POLICY NOTE

THE PUBLIC SERVICE VEHICLES (REGISTRATION OF LOCAL SERVICES) (BUS SERVICES IMPROVEMENT PARTNERSHIPS SERVICE STANDARDS DECISIONS) (APPEALS) (SCOTLAND) REGULATIONS 2024

SSI 2024/248

The above instrument was made in exercise of the powers conferred by section 6M of the Transport Act 1985 ("the 1985 Act"). The instrument is subject to the negative procedure.

Summary Box

This instrument creates a right of appeal against the determinations of the Traffic Commissioner specified in section 6M of the 1985 Act (known as "service standards decisions"). These service standards decisions are a key element of Bus Services Improvement Partnerships. The instrument allocates these appeals to the Upper Tribunal for Scotland and specifies the persons who may raise the appeals. The instrument also sets out the powers of the Upper Tribunal in relation to the appeals.

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 Transport (Scotland) Act 2001 ("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 the Quality Partnership model under the 2001 Act with Bus Services Improvement Partnerships ("BSIPs").

BSIPs are a type of statutory partnership between local transport authorities and bus operators. BSIPs provide 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.

A key part of the BSIP model is the setting of a range of service standards with which all qualifying local operators within the BSIP area must comply. If qualifying operators in the area do not provide a service which meets the applicable service standards, they risk losing the right to operate the service through deregistration. The Traffic Commissioner can refuse an application for registration of a new service, or cancel a service registration, if the Commissioner considers that the operator is not complying with, or is unlikely to be able to comply with, a particular service standard. These determinations of the Traffic Commissioner, along with others relating to service standards, are listed in section 6M of the 1985 Act and are known as service standards decisions.

In order to ensure a fair determination of the civil rights of local transport authorities and bus operators, an appeals process against service standards decisions must be put in place. This instrument therefore provides that both the operator and the local transport authority affected by the service standards decision may appeal against the decision. In the case of a BSIP scheme made by multiple authorities acting jointly, those authorities may appeal jointly.

These appeals are to be heard in the Upper Tribunal for Scotland. This reflects the fact that the Traffic Commissioner can be considered equivalent to the First-Tier Tribunal for Scotland in terms of decision-making powers, and providing a right of appeal direct to the Upper Tribunal is therefore considered appropriate for service standards decisions. Also, allowing these appeals to be raised in the Upper Tribunal will serve to maintain comparable levels of rights with English counterparts in respect of Enhanced Partnerships, a partnership model similar to BSIPs.

This instrument also sets out the powers of the Upper Tribunal when dealing with these appeals. The Tribunal may dismiss the appeal, or allow it and quash the Traffic Commissioner's determination. If the Tribunal opts to do the latter, it must either reconsider the matter itself and make a new determination or remit the matter to the Traffic Commissioner for reconsideration.

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 Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (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.

Consultation

A public consultation on a suite of regulations, including this one, relating to determination of bus services appeals by the Upper Tribunal took place from 7 August 2023 to 27 October 2023. There were five responses to this consultation. The majority of respondents were content with the provisions. The main concerns have been addressed in the analysis of consultation responses document. Some responses commented more generally on local transport provision, which was outside of the scope of the consultation. Three respondents gave permission to publish their responses, which are available on the Scottish Government website[1].

A previous public consultation on the general 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, the Convention of Scottish Local Authorities ("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

[1] Draft regulations allocating bus service appeals to the Scottish Tribunals: consultation - Scottish Government consultations - Citizen Space - https://consult.gov.scot/tribunals-and-administrative-justice/tribunals-scotland-act-2014-draft-regulations/.

questions within the document. The 2021 consultation did not ask specific questions about BSIP appeals regulations. The analysis report published in March 2022 is available on the Transport Scotland website[2] and contains fuller analysis of the responses received.

Following the consultation, we have had subsequent discussions about technical elements of the regulations with key stakeholders including the Association of Transport Coordinating Officers ("ATCO"), CoSLA, the Scottish Courts and Tribunals Service, and the Traffic Commissioner for Scotland.

Impact Assessments

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
- A partial Business and Regulatory Impact Assessment
- A Child Rights and Wellbeing Impact Assessment ("CRWIA")
- An Islands Screening Assessment
- A Fairer Scotland Duty Impact Assessment

As required by the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, a further CRWIA was carried out prior to laying these regulations and the associated statement of compatibility is published separately.

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

A further BRIA has also been completed for the set of four regulations relating to bus service appeals that this instrument is part of.

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 and appeals are expected to be minor for local transport authorities.

In addition, a further BRIA has been completed for the set of four regulations relating to bus service appeals that this instrument is part of. This has highlighted no impact on business.

Primary costs are expected to arise from the Scottish Courts and Tribunals Service, including costs for IT management for setting up the case management systems. There will also be running costs for cases which will be dependent on the number of cases and the makeup of the hearing panel. Costs to local transport authorities and businesses as a result of these regulations are expected to be negligible.

[2] 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/.

Scottish Government
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September 2024