981(**b**) to act as an officer or servant of a traffic commissioner, where the traffic commissioner considers the person to be involved in the establishment, maintenance, operation or management of any panel,

(e) a person whose appointment could, in the opinion of the traffic commissioner, reasonably give rise to a concern as to whether that person could act impartially as a panel member.

Appointment and tenure of a panel member

4.—(1) A panel member is to be appointed by the traffic commissioner on such terms and conditions as the traffic commissioner considers appropriate.

(2) A panel member may at any time resign by written notice given to the traffic commissioner.

Removal of a panel member

5.—(1) The traffic commissioner may remove a person from being a panel member if—

(a) the person has failed to comply with the terms and conditions of the person's appointment,

(b) the person is insolvent,

(c) the person has been convicted (whether before or after a person's appointment) of a criminal offence,

(d) the person becomes ineligible for appointment as a panel member under regulation 3(2),

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(**a**) 1994 c. 39. Section 2 was amended by section 120(1) and paragraph 232(1) of schedule 22 of the Environment Act 1995 (c. 25).

(**b**) 1981 c. 14. Schedule 2 was substituted by section 3(3) and schedule 2 of the Transport Act 1985 (c. 67).

(e) the person has, without reasonable excuse, been unavailable to perform the person's duties as a panel member,

(f) the traffic commissioner considers that the person is otherwise unfit to be a panel member or is unable for any reason to carry out the functions of a panel member.

(2) For the purposes of paragraph (1)(b), a person is insolvent when—

(a) the person's estate is sequestrated,

(b) the person grants a trust deed for, or makes a composition or arrangement with, creditors,

(c) the person is adjudged bankrupt,

(d) a voluntary arrangement proposed by the person is approved,

(e) the person's application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002(**a**), or

(f) the person becomes subject to any other order or arrangement analogous to any of those described in sub-paragraphs (a) to (e) anywhere in the world.

Replacement of a panel member

6. Where a panel member resigns in accordance with regulation 4(2) or is removed from being a panel member in accordance with regulation 5, the traffic commissioner may appoint another person to the panel to fill the vacancy.

Chairing of a panel

7. The traffic commissioner must select one person from among the panel members to chair the panel.

Remuneration, expenses and administration

8.—(1) The traffic commissioner may pay panel members such remuneration as the traffic commissioner considers appropriate.

(2) The traffic commissioner must pay or reimburse panel members any expenses which have been reasonably incurred by them in connection with the panel's functions.

(3) The traffic commissioner must make arrangements for panel members to be provided with such administrative support and accommodation in connection with their functions as the traffic commissioner considers appropriate.

Requests to give oral evidence to a panel

9.—(1) Where, following notice having been given by the traffic commissioner under section 13J(2)(a) or, as the case may be, section 13O(2)(a) of the 2001 Act, a person wants to give oral evidence to a panel, that person must—

(a) submit a request in writing to the traffic commissioner within the period of 28 days beginning with the day after the day on which that notice was given by the traffic commissioner, and

(b) provide a written summary of the oral evidence which the person wants to give.

(2) The traffic commissioner must provide the panel with any requests to give oral evidence submitted under paragraph (1).

(3) The panel must hold an oral evidence session where a request to give oral evidence is submitted under paragraph (1) by—

(a) an operator of a local service in the area to which the proposal relates,

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(**a**) 2002 asp 17. Section 2 was amended by sections 211(2) and 212(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(b) the local transport authority seeking approval of the proposal, or

(c) a person who was not consulted on the proposal in accordance with section 13G of the 2001 Act(**a**) but who, in the panel's opinion, ought to have been so consulted.

(4) Where a request to give oral evidence is submitted by a person other than a person specified in paragraph (3), the panel may hold an oral evidence session.

(5) Where more than one request to give oral evidence is submitted to the panel under paragraph (1), the panel may decide to hold one or more oral evidence sessions.

Invitations to present evidence to a panel

10.—(1) A panel may invite the following persons to give evidence to the panel—

(a) the local transport authority seeking approval of the proposal,

(b) any person consulted on the proposal in accordance with section 13G of the 2001 Act, and

(c) any person who was not consulted on the proposal in accordance with section 13G of the 2001 Act but who, in the panel's opinion, ought to have been so consulted

(2) A panel making an invitation under paragraph (1) may—

(a) specify the matters on which it wants evidence to be given, and

(b) specify how that evidence is to be given.

(3) Where a panel requires written evidence to be given by any person other than the local transport authority seeking approval of the proposal, the panel must send a copy of that evidence to that authority.

Oral evidence sessions held by a panel

11.—(1) Where a panel is to hold an oral evidence session, the panel must—

(a) give written notice of the date, time and location of the oral evidence session to—

(i) the local transport authority seeking approval of the proposal,

(ii) any person from whom the panel has invited evidence in accordance with regulation 10, and

(iii) any person who has submitted a request to give oral evidence in accordance with regulation 9(1), and

(b) give notice of the date, time and location of the oral evidence session in at least one newspaper circulating in the area to which the proposal relates.

(2) The panel may determine the procedure to be followed in an oral evidence session and in particular may—

(a) determine the way in which oral evidence is to be presented,

(b) impose time limits on the presentation of oral evidence,

(c) exclude any person from a session, or part of a session, where the panel considers the information likely to be disclosed is of a confidential or commercially sensitive nature,

(d) direct, where two or more parties make a request to submit evidence on a particular issue, that evidence is to be submitted by one party only on behalf of all of them,

(e) decline to hear evidence or submissions which could have been submitted to the local transport authority making the proposal in response to the authority's consultation under section 13G of the 2001 Act.

(3) Oral evidence sessions must be held in public, unless the panel has determined under paragraph (2)(c) that any person is to be excluded from a session or part of a session.

(**a**) Section 13G was inserted by section 38 of the Transport (Scotland) Act 2019 (asp 17).

Prescribed matters

12. The following matters are prescribed for the purposes of section 13J of the 2001 Act—

(a) how, and to what extent, the proposed franchising framework will contribute to the implementation of the local transport authority's relevant general policies,

(b) the deliverability, sustainability and affordability of the proposed franchising framework,

(c) the likely effect of making the proposed franchising framework on—

(i) the local transport authority's existing bus network, and

(ii) neighbouring local transport authorities' bus networks, and

(d) the likely effect of making the proposed franchising framework on the local economy and community, including possible benefits to the local community in terms of improving access to employment, healthcare, and education opportunities.

Decision of a panel

13.—(1) A panel must notify the traffic commissioner of its decision under section 13J(4) or section 13O(4) or (5) of the 2001 Act, as the case may be, within the period of six months beginning with the date on which the panel is convened unless (before the end of that period) the panel issues a notice to the traffic commissioner—

(a) stating that the panel does not intend to notify the decision within that period,

(b) specifying the reason why that is so, and

(c) indicating the likely date for notifying the decision.

(2) Where a panel issues a notice under paragraph (1), it must notify the traffic commissioner of its decision within the period of twelve months beginning with the date on which the panel is convened.

(3) The traffic commissioner may, in exceptional circumstances, extend the period specified in paragraph (2) where the panel has issued a notice to the traffic commissioner—

(a) stating the panel does not anticipate that it will be able to notify the decision within that period,

(b) specifying the reason why that is so, and

(c) indicating the likely date on which the panel considers it will be able to notify the decision.

Guidance for panels

14. The traffic commissioner may give guidance to panels as to the exercise of their functions under the 2001 Act and these Regulations.

JIM FAIRLIE
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
3rd September 2024

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with respect to the notices that may be given by the traffic commissioner under sections 13J(2) and 13O(2) of the Transport (Scotland) Act 2001 ("the 2001 Act") and the panels that may be convened by the traffic commissioner under those sections. Those sections of the 2001 Act detail parts of the process to be followed when a local transport authority seeks to make, vary or revoke a franchising framework, including requirements that these proposals are approved by a panel appointed by the traffic commissioner.

Regulation 2(1) specifies what must be included in any notice given by the traffic commissioner under section 13J(2)(a) or 13O(2)(a) of the 2001 Act. This regulation also prescribes the period within which representations may be made to the traffic commissioner in relation to the proposal which is the subject of such a notice.

Regulation 3 sets eligibility criteria for the appointment of members of a panel members convened under sections 13J(2)(b) and 13O(2)(b) of the 2001 Act.

Regulations 4 to 6 make provision with respect to the appointment, removal, and replacement of panel members.

Regulation 7 provides that the traffic commissioner, when forming a panel, must select a member to act as chair.

Regulation 8 provides that the traffic commissioner may pay panel members remuneration, and must pay or reimburse members' reasonable expenses. This regulation also provides for a panel to be given administrative support and accommodation.

Regulations 9 to 11 make provision with respect to evidence-gathering by a panel. Regulations 9 and 10 provide that persons may make requests to the traffic commissioner to present oral evidence to a panel, and a panel may also invite certain persons to present written or oral evidence. Regulation 11 makes provision with respect to oral evidence sessions to be held by a panel.

Regulation 12 prescribes the matters that local transport authorities should give appropriate weight to in developing a franchising proposal so that a panel may assess whether appropriate weight has been so given.

Regulation 13 makes provision with respect to the time period within which a panel must notify the traffic commissioner of its decision.

Regulation 14 allows the traffic commissioner to give either general or specific guidance to panels as regards the exercise of their functions under the 2001 Act and these Regulations.

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