POLICY NOTE

THE LOCAL SERVICES FRANCHISES (TRAFFIC COMMISSIONER NOTICES AND PANELS) (SCOTLAND) REGULATIONS 2024

SSI 2024/229

The above instrument was made in exercise of the powers conferred by section 13J(5)(c) and section 13T(1) of the Transport (Scotland) Act 2001 ("the 2001 Act"). The instrument is subject to the negative procedure.

Purpose of the instrument:
Sections 13I and 13N of the 2001 Act enable a local transport authority to request that the Traffic Commissioner convene a panel for the purpose of considering whether to approve the making of a proposed franchising framework, or a proposed variation or revocation of a franchising framework. Upon request, the Traffic Commissioner must convene a panel under section 13J or 13O of the 2001 Act, as applicable. The purpose of this instrument is to make further provision with respect to the panels to be convened by the Traffic Commissioner and, in particular, to make provision with respect to the appointment, removal and replacement of panel members, the remuneration of members, and the process to be followed by a panel in making decisions. This instrument also makes provision with respect to the notices issued by the Traffic Commissioner in relation to a proposed franchising framework, or a proposed variation or revocation of a framework.

Policy Objectives

The intention 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 may use to revitalise their local bus networks according to their own needs. The 2019 Act builds on (and in some cases replaces) existing powers that were available to local transport authorities under the 2001 Act. In particular, the 2019 Act replaces the quality contracts model provided in the 2001 Act with the local services franchises model. This model involves a local transport authority putting in place an overarching franchising framework and then entering into franchise agreements with bus operators in respect of the local services within the area of the framework. The framework will set out the services to be provided, the standards to be met in doing so, and any additional facilities that are to be provided in the area.

The local services franchises model puts in place a clearly structured process with the intention of making the process transparent and ensuring that franchising proposals are subject to a high level of scrutiny. For instance, the requirements on the Traffic Commissioner to issue notices in respect of new franchising proposals, and the provisions in this instrument about those notices, are intended to make people aware of a local transport authority's franchising proposals and allow them an opportunity to make representations in relation to the proposals.

A local transport authority proposing to make, vary or revoke a franchising framework must request that the Traffic Commissioner convenes a panel of three persons to consider the authority's proposal. The local transport authority may only proceed with their proposal if it is approved by the panel.

The role of the panel is to provide an additional safeguard that the local transport authority's franchising proposals are carefully considered, based on evidence, and follow the guidance issued by Scottish Ministers. Moreover, feedback from our public consultation on implementing the bus powers in the 2019 Act, and subsequent engagement with our key stakeholders, highlighted the need for the panels to adopt a balanced, objective, evidence-based, and transparent approach when considering a local transport authority's franchising proposals.

A panel will consist of three members appointed for a period by the Traffic Commissioner. To ensure that the panels can carry out their functions effectively, this instrument sets out the eligibility criteria for appointing panel members, which are focussed on ensuring members have appropriate knowledge and experience, and any real or perceived conflicts of interest are avoided. This instrument also provides that the Traffic Commissioner may pay panel members a level of remuneration that the Commissioner considers appropriate. The Traffic Commissioner will be required to pay or reimburse members' reasonable expenses and will also provide administrative support and accommodation appropriate for a panel to discharge its functions.

Panel members may resign, and the Traffic Commissioner may remove members if they fail to meet conditions set out in this instrument. This is to address situations where a member is unable to discharge their duties or the Traffic Commissioner has become aware of a potential conflict of interest, which may impact the panel's decision making.

A panel may invite individuals to submit evidence as part of its evidence gathering, and may hold oral evidence sessions in which the panel determines the procedure to be followed. This is to allow panels to be open and transparent by holding evidence sessions in public to discuss specific aspects of a local transport authority's franchising proposal, particularly if it is causing potential concern to stakeholders and it has not been addressed by the authority. Feedback from several respondents to our public consultation and subsequent engagement with the Association of Transport Co-Ordinating Officers (ATCO) and the Office of the Traffic Commissioner supported this approach.

This instrument also provides that a panel must submit its decision on whether to approve the proposed making, variation or revocation of a franchising framework to the Traffic Commissioner within a specified time period. This instrument also confers a power on the Traffic Commissioner to give panels guidance on exercising their functions under the 2001 Act and in this instrument.

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 Local Services Franchises (Traffic Commissioner Notices and Panels) (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 relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation
A public consultation on the implementation of the bus provisions contained in Part 3 of the 2019 Act took place from 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 questions within the document.

The public consultation asked questions about the make-up of the panel and its functions. The main theme that emerged from local transport authorities and regional transport partnership responses was the need for the panel to adopt a balanced, objective, evidenced-based and transparent perspective, and they should not create an undue barrier in exercising the franchising powers to be inserted into the 2001 Act.

There were several comments about the make-up of the panels, in particular, the need for at least one member of the panel to have knowledge of the Equality Act 2010. A trade union/campaign organisation suggested that no panel should be dominated by individuals from the bus sector. Most respondents suggested there is a need for panel members to have financial or transport expertise. In addition, some trade union/campaigning organisations focused on the need for any panel membership to gather a breadth of perspectives and knowledge so that a range of policy aims and human rights duties inform any decisions made. Some respondents highlighted the need to ensure the selection process is transparent and that the panel members are accountable and independent.

A total of 18 respondents, including local transport authorities, regional transport partnerships, operators, trade unions and some individuals, responded to a question on the appointing, removing or replacing of panel members. A key theme from the responses was the need to ensure there are no conflicts of interest, and if a conflict of interest is discovered, this should lead to the immediate removal of the person in question from the panel.
The key themes from the 22 responses which focus on the functions of the panel included the need for all decisions made by a panel to be fully justified, transparent and accountable. In addition, representatives should be able to attend formal public hearings and be allowed to provide written or oral submissions, and the process a panel must follow should be specified and have robust and detailed criteria.

Following the public consultation, we have had subsequent discussions with key stakeholders, including ATCO, CoSLA, the Competition and Markets Authority, and the Confederation of Passenger Transport to obtain views to inform the development of these regulations. Officials have also engaged with public sector organisations, including the Traffic Commissioner ("TC") on technical elements of these regulations.

Impact Assessments
A final Business and Regulatory Impact Assessment ("BRIA") has been produced for this instrument. This supplements the partial BRIA that was completed for the implementation of part 3 of the 2019 Act. The primary costs resulting from these regulations are expected to fall to the OTC in the form of remuneration, expenses, and associated work costs. The Scottish Government is in discussion with the TC on how this work will be funded.

The following impact assessments were conducted in relation to the implementation of the bus provisions contained in Part 3 of the 2019 Act:

- An Equalities Impact Assessment
- An Islands Screening Assessment
- A Childrens' Rights and Wellbeing Impact Assessment (CRWIA)
- A Fairer Scotland Duty Impact Assessment

Financial Effects
Primary costs are expected from the TC in the form of remuneration, expenses, and associated work costs for setting up the panels. Costs to local transport authorities and businesses as a result of these regulations are expected to be negligible.

Scottish Government
Transport Scotland

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