

# **TRANSPORT (SCOTLAND) ACT 2019**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 3 – Bus Services**

##### **Introduction**

86. Part 3 of the Act deals with bus services. This breaks down into four sub-topics:
- Provision of services by local transport authorities;
  - Bus services improvement partnerships;
  - Local services franchising;
  - Information relating to services.

##### **General background**

87. The majority of bus services in Scotland are provided by bus operators on a commercial basis, though they are subject to regulation to ensure that vehicles meet safety and environmental standards, that operators and drivers are suitably qualified and comply with their legal obligations, that services are operated punctually and reliably and that accurate passenger information is made available in good time.
88. These requirements are enforced by the Traffic Commissioner for Scotland, an independent statutory regulator, with the support of the Driver and Vehicle Standards Agency, an agency of the UK Department for Transport. In addition, Bus Users Scotland, a not-for-profit membership organisation, works to promote the interests of bus users, monitors services to see if they are reliable and punctual and works with bus operators to ensure effective mechanisms for dealing with customer complaints.
89. Transport Scotland subsidises a proportion of the overall costs of the bus network (including scheduled and demand responsive services) through Bus Service Operators Grant (BSOG) which is provided under section 38 of the Transport (Scotland) Act 2001.
90. Beyond this, the majority of services are funded by passenger fares and by reimbursement payments from Transport Scotland for carrying passengers under the national concessionary bus travel schemes, which account for around a third of all bus journeys.
91. A significant minority of services that would not otherwise be viable receive additional financial support from local transport authorities in order to meet social needs in line with their local transport strategies and plans.
92. In some instances, especially where patronage would be too low to justify conventional scheduled bus services, authorities provide demand responsive or dial ride services using a mix of providers using bus and taxi firms and community transport groups.

##### **Regulatory framework**

*These notes relate to the Transport (Scotland) Act 2019  
(asp 17) which received Royal Assent on 15 November 2019*

93. The regulation of the provision and funding of bus services in Scotland is largely devolved to the Scottish Parliament. The regulatory framework is similar to that in England (outside London) and Wales and is based on a commercial market with some government subsidy for bus services (via BSOG) and funding for concessionary travel and with a range of transport authority powers including the ability to subsidise otherwise non-commercial services where necessary.
94. The legal framework for bus services is primarily contained in the following Acts:
- Transport Act 1968;
  - Public Passenger Vehicles Act 1981;
  - Transport Act 1985 (“the 1985 Act”);
  - Transport (Scotland) Act 2001 (“the 2001 Act”);
  - Transport (Scotland) Act 2005.
95. There are also numerous statutory instruments that sit below these pieces of legislation setting out the detail of the various regimes.
96. The Scottish Government’s agency, Transport Scotland, sets the national policy framework and provides funding to support bus services.
97. The traffic commissioner for the Scottish Traffic Area is the independent licensing and regulatory authority. The Commissioner is a ‘cross border public authority’ with reserved and devolved responsibilities. Licensing of bus operators (Public Service Vehicles (PSVs)) and disciplinary action against PSV drivers are reserved to the UK. Registration of services is devolved and subject to the [Public Service Vehicles \(Registration of Local Services\) \(Scotland\) Regulations 2001](#). The regulatory regime is designed to ensure that bus service operators are of good repute and that services are introduced, varied or cancelled in an orderly fashion and operated safely and reliably as registered.
98. Provided that an operator registers a service with the Office of the Traffic Commissioner they can operate any route they wish to any timetable (subject to certain limitations where a quality partnership or contract scheme is in place or where the traffic commissioner has imposed a traffic regulation condition at the local transport authority’s request). Bus operators use their commercial judgement to determine service routes and frequencies. This market based approach encourages innovation and entrepreneurship and provides incentives for operators to bear down on costs, provide new services and develop new types of service. The statutory process for registration of bus services was changed in January 2016 to extend the time period for pre-registration engagement with local transport authorities.
99. Local transport authorities (defined in paragraph 102 below) are responsible for ensuring that bus services in their area meet local needs. Under the 1985 Act, they have a duty to secure the provision of services that they deem to be socially necessary and that would otherwise not be provided commercially and a power to provide subsidy to operators to provide those services.
100. Local authorities are also generally responsible for infrastructure – including bus stations and stops, bus lanes and other priority measures – and ensuring the provision of passenger information. Through the planning system and management of roads and parking, local authorities have a significant influence on the context in which services have to operate.
101. The 2001 Act gave local transport authorities wide ranging powers to work with operators in improving bus services, including quality partnerships and quality contracts (a kind of franchising).

Glossary of existing legislative expressions

102. There are several expressions used in these Notes which are drawn from existing legislation. This paragraph sets out and explains the most common:

“*local service*” is defined by section 2 of the 1985 Act. While there are some exceptions, it generally refers to a service using one or more public service vehicles for the carriage of passengers by roads at separate fares;

“*local transport authorities*” (LTAs) are typically local authorities: see section 82(1) of the 2001 Act. The Strathclyde Passenger Transport Authority is also defined as a local transport authority. Further, a number of Transport Partnerships have had some of the functions of a local transport authority conferred upon them by virtue of orders under section 10 of the Transport (Scotland) Act 2005;

“*passenger transport authorities*” (PTA) were established under the Transport Act 1968. These authorities have a duty to secure the provision of public passenger transport services in their area (see section 9A of the Transport Act 1968). They also have powers to provide subsidies in support of that duty. There is only one PTA in Scotland – Strathclyde Passenger Transport Authority. However, most of their functions (including their function under section 9A) have now been transferred to the Strathclyde Partnership for Transport (SPT) (a regional Transport Partnership – see below). The rest of Scotland is served by local transport authorities or regional Transport Partnerships;

“*public service vehicle*” (PSV) is defined by section 1 of the Public Passenger Vehicles Act 1981 and means a motor vehicle which is either (i) a vehicle adapted to carry more than 8 passengers that is used for carrying passengers for hire or reward, or (ii) a vehicle that isn’t adapted that is used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers;

“*regional Transport Partnership*” refers to any of the Transport Partnerships which were established by an order made under section 1 of the Transport (Scotland) Act 2005 in respect of a particular region of Scotland. Each Transport Partnership is required to create a regional transport strategy for its area. The Transport (Scotland) Act 2005 also allows for certain local transport functions to be transferred to these Partnerships and 3 such orders have been made, transferring functions to SPT (covering the West of Scotland region), SWestrans (covering the South-west region) and ZEstrans (covering Shetland);

103. The order made in 2005<sup>1</sup> which created the regional Transport Partnerships originally named the region covered by SPT as the “West of Scotland” region and provided that the regional Transport Partnership for that area would be known as the “West of Scotland Transport Partnership”. However, a Transport Partnership may decide to change the name of its region by notifying the Scottish Ministers and its constituent councils and the West of Scotland Transport Partnership notified Ministers of its change of name to “Strathclyde Partnership for Transport” in early 2006;

“*traffic areas*” are areas established under section 3 of the Public Passenger Vehicles Act 1981. The whole of Scotland is classed as a single traffic area for the purposes of that Act;

“*traffic commissioner*” is an office established under section 4 of the Public Passenger Vehicles Act 1981. The Scottish traffic commissioner is a designated cross border public authority and is appointed by the Secretary of State. The commissioner has a variety of statutory enforcement functions relating to:

- PSV operator licences;
- registration of local services;

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<sup>1</sup> The Regional Transport Partnerships (Establishment, Constitution and Membership) (Scotland) Order 2005 [SSI 2005/622](#).

- ticketing schemes;
- the provision of information.

## **Provision of services by local transport authorities**

### **Introduction**

104. The 1985 Act deregulated bus services in the UK, moving from council-run buses to an open commercial market via a transitional period. In that transitional period, the bus services that councils provided were moved over to companies owned by them, which were then largely sold off. In Scotland, only one of those companies remains in existence today: Lothian Buses Limited. Otherwise, section 66 of the 1985 Act prevents a council from providing local services themselves<sup>2</sup>.
105. As noted in the general background section, however, under section 63 of the 1985 Act councils<sup>3</sup> are under a duty to secure the provision of such public transport services as they consider appropriate in order to meet any public transport requirements which they don't think would otherwise be met by the open commercial market. Councils have a variety of tools to try to achieve this, but subsection (5) of section 63 is significant in that it enables councils to enter into agreements to provide subsidies to operators in order to secure a service.

### **Provision of services by local transport authorities – [section 34](#)**

106. Section 34 of the Act inserts new section 2A to the 2001 Act which enables local transport authorities to provide services for the carriage of passengers by road using vehicles requiring a PSV operator's licence. The local transport authority must be satisfied that the provision of such services will contribute to the implementation of their relevant general policies (as defined in section 48 of the 2001 Act). The new function in section 2A is also added to the list of matters, in section 79 of the 2001 Act, which the Scottish Ministers may issue guidance in relation to the exercise of, and local transport authorities must have regard to any such guidance.
107. Subsection (2) repeals the provisions of the 1985 Act which placed a restriction on councils operating such services and which allowed for a transition of existing services out to public transport companies. However, subsection (3) provides that repealed provisions will continue to have effect in so far as is necessary for any existing services or undertaking which relies upon them.

## **Bus services improvement partnerships**

### **Introduction**

108. Sections 35 and 36 of the Act introduce a number of new provisions on Bus Services Improvement Partnerships (BSIPs) into the 2001 Act (inserted sections 3A to 3M and a new schedule A1). These provisions replace the material on quality partnerships in Part 2 of the 2001 Act and provide an updated and revised model for how local transport authorities can work with operators to improve the quality and efficiency of local services.
109. Section 37 provides for the changes necessary to the 1985 Act to deal with the registration of local services where a BSIP is in place. These mainly relate to the enforcement of the service standards imposed by the schemes which implement the arrangements. Some further amendments which are consequential on these changes are in Part 1 of the schedule of the Act.

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<sup>2</sup> There is an existing exemption to this prohibition under section 71 of the 1985 Act for small undertakings and there are a number of other provisions, such as community bus permits, under which a council can provide bus services in certain circumstances. In addition, the councils for the Orkney Islands, Shetland Islands and Western Isles are specifically exempted from the restriction in section 66 of the 1985 Act.

<sup>3</sup> In addition, this could apply to a regional Transport Partnership which has had the functions of a council under this section conferred upon it by an order made under section 10 of the 2005 Act.

110. BSIPs involve local transport authorities formulating a plan (called a partnership plan in the Act) with the operators in their area and then deciding on how best to implement it through supporting schemes (partnership schemes). BSIPs contain several distinguishing features from quality partnerships, namely:
- there is a requirement for the local transport authority to invest in some way (whether through new facilities or taking certain measures to assist the operators);
  - the range of available ‘service standards’ is more extensive;
  - operators are to be involved in the preparation of the partnership plans and schemes and have a say in whether the plans or schemes are to proceed;
  - reflecting that involvement, operators in the area of a scheme must provide a service which meets the operational service standards or risk losing the right to operate the service through deregistration;
  - the traffic commissioner can refuse an application for registration by an operator who, in the commissioner’s opinion, cannot meet the operational service standards that are applicable in an area.

### **Bus services improvement partnerships**

Partnership plans and schemes – inserted [sections 3A](#) and [3B](#)

111. Section 3A(2) sets out the core requirements of what a partnership plan is and what it must contain.
112. Partnership plans operate at the strategic level and are to have three core elements, namely:
- providing an analysis of the local services operating in an area;
  - determining policies relating to those services; and
  - setting objectives to be achieved within the life of the plan.
113. Partnership plans must also make provision for obtaining the views of those in the community using the local services about how well those services are working and make provision for when it is to be reviewed.
114. Section 3B(1) provides that a partnership plan must be underpinned by one or more implementation schemes (referred to in the Act as partnership schemes) which set out in detail how the desired improvements to services or standards required are to be achieved. Section 3B(2) confirms that further schemes may be made in relation to existing plans.
115. A partnership scheme may relate to the whole of the area of a partnership plan or any part of it. It will contain the standards of service that are expected of the operators of local services which have stopping places in the area of the scheme. It must also contain a requirement for at least one facility or measure to be provided by the local transport authority. Facilities will typically take the form of an investment in infrastructure, such as providing improved bus stops, whereas measures will relate to taking actions, such as restricting the number of times in a year that local authority roadworks occur on key bus corridors. It is also possible for a scheme to contain a requirement on a local transport authority or operator to take some other action designed to facilitate the operation of the scheme. This might include publicising the scheme or committing to meet on a regular basis to discuss matters.
116. Once a partnership scheme is in place, section 3F(1) confirms it will apply to all operators of local services within the area of the scheme. Failure to comply with the operational service standards of the scheme can lead to an operator being deregistered as an operator of a local service and therefore unable to provide services in that area

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(see sections 6(7ZA) and 6L of the 1985 Act, as added by section 37 of the Act). It is also open to the traffic commissioner to issue penalties under section 39 of the 2001 Act (as amended by paragraph 3(4) of the schedule of the Act) for non-compliance.

117. However, some types of services may be exempted from complying with partnership schemes. For example, it would be inappropriate for tour operators or community bus permit holders who stop in the area of a partnership scheme to have to comply with the service standards set for operators of local services. Regulations made under section 3M will set out the types of service that local transport authorities may decide to exempt from a scheme and can further provide that some types of service must be exempted.

Service standards – inserted [sections 3C](#) and [3D](#)

118. Section 3C sets out what may be agreed by way of a service standard for inclusion in a partnership scheme. These standards may be in respect of almost any aspect of the service, from the buses used to provide the service, setting a maximum level for the fares that may be charged in certain cases through to design of tickets used.
119. Operators of local services in a scheme's area will be bound by the scheme and the service standards contained in it. That will be the case even if a given operator did not participate in the preparation of the scheme and objected to it being made (a voting mechanism which is subject to a requirement for a sufficient number of persons to object).
120. There are two categories of service standard: route service standards (see section 3C(1)(a)) and operational service standards (see section 3C(1)(b)).
121. A 'route service standard' is one which relates to the frequency and timing of a particular service or, a particular service and other local services taken together (for example, where there are several services operating in an area, the route requirement can set frequency or timing requirements for a service which take into account there being other options available for bus users).
122. It is possible that, due to an increase in the number of operators, it may become impossible for a route service standard which, for example, imposes a maximum frequency of services, to be complied with. For example, it may be that services on a route are limited to operating four times an hour and there are now five operators each wishing to provide an hourly service.
123. In those circumstances, section 3D provides that the local transport authority which made the partnership scheme must modify the route service standard in such a manner as is necessary to make it possible for each registered operator to provide a service. This modification is a variation of the partnership scheme but, unlike other variations, the limited circumstances and the need to ensure that new operators are not prevented from entering the market on this ground, means that the full procedure for variation<sup>4</sup> does not need to be complied with. However, the section does contain a power enabling the Scottish Ministers to make regulations providing for the procedure to be followed before a modification may be made. Such regulations could include the requirement of notice being given or a consultation being carried out with persons who are likely to be affected.
124. The regulation-making power also anticipates that the effect of the modification may be postponed. For example, if the operators are able to agree a means of complying with the service standard without the need for a modification, that may be a preferable outcome.
125. An 'operational service standard' is a standard which relates to anything other than the timing or frequency of a service. Subsection (3) offers some examples of what may be imposed but it is not an exhaustive list (i.e. a standard could relate to other matters than those listed). These service standards can therefore cover a wide variety of different

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<sup>4</sup> See inserted section 3H, schedule A1 and the material on variations elsewhere in the document.

types of requirements that operators will have to comply with if they wish to run a service in the area of the partnership scheme.

126. Section 37(2)(a) of the Act includes a provision amending the 1985 Act which requires that service standards have to be recorded with the particulars of the service that are registered. This is to help ensure that the service standards are met.

#### Making partnership plans and schemes to implement them

127. Section 3A(1) enables a local transport authority<sup>5</sup> to make a partnership plan when it considers it appropriate to do so. This is a broad test which gives the local transport authority discretion as to when they wish to make a partnership plan. In practice this will be informed by discussions with the operators of local services in the area and those in the community using those services.
128. Section 3B(1) requires the making of at least one scheme to implement a partnership plan.
129. To make a partnership scheme the local transport authority must be satisfied that the scheme will contribute to the implementation of the policies that are in the partnership plan itself and their relevant general policies (section 3B(6)). In a situation where there are two or more local transport authorities acting jointly, each must be satisfied that the scheme will contribute to the implementation of their own relevant general policies.
130. In addition, the local transport authority have to be satisfied that the scheme will either bring benefits to users of the services by improving the quality or effectiveness of the services or otherwise reduce or limit traffic congestion, noise or air pollution.

#### Procedure for making a partnership plan or scheme - [Part 1](#) of inserted schedule A1

131. To make a partnership plan and scheme or a partnership scheme or schemes in respect of an existing plan, the local transport authority must follow the procedure set out in Part 1 of schedule A1. That procedure involves giving notice to and consulting a range of interested people at different stages in the process. The process also gives operators of local services a right to be involved in the preparation of the partnership plan and the scheme. This collaborative working element recognises the intrinsic role that operators have in delivery of service improvements under any partnership plan and scheme that is put in place. Operators do not, however, have to participate in the preparation process if they do not want to.
132. Another significant aspect of the procedure is that the operators of local services in the area of a proposed partnership plan or scheme are given an opportunity to object to a draft partnership plan or scheme (paragraphs 4 and 5 of schedule A1). If a sufficient number of such operators object, the scheme cannot proceed and the local transport authority will either need to revise it and go through the process again or start again with a new proposal.
133. What will constitute a sufficient number of operators to prevent a partnership proposal from progressing will be set out in regulations (see Part 4 of schedule A1). This reflects that there will be a wide range of possible circumstances that need to be covered, taking into account both the number of operators and their share in the market, and that there may need to be regular updates to reflect different trends in how bus services operate.
134. The process also includes an opportunity for the local transport authority to modify the proposed partnership plan or scheme before formally making the plan or scheme. This is likely to arise where the consultation that has been carried out has raised issues that need to be addressed. Paragraph 7 of schedule A1 governs the procedure for this. Again the local transport authority must give notice of the modifications to persons with an interest and give the operators of local services an opportunity to object to the partnership plan or scheme as modified.

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<sup>5</sup> Local transport authority is defined in section 82(1) of the 2001 Act. As explained at paragraph 156 below, two or more local transport authorities may act jointly to put in place a partnership plan and scheme.

135. Finally, once the partnership plan or scheme has been made, the local transport authority must give a notice confirming that fact within the period of 14 days starting on the day after the partnership plan or scheme was made. The plan or scheme will not have effect if this notice is not given within the time period.

**Traffic regulation orders – inserted [section 3E](#)**

136. In some cases, to deliver what is proposed under a partnership plan or a scheme, it may be necessary for a traffic regulation order to be made. In many cases, the local transport authority will be the traffic authority and so will be able to proceed on that basis. However, for those roads where the traffic authority is the Scottish Ministers (within the meaning of section 121A of the Road Traffic Regulation Act 1984), section 3E of the 2001 Act requires that the creation, variation, postponement or revocation of a partnership scheme will have to be made with the local transport authority and the Scottish Ministers acting jointly.
137. In practice, this means that at the point it is identified that such a traffic regulation order is required (perhaps as part of the preparation of a partnership scheme), it will be necessary for the local transport authority to contact the Scottish Ministers in relation to the proposal and involve them in the process for finalising what is to be in the partnership scheme. The Scottish Ministers will become akin to a local transport authority at that point and will be a party to the final partnership scheme as made or varied. The precise working arrangements between the local transport authority and the Scottish Ministers will vary from scheme to scheme.
138. Paragraph 1 of the schedule of the Act amends section 1 of the Road Traffic Regulation Act 1984 to enable the local transport authority to make the necessary traffic regulation order. To do so they must have the consent of the Scottish Ministers.

**Postponement – inserted [section 3G](#)**

139. A local transport authority may also postpone the coming into operation of all or part of a partnership scheme by up to 12 months, or for such different period as may be specified in regulations made by the Scottish Ministers. This may be useful where there are unexpected circumstances which delay the provision of a facility or a measure or operators need more time to adapt to a new service standard. The procedure for postponing a partnership scheme (or any part) is set out in paragraphs 9 and 10 of schedule A1.

**Variation and revocation of partnership plans and schemes – inserted [sections 3H](#) and [3I](#) and [Parts 2](#) and [3](#) of inserted schedule A1**

140. Sections 3H and 3I set out the situations where a local transport authority may undertake a process to vary or revoke a partnership plan or a scheme.<sup>6</sup>
141. A partnership scheme may only be varied under section 3H where the local transport authority are satisfied that the scheme, as varied, will contribute to the implementation of the policies that are in the partnership plan itself and the relevant general policies of the local transport authority. In a situation where there are two or more local transport authorities working together, each must be satisfied that the variation will contribute to the implementation of their own relevant general policies.
142. In addition, the local transport authority have to be satisfied that the scheme as varied will either bring benefits to users of the services by improving the quality or effectiveness of the services or otherwise reduce or limit traffic congestion, noise or air pollution.
143. The variation of schemes specifically allows for new local transport authorities to join an existing partnership plan. This may be where services operate across the areas of the authorities or if the authorities wish to promote consistency across a region. In those circumstances the new authority (the prospective authority) must also be satisfied

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<sup>6</sup> It is also possible to vary or revoke a partnership scheme where the scheme itself provides for that. See section 3B(10) and the further explanation elsewhere in the document.



that the scheme as varied will contribute to the implementation of the policies of the partnership plan they are joining and their relevant general policies and bring benefits to service users or reduce or limit traffic congestion etc. in the same way as they would if they were making a plan. This replicates the situation that would arise if the prospective authority were proposing a new partnership plan for their area.

144. Part 2 of schedule A1 sets out the procedure for varying a partnership plan or scheme under section 3H. This follows a similar approach to that for making a partnership plan or a scheme in the first place with notices being given, operators having an opportunity to object to the variation or revocation and a confirmatory notice being given at the end. As with making a scheme, it is possible for an authority to postpone the coming into operation of a variation or a part of a variation for up to 12 months, or for such different period as may be specified in regulations made by the Scottish Ministers.
145. Subsection 3I provides that a partnership plan or a scheme may be revoked where the local transport authority consider it appropriate to do so. Where a partnership plan is revoked, the scheme or schemes that are in place to implement it must also be revoked. Similarly, if all the schemes relating to a partnership plan are to be revoked, the partnership plan itself must also be revoked.
146. Part 3 of schedule A1 sets out the procedure for revoking partnership plans and schemes. There are fewer steps to this procedure (in that there is no need to prepare the revocation or modify the proposals) but operators still have an opportunity to object to the revocation. If a sufficient number object, the partnership plan and schemes may not be revoked.

Variation or revocation in accordance with the terms of a partnership scheme –  
inserted [section 3B\(10\)](#)

147. As part of a partnership scheme, a local transport authority and operators may decide to include provision for the scheme to be varied or revoked if certain conditions are met or events occur. For example, a scheme could provide that it will be revoked (or become revocable) if the number of users of the service do not meet the specified expectations within a certain time period. In this situation, the scheme will set out what is to happen and what process is to be followed.
148. The Scottish Ministers may make regulations under section 3M about the types of situations where this method of variation and revocation is available (or not available) and the process which may or must apply.

Competition test

149. Paragraph 3(2) of the schedule of the Act amends the competition test in section 37 of the 2001 Act to ensure it is applied whenever a local transport authority is considering making or varying a partnership scheme. That reflects the potential impact that such a scheme has in relation to the bus services market in an area. Where a scheme would have a significantly adverse effect on competition and that effect cannot be justified by reference to the benefits to be gained, the scheme cannot go ahead.
150. As a further competition safeguard, the Competition and Markets Authority are mandatory consultees at a number of stages in the process of making and varying partnership plans and schemes.

Reports on partnership schemes

151. Inserted section 3J requires each local transport authority to prepare an annual report on the effectiveness of each of the partnership schemes made by the authority which are still in force. Where the local transport authority are, in fact, a number of local transport authorities acting jointly it will be sufficient for one of them to report on the scheme, but the duty to co-operate in section 47 of the 2001 Act combined with the effect of inserted section 3L(3) will mean each may be required to contribute to the report.

Provision of information

152. Inserted section 3K enables a local transport authority to require relevant information from operators of local services when the authority is exercising functions in relation to preparing and making a BSIP plan or scheme; reviewing the effectiveness of a plan or scheme or determining whether and how to vary or revoke a plan or scheme. What constitutes relevant information for these purposes will be set out in regulations made by the Scottish Ministers and those regulations may specify circumstances in which information may not be required by the local transport authority.
153. Information required under section 3K may only be used for the specific purpose for which it was gathered. It is an offence to disclose this information other than to permitted persons (see subsection (8)). The permitted persons are a local transport authority, any person providing services to the local transport authority in connection with the function being exercised, and where section 3E applies (that is, where the Scottish Ministers are required to act jointly with the local transport authority), the Scottish Ministers.

#### Guidance

154. Section 79 of the 2001 Act, as amended by paragraph 3(6) of the schedule of the Act, will require a local transport authority to have regard to any guidance issued by the Scottish Ministers in relation to the authority's exercise of the functions relating to a BSIP. This is intended to provide best practice advice in relation to the new provisions and regulations.
155. Any guidance issued must be published.

#### Multi-authority partnership plans – inserted [section 3L](#)

156. While the majority of the provisions simply make reference to a local transport authority making a partnership plan, it is open to 2 or more such authorities to act jointly to make a partnership plan and the necessary scheme or schemes. In those cases, where there is a reference to the area of local transport authority which is a combination of local transport authorities acting jointly, it is to the combined area of all of them. However, a reference to the relevant general policies<sup>7</sup> of a local transport authority is a reference to the relevant general policies of each of the local traffic authorities which are acting together.
157. Where two or more local transport authorities choose to work together to make a partnership plan, it will be for them to decide how best to achieve that administratively. This is supported by the duty in section 47 of the 2001 Act (as amended by paragraph 3(4) of the schedule of the Act) which requires authorities to co-operate in relation to BSIP arrangements.
158. However, section 3L(3) confirms that once the authorities start acting jointly in respect of a partnership plan or scheme, they must continue to do so for the life of the partnership plan or scheme. For example, it would not be open to one authority to revoke the partnership plan without the co-operation of the other authorities.

#### Further provision – inserted [section 3M](#) and [Part 4](#) of inserted schedule A1

159. Section 3M confers power on the Scottish Ministers to make regulations about the BSIP arrangements. The regulations are expected to provide further details on a broad range of matters from the required content of a partnership plan or a scheme as well as in respect of a number of procedural matters.
160. Regulations made under Part 4 of schedule A1 will set some important aspects of the procedure for deciding if a partnership plan or scheme may go ahead (particularly in relation to which operators qualify as having a right to object). However, the nature of the material is such that it may need to be fairly specific to operate effectively and it is considered more appropriate that this is therefore left to regulations to enable adjustment and fine tuning in light of experience.

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<sup>7</sup> Defined in section 48 of the 2001 Act.

161. By virtue of section 81 of the 2001 Act, regulations made under section 3M may make different provision for different cases and classes of case any may include incidental, supplementary, consequential saving or transitional provision. This will allow the regulations to differentiate between the different types of operations and circumstances that exist and make tailored provision where necessary.
162. Further, section 81(3) provides that regulations under section 3M will be subject to the negative procedure. Section 81(4) (as amended by the schedule to the Act) provides that regulations made under paragraph 26 of schedule A1 will be subject to the affirmative procedure.

#### Interpretation

163. Section 48 of the 2001 Act is amended by paragraph 3(5) of the schedule of the Act to define a number of words and expressions for the purpose of the sections relating to BSIPs. The paragraph also removes redundant expressions relating to quality partnership schemes.

#### Registration of local service and functions of traffic commissioner – [section 37](#)

164. Section 37 of the Act makes a number of changes to the 1985 Act to deal with the implications of a BSIP plan and scheme being in place on the registration of local services and the functions of the traffic commissioner.
165. Several of the changes made in section 37 are aimed at ensuring that operators who are not in a position to comply with operational service standards are either refused registration under section 6 of the 1985 Act or are at risk of having such a registration cancelled if they do not comply. This therefore prevents operators from providing services which do not meet the imposed operational service standards and represents a significant aspect of the means by which partnership schemes are enforced.

#### Application for registration where partnership scheme in operation – inserted section 6K of the 1985 Act

166. Section 6K of the 1985 Act caters for situations where a partnership scheme has imposed an operational service standard on a local service and a person is either applying to be registered to provide that service or to vary an existing registration that they have in respect of that service.
167. The section requires the traffic commissioner to refuse such an application where the traffic commissioner considers that the applicant is unlikely to be able to comply with the service standard in relation to the services. The traffic commissioner does not have any discretion in this respect.

#### Cancellation of registration when operational service standards not met – inserted [section 6L](#)

168. Section 6L (read with the new subsection (7ZA) of section 6) enables the traffic commissioner to cancel a registration in circumstances where the traffic commissioner considers that an operator is not providing a registered service in accordance with an operational service standard that has been imposed in relation to the service (or services) that the operator provides.
169. It is worth noting that the wording of subsection (2) gives the traffic commissioner discretion about cancelling the registration in order to enable other means of resolving the situation to be explored first (including the imposition of penalties or attaching conditions to the registration).

#### Appeals – inserted [section 6M](#)

170. This section provides the Scottish Ministers with the power to make regulations for appeals against service standards decisions.

#### Scrutiny of operation of bus services improvement partnership – inserted [section 6N](#)

171. Section 6N of the 1985 Act applies where a BSIP scheme is in operation, and it appears to the traffic commissioner that the local transport authority may not be complying

with their obligations under the scheme. In these circumstances, the commissioner may investigate the local transport authority's actions and require the provision of information to support the investigation within such period as the commissioner specifies when requiring the information.

172. Where the commissioner has carried out an investigation, the commissioner must prepare and publish a report on the investigation. The report must set out whether the commissioner considers that the local transport authority is complying with its obligations under the scheme. If the commissioner is not satisfied, the commissioner may make appropriate recommendations, including specifying remedial actions that should be undertaken by the local transport authority.

## **Local services franchises**

### **Introduction**

173. Section 38 of the Act introduces a suite of new provisions into the 2001 Act (section 13A to section 13T) to enable a local transport authority<sup>8</sup> to create and operate local bus services under a franchising model. The model will involve 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 framework area.
174. A franchising framework under the new provisions in the 2001 Act will have the effect of displacing the standard arrangements for providing local services within the framework area and will prevent operators from providing services in the area otherwise than under a franchise agreement (subject to a few exceptions which are detailed below). Those operators who do enter into franchise agreements to provide services within the scheme will therefore have the exclusive right to operate the local services specified in their agreement.
175. Because of the implications of making a framework, the local transport authority will be required to carry out a comprehensive assessment of the suitability and viability of adopting the proposed model before it is adopted. Many of the provisions in the new chapter 2 are directed at ensuring that this assessment takes place. The chapter also makes provision for an independent audit of the financial implications of any proposed framework as well as requiring that an independent panel must approve the making of the framework. Approval is also required for a framework to be varied or revoked.
176. The franchising model adopted is an update on the Quality Contract approach of the 2001 Act which the new provisions replace. While all the provisions relating to Quality Contracts have been replaced, there are several procedural similarities between the processes for establishing a franchising framework and a Quality Contract scheme so aspects of the process should be familiar. Others have been added to improve the assurance process and, so far as possible, attempt to improve the likely effectiveness of franchising frameworks.
177. Where the new model differs significantly from the Quality Contract model is in the tests that must be satisfied before the framework may be made. Section 13(1) of the 2001 Act allowed a Quality Contract scheme to be made only if:
- it was necessary for the purpose of implementing the local transport authority's relevant general policies in the area to which the proposed scheme related; and
  - the proposed scheme would implement those policies in a way which was economic, efficient and effective.

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<sup>8</sup> Local transport authority is defined in section 82(1) of the 2001 Act. As explained at paragraph 233, two or more local transport authorities may act jointly to put in place a franchising framework.

178. Under the new franchising model these tests have been removed. Instead the statutory assessment process will require the local transport authority to consider (among other things) how and to what extent the franchising framework will contribute to the implementation of their relevant general policies and the independent panel will be able to assess whether, in those circumstances, the local transport authority have come to a reasonable conclusion in deciding to make such a framework. This change of approach is designed to increase the range of situations in which a local transport authority can consider the franchising model option.

### **Franchising frameworks and franchise agreements**

#### Franchising frameworks and franchise agreements – inserted sections 13A and 13B

179. These sections authorise the entering into of franchise frameworks and agreements, set out what a franchising framework is and the effect it has, and define what is meant by a franchise agreement for the purposes of the chapter.
180. Section 13A(3) sets out the main components of a franchising framework. It should, however, be read in conjunction with section 13D (proposed franchising frameworks) which contains a number of specific requirements about the content of a franchising framework.
181. A franchising framework gives a local transport authority the power to determine what local services are required in the area of the framework, set standards for those services and make decisions about what facilities may be required to support them. The framework can also specify types of service which should not be affected by the making of the framework (such as those of tour operators who use stops in the area but are not providing local services in the usual manner<sup>9</sup>).
182. Section 13B provides that by making a franchising framework, the local transport authority disapplies several of the provisions relating to the registration and provision of local bus services under the 1985 Act. Those provisions generally allow persons who hold the relevant PSV operator licences to register and operate local services in any area that they choose. Under franchising, only those operators who have entered into a franchise agreement will be permitted to provide services in the area of the framework<sup>10</sup>.
183. Operators who enter into franchise agreements may be paid for providing the services or indeed may pay for the opportunity to provide them. This reflects that in different prevailing market conditions it may be necessary to pay operators and in others that the profitability is such that operators will pay for the exclusive right to provide them. However, in a situation where a local transport authority spend money on entering into a franchising agreement, and that spending could be considered to be subsidising the provision of services under section 88(1) of the 1985 Act, section 13A(7) disapplies the requirements contained in sections 88 to 92 which would otherwise require to be satisfied to provide a subsidised service.
184. A franchising framework may be made in respect of the whole or any part of the local transport authority's area. Where two or more local transport authorities<sup>11</sup> work together to make a franchising framework, the franchising framework can cover all of the combined areas or a part of the combined area. This reflects the fact that local services frequently cross between the areas of local transport authorities.
185. Section 13A(2), read in conjunction with section 13C, requires a local transport authority to follow the process in chapter 2 in order to make a framework.

### **Process for making a franchising framework**

#### Overview of process to make franchising frameworks – inserted section 13C

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<sup>9</sup> See also section 13T(2)(c) which allows for the Scottish Ministers by regulations to require certain types of service to be exempted.

<sup>10</sup> Subject to certain exceptions explained at paragraph 190.

<sup>11</sup> The ability to act jointly is addressed in section 13S.

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186. Section 13C pulls together the key steps that a local transport authority must complete before it is able to make a franchising framework for its area. It must:
- prepare a proposed framework;
  - prepare an assessment of the proposed framework;
  - obtain a report from an independent auditor on the financial implications of the proposed framework;
  - consult on the proposed framework;
  - if necessary, modify the proposed framework and, where the modifications materially affect an aspect of the assessment, go through the process of assessment, audit and consultation again; and
  - obtain approval to make the proposed framework from a panel convened by the traffic commissioner for that purpose.

187. Paragraph (g) of subsection (1) confirms that a local transport authority must also comply with any additional procedural requirements that may be imposed by the Scottish Ministers under section 13T.

188. Once that approval is obtained, the local transport authority may make the framework and give the requisite notices under section 13K.

**Proposed franchising framework – section inserted 13D**

189. This section sets out the required content of a proposed franchising framework. Once prepared by a local transport authority, the proposed framework forms the basis of what the assessment that must be prepared under section 13E will consider and the subsequent independent audit and consultation.

190. It is possible for the franchising framework to specify certain local services (or descriptions of local services) within the area of the framework that are not to be subject to the franchising arrangements. Where it does so, section 13B(5) provides that the conditions for the exemption act as the prescribed particulars for registration under section 6 of the 1985 Act. This gives flexibility to cater for the various circumstances that may arise locally. For example, operators who are primarily providing longer distance services may be exempted so that they can continue to use stopping places within the area of a franchise agreement made under the framework.

191. Also of note is that subsection (4) requires that the franchising framework must provide for the revocation or variation of any existing partnership plan or any scheme made under such a partnership plan to the extent that there is an overlap between the framework and the scheme. This reflects that a partnership scheme under Chapter 1 of the 2001 Act (inserted by section 35 of the Act) cannot operate in respect of the same local services at the same time as a franchising framework (due to the exclusivity elements of the franchising model). It is possible, however, for a partnership plan and a franchising framework to co-exist in so far as the plan may cover a broad geographical area, within which franchising may operate in some areas. The ability to vary the partnership plan in subsection (4)(b) is to enable appropriate dovetailing of the two models.

192. The making of a franchising framework will have the effect of varying or revoking the existing partnership plan or scheme without any requirement to follow the processes which would otherwise apply in order to make such a variation or revocation (such as obtaining the consent of a proportion of operators providing services in the area). However, the processes for preparing, assessing and making a franchising framework involve extensive consultation and independent approval which provides procedural safeguards.

**Assessment of proposed franchising framework – inserted section 13E**

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193. Section 13E requires local transport authorities to prepare a detailed assessment of the proposed franchising framework. As noted in the introduction to this chapter, this assessment is adopted in place of the tests that exist for Quality Contract schemes in section 13(1) of the 2001 Act.
194. The assessment provides a basis for an independent audit of the financial implications of the framework and the overall approval of the framework (after consultation) by a panel convened by the traffic commissioner. A report on the assessment is also to be made available as part of the consultation on the proposed framework that the local transport authority is required to carry out.
195. In preparing the assessment, the local transport authority must have regard to the guidance issued by the Scottish Ministers in relation to such assessments (subsection (5)). It is anticipated that the guidance will be similar in many respects to existing best practice guidance around producing business cases in the public sector.
196. The local transport authority must also engage with operators in their area to obtain their views on the proposal. While this is short of formal consultation, it provides an opportunity to engage at an early stage in the process and test the viability of the proposed framework.
197. There are several mandatory elements to the assessment. To deal with each in turn:
- The local transport authority must believe that, at least to some extent, the proposed framework will contribute to the implementation of their relevant general policies. The exact way and extent to which it contributes to these policies then has to be set out in the assessment;
  - The local transport authority will have to consider the other available options and set out in the assessment why they consider franchising to be suitable;
  - There must be consideration of the impact of the framework on areas adjacent to the proposed framework. This sits with the duty of the local transport authority under section 47 of the 2001 Act (as amended by paragraph 3(4) of the schedule) to have regard to the desirability of making the framework jointly with the local transport authority of another area;
  - The assessment requires the local transport authority to set out their proposals for operating the framework and to seek to identify if there are concerns around finding operators for all of the local services to be provided under the framework. This practical element is of importance to the determination of whether, in practice, the framework is likely to be viable;
  - The financial implications have to be considered and set out. This key element is the primary basis of the independent audit and it is expected that the guidance from the Scottish Ministers will have a particular emphasis on this aspect;
  - The final mandatory element of the assessment is the local transport authority's proposal in relation to how they will review the effectiveness of the framework. As each framework will be tailored to local circumstances, it is expected that the local transport authority will need to identify relevant data in order to enable them to benchmark progress.
198. Additionally, subsection (3) confirms that a local transport authority may include such other elements in their assessment as they think fit. For example, this could relate to particular local circumstances which have a bearing on why the local transport authority consider it desirable to pursue a franchising framework.

**Audit of proposed franchising framework – inserted section 13F**

199. Section 13F sets out the requirements for an independent audit of the financial implications in the assessment. A local transport authority must obtain a report from

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such an auditor before they are able to proceed with the consultation on the proposed framework.

200. To be an auditor for these purposes, a person (which may be an individual or a firm) must be eligible for appointment as a statutory auditor under section 1211 of the Companies Act 2006. This includes, for example, appropriately qualified members of the Institute of Chartered Accountants of Scotland.

Consultation on proposed framework and any modifications – inserted sections 13G and 13H

201. Section 13G sets out the process for consultation in relation to the proposed franchising framework. This involves giving notice of the intention to make a franchising framework and then conducting a consultation with the persons listed in subsection (4).
202. Section 13H anticipates that the consultation may lead to the local transport authority making adjustments to the proposed framework. Subsections (3) and (4) provide that, where necessary, the local transport authority should repeat the assessment, audit and consultation steps of the process in respect of the framework.

Approval – inserted sections 13I and 13J

203. Sections 13I and 13J provide for a mechanism for a local transport authority to obtain approval for them to make their proposed franchising framework.
204. To do this, they must request that the traffic commissioner convene a panel for the purpose of approving the making of the proposed framework and provide the commissioner with a range of relevant information for passing to the panel.
205. On receipt of such a request, the traffic commissioner must give notice in such manner as the commissioner considers appropriate (for example, perhaps by publishing it in a local paper or putting it on its website) that the local transport authority are seeking approval and inform interested persons that they may make representation to the commissioner (who will then pass them on to the panel (see section 13J(2))).
206. Under section 13J, the traffic commissioner must appoint a panel to consider the application. The criteria and process for appointment to a panel will be set out in regulations made under section 13S.
207. It is open to the panel to approve the framework subject to the local transport authority making modifications to the approved framework before it is made (i.e. giving a conditional approval).

Making of franchising framework – inserted section 13K

208. Once the local transport authority have the approval of the panel, they may proceed with making the framework. They have 6 months from the date of approval to do so (and thereafter a year to put in place the necessary franchise agreements to implement it – see section 13Q). It is open to the local transport authority to postpone the coming into force of the framework under section 13M.
209. Within 14 days of the framework being made, the local transport authority must publish notice of having made the framework and send a copy of the framework as made to the traffic commissioner. The notice must set out where the framework can be viewed (for example, it may be in local libraries or online).
210. Subsection (5) sets out that a franchising framework comes into operation by reference to the local services contained in the framework and that there are two possibilities for commencement. Either, the framework comes into force at a date specified in the framework or (if no date is specified in the framework) it comes into operation at such date as is provided for in a franchise agreement which has been entered into under the framework in respect of the local service in question.



## **Entering into franchise agreements**

### Entering into franchise agreements – inserted section 13L

211. Once a local transport authority have made a franchising framework, they may start to enter into franchising agreements for the provision of local services under the framework. This process is governed by the procurement requirements set out in both EU legislation (EU Regulation 1370/2007) and domestic law.
212. Subsections (3) and (6) confirm that tenders may be accepted only from (i) operators who hold valid PSV operator licences which are not subject to conditions preventing them from operating the local services to which the tender relates, or (ii) operators who hold community bus permits.
213. Subsections (4) and (5) provide that whenever a local transport authority and an operator enter into a new franchise agreement, the local transport authority must give notice to the other operators who the authority think are likely to be affected and to the traffic commissioner.
214. The notice must contain details of the local services covered by the franchise agreement, the date when it is to come into operation and state for how long the agreement will last.
215. This notice will likely be of practical importance as the granting of a franchise agreement will mark the point at which provision of the local services in question will start to become restricted to the operator with the franchise agreement and this notice will make operators aware of that.

## **Operation, variation and revocation of franchising arrangements**

### Postponement of franchising framework coming into operation – inserted section 13M

216. In some circumstances, it may be necessary to postpone when a franchising framework is to come into operation as it relates to a particular local service. For example, this may be useful where unexpected events have occurred with the result that the preparations for launching a service are behind schedule. However, a local transport authority cannot postpone the coming into operation of a framework where the framework itself provides for its coming into force on a particular date. Where they need to do that, they should seek approval to vary the framework under section 13N.
217. Where the date of coming into force of the framework is determined by a franchise agreement, a local transport authority can postpone the date on which the framework (so far as relating to a local service) is to come into operation for up to a year. Before doing so, they must consult the operators who are likely to be affected by the decision, and the traffic commissioner. They must also then give notice in accordance with section 13M(4) of having gone ahead with the postponement. In a similar manner, they can postpone the coming into effect of a variation (in so far as relating to a local service).
218. The Scottish Ministers have power under subsection (5) to make regulations which may provide for a different maximum period of postponement.

### Variation or revocation of franchising frameworks – inserted sections 13N and 13O

219. Sections 13N and 13O provide a means for a local transport authority to vary the terms of a franchising framework or revoke one before it comes to its natural end.
220. For both variation and revocation the local transport authority must request the traffic commissioner to convene a panel to approve the variation or revocation and supply a range of information as part of an application to the commissioner for onwards transmission to the panel to enable it to make its decision. The traffic commissioner must thereafter publish a notice under section 13O(2) (read with subsection (3) of that section) inviting representations from persons with an interest and the traffic commissioner is obliged to pass them to the panel once constituted.

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221. In proposing a variation, it will be necessary for the local transport authority to consider many of the same issues as they did when proposing and assessing the framework in the first place. The documents that will result from that consideration are set out in subsection (3) of section 13N and form part of the application to the traffic commissioner. Where the local transport authority are proposing a variation which will have a material effect on the matters considered as part of the assessment prepared under section 13E, they may consider it necessary to carry out a new assessment of the framework (or a part of it) and, in those circumstances, the provisions around assessment, audit, consultation and modification apply to the variation as they applied to the original proposed framework by virtue of subsection (5). For minor variations, however, this will not be necessary.
222. The panel convened by the traffic commissioner has largely the same range of options in relation to its decision to approve a variation as it would have in relation to the making of a proposed framework. This includes, by virtue of section 13O(4)(b), the power to require the local transport authority to adjust the proposed variation.
223. In relation to revocations, the options available to the panel are slightly more restricted as there is no need for them to be able to require modifications to be made to a framework that is being revoked.
224. Once the panel has given approval, the variation or revocation must be publicised in the same manner as the making of a framework under section 13K.

**Reports on franchising frameworks – inserted section 13P**

225. A local transport authority must prepare an annual report on the effectiveness of the franchising framework. This obligation to report starts on first anniversary of the date when local services first start being provided under the franchising framework.
226. In preparing the report, the local transport authority have to consult such persons as they consider necessary to be able to assess the effectiveness of the framework and also must consider any other relevant representations which have been made to it relation to the period under review.
227. Once prepared, the report must be published in such manner as the local transport authority consider appropriate.

**Non-implementation of franchising frameworks – inserted section 13Q**

228. Section 13Q(1) acts as a long-stop provision to prevent franchising frameworks being made and left unimplemented for more than 12 months by providing for them to cease to have effect at that point. This also provides a means of extinguishing frameworks (short of formal revocation) where it transpires that franchise agreements cannot be entered into in respect of all the services in the framework (for whatever reason).
229. However, the framework is not extinguished if, at the time the framework would otherwise be extinguished, the local transport authority has applied for approval of a variation and the decision for that has not been made. In those circumstances, the expiry of the framework is suspended until either a decision is made refusing the variation (which will mean the framework ceases to have effect at that point) or, where the decision is to approve the variation, on a date six months after the date of approval (if the variation has not been implemented in the meantime by the local transport authority who sought it).
230. Subsection (4) enables the Scottish Ministers to make regulations amending the section to substitute a different period for when a franchising framework will expire. This is to enable the period to be adjusted in light of operational experience. Such regulations are subject to the affirmative procedure (see the amendment of section 81 of the 2001 Act in paragraph 3(7) of the schedule).

**Provision of information – inserted section 13R**

231. Section 13R enables a local transport authority to require relevant information from operators of local services when the authority is exercising functions in relation to preparing and making a franchising framework; reviewing the effectiveness of a framework or determining whether and how to vary or revoke a framework. What constitutes relevant information for these purposes will be set out in regulations made by the Scottish Ministers and those regulations may specify circumstances in which information may not be required by the local transport authority.
232. Information required under section 13R may only be used for the specific purpose it was gathered for and it is an offence to disclose this information other than to the permitted persons. The persons are a local transport authority, an auditor appointed under section 13F, any other person providing services to the local transport authority in connection with the function being exercised and the panel appointed under section 13J(2) or 13O(2).

#### Multi-authority franchising – inserted section 13S

233. While the majority of the provisions simply make reference to a local transport authority making a franchising framework or agreement, it is open to two or more such authorities to act jointly to make a franchising framework and the necessary agreements. In those cases, where there is a reference to the area of a local transport authority which is, in fact, a combination of local transport authorities acting jointly, it is to the combined area of all of them. However, a reference to the relevant general policies<sup>12</sup> of a local transport authority is a reference to the relevant general policies of each of the local traffic authorities which are acting together.
234. Where two or more local transport authorities choose to work together to make a franchising framework, it will be for them to decide how best to achieve that administratively. This is supported by the duty in section 47 of the 2001 Act (as amended by paragraph 3(4) of the schedule of the Act) which requires authorities to co-operate in relation to franchising frameworks.
235. However, section 13S(3) confirms that once the authorities start acting jointly in respect of a franchising framework, they must continue to do so for the life of the framework. For example, it would not be open to one authority to revoke the framework or any agreement without the co-operation of the other authorities.

#### Further provision about franchising arrangements – inserted section 13T

236. This section confers on the Scottish Ministers a power designed to supplement the provision in the chapter with matters of administrative and procedural detail. Examples of the kind of thing in contemplation are listed in subsection (2). Subsection (3) anticipates that there is likely to be a particular requirement to deal with the transitional arrangements for the start, variation and end of franchising framework arrangements.

### **Information relating to services**

#### Provision of service information when varying or cancelling registration – [section 39](#) Overview

237. Section 6 of the 1985 Act and supporting regulations<sup>13</sup> deal with the registration of local services. The section and regulations also deal with the circumstances in which such a registration can be varied or cancelled. Without this registration, a local service cannot be provided by an operator.
238. Section 39 of the Act inserts a series of three new sections into the 1985 Act. These provisions enable any affected authority (see paragraphs 254 to 256 below) to obtain specific service information from an operator who proposes to vary or cancel the registration of a local service and, in limited circumstances, share it with other people who may wish to bid to provide a similar service to the one being withdrawn or varied.

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<sup>12</sup> Defined in section 48 of the 2001 Act.

<sup>13</sup> Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001 ([SSI 2001/219](#)).

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Where an operator does not provide the information (or does not provide it timeously) the Scottish Traffic Commissioner will be able to impose a financial penalty on the operator (see section 39(2) of the Act).

239. These new powers to obtain and share information are designed to facilitate more effective competition in the bus market and follows recommendations made by the Competition Commission. The Policy Memorandum which accompanied the Bill for this Act provides full details about this aspect.
240. The new powers should be contrasted with a similar power to obtain information in section 43 of the 2001 Act, which enables a local transport authority to request information at any time in connection with the formulation of their relevant general policies. Though the section 43 power enables a local transport authority to request similar information about passengers, journeys and fares as that under the new provision, it does not allow for requesting revenue information (see paragraph 244 below), nor does it have any particular sanction attached to it for failure to comply. Further, it only requires operators to provide information that they currently have. The new power, however, backed by the ability to make regulations under section 6ZC, requires operators to ensure that they have appropriate records and that they are in a position to share them prior to deciding to change or discontinue a service. If they fail to do so, they may find themselves subject to a variety of sanctions.
241. Further, the material obtained under the section 43 power may not be disclosed where it relates to the affairs of an individual or business during the lifetime of the individual or the existence of the business. Although there are some exceptions (set out in section 43(5)), this is a significant limitation.
242. An additional constraint is that the section 43 power can only be used in relation to the formulation of general policies: it does not assist local transport authorities (and others with similar duties) where they are dealing with a specific service withdrawal and they need to secure an alternative.

Provision of service information when varying or cancelling registration: inserted [section 6ZA](#)

243. Inserted section 6ZA(1) sets out that the remainder of that section applies where the operator notifies an affected authority of its intention to cancel or vary a registered local service.<sup>14</sup> The affected authority (or authorities) then may require the operator to provide them with information about the service (subsection (2)). Regulations made under section 6ZC may, however, provide for exceptions to this rule; for example, if the variation is to add stops or increase the frequency of service it would be inappropriate (and unnecessary) for the authority to look at the specific service information. The regulations may also prescribe the time period which the authority has to make the requirement.
244. The information that the affected authority can request will be fully set out in regulations, but it will be limited (by virtue of section 6ZA(3)) to two types of information, namely:
- information about passenger numbers, journeys and fares (which is sometimes referred to in the industry as “patronage information”); and
  - information about the revenue obtained by the service (the “revenue information”).
245. Further restrictions on the information that an authority may seek are set out in subsection (4).
246. The first restriction (subsection (4)(a)) is that they may only request the information in connection with their functions under section 9A of the Transport Act 1968 (where

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<sup>14</sup> Notification is a requirement under the regulations governing the registration of local services (currently the Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001.

the affected authority is SPT) or under section 63 of the 1985 Act (where the affected authority is a local transport authority or a Transport Partnership other than SPT).

247. Under section 9A of the 1968 Act, a Passenger Transport Authority must formulate general policies with respect to the descriptions of public passenger transport services the Authority considers is appropriate for the Passenger Transport Executive to secure for their area for the purpose of meeting any public transport requirements within their area which in the view of the Authority would not be met apart from any action taken by the Executive for that purpose. This is supplemented by a duty on the part of the Executive to secure the provision of such services as they consider it appropriate to secure for meeting any public transport requirements within their area in accordance with those policies. The functions of the Strathclyde Passenger Transport Authority and the Strathclyde Passenger Transport Executive under section 9A were transferred to SPT by order made under section 10 of the Transport (Scotland) Act 2005.
248. Under section 63 of the 1985 Act, the functions relate to the authority's duties to (i) secure that there are sufficient services to meet the public transport requirements in their area which would not be met without action being taken by the authority and (ii) formulate from time to time general policies as to the descriptions of services that the authority proposes to secure in terms of that duty.
249. The information sought must therefore relate to the authority's obligation to ensure that there is a sufficient service provision and the formulation of general policies in connection with that. This may manifest itself in different ways. For example, it makes it clear that an authority cannot request information in relation to their wider transport planning duties or for the purposes of informing a proposal to make a franchising framework under section 13A of the 2001 Act. However, it will inform decisions about how they comply with their duty to provide services to meet public transport needs in their area, which might include providing subsidies for particular services.
250. The second restriction (subsection (4)(b)) is that the authority can require information in respect of the preceding 12 months only (or a shorter period if the service has not been operating that long). Section 6ZC provides that the Scottish Ministers may, however, adjust the length of that period by regulations.
251. Subsection (5) deals with operators' responses to requirements for information and has two elements.
252. The first element is that an operator must respond with the required information within a period to be set by regulations. That period is expected to start with the day that the operator receives the requirement from the authority.
253. The second element is that an operator can, at the same time as sending the required information, also request that the authority do not disclose it on the basis that disclosure of the information is likely to harm the operator's business. In making such a request they are required to provide evidence of their assertion. This evidence will be assessed by the authority under inserted section 6ZB(6). If they decide that disclosure of the information is likely to harm the operator's business they cannot disclose it.
- Subsection (6) of [section 6ZA](#) defines an affected authority.
254. The authorities that can be affected are local authorities and regional Transport Partnerships which have functions under section 9A of the 1968 Act or section 63 of the 1985 Act<sup>15</sup> (see paragraphs 247 and 248 above). For these purposes, it is worth noting that section 63 is not available to a local authority whose area forms part of the Strathclyde Passenger Transport area (the area served by SPT).

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<sup>15</sup> While not obvious on the face of the 1985 Act, section 10 of the Transport (Scotland) Act 2005 allowed for the transfer (by order) of certain transport functions to regional Transport Partnerships. Three such orders have been made to date. The first of these orders transferred a number of functions (including the function in section 9A of the 1968 Act) to SPT. The remaining two orders transferred a number of functions (including the function in section 63 of the 1985 Act) to SWestrans and to ZEtrains respectively.

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255. For these authorities to be affected, they must have a bus stop in their area (or region) somewhere on the route of the service which the operator is proposing to vary or cancel.
256. It is therefore possible for more than one authority to be an affected authority and the disclosure requirements in section 6ZB reflect that by allowing for sharing of information between such authorities. It is expected that in such cases the authority which is most affected by the proposal will take the lead in requesting the information, but there is no bar on all affected authorities from doing so.

#### Sanctions

257. Where an operator fails to comply with the duties in section 6ZA, the Scottish Traffic Commissioner will be able to take enforcement action against them.

#### Provision of service information: extent of permissible disclosure: inserted section 6ZB

258. This section sets out the limited circumstances in which information obtained by an affected authority may be disclosed. In doing so, it draws a distinction between the two different types of information, patronage and revenue, with the latter having a narrower group of potential recipients and additional controls placed on what may be disclosed. In both cases, however, the information may be shared with other affected authorities (who may not then disclose the information to anyone else).
259. Subsection (2) deals with the disclosure of patronage information. This may be shared with an economic operator (see paragraph 265 below) in connection with an invitation to submit a tender to provide a supported service to replace or supplement the service being varied or cancelled by the operator. This then will allow the authority to share the information with other operators who may wish to make a bid.
260. The section also provides the Scottish Ministers with a basis for making regulations to extend the people to whom patronage information may be disclosed. Any extension would be subject to the consultation requirements set out in that section and described below.
261. Subsections (3) and (4) deal with the disclosure of revenue information. Like patronage information, the affected authority are able to share information with an economic operator in connection with an invitation to submit a tender to provide a supported service to supplement or replace the service being varied or cancelled. However, the information has to be aggregated into an annual figure to preserve commercial confidentiality. The authority are also prevented from disclosing it where they have decided to take on the revenue risk for the service as there would be no practical benefit in its disclosure.
262. There are essentially two approaches to revenue risk in contracts for supported services. In the first, known as the “minimum cost approach”, the operator tenders for the whole cost of running the service and the authority keeps any revenue generated by passengers – so assuming the risk. In this way, the operator’s costs are completely covered by the authority regardless of how much revenue is actually generated by passengers. Any difference between estimated and actual passenger revenue will require to be absorbed by the authority. In the second approach, known as the “minimum subsidy approach”, the operator retains the revenue from passengers and tenders for the whole costs of operating the service less the estimated passenger revenue. As such, the local transport authority pays a fixed sum by way of subsidy and if actual passenger revenue falls short of estimates, that shortfall will be absorbed by the operator.
263. Subsections (6) and (7) deal with where an operator requests (under section 6ZA(5)(b)) for the information provided not to be disclosed if it considers that disclosure is likely to cause damage to its commercial interests. Where the affected authority decide that they agree with that assessment, subsection (7) confirms that they may not disclose the information. It also makes clear that the authority cannot disclose any information

which the operator has asked not to be disclosed until they have considered the evidence, made their decision and notified the operator accordingly.

264. Subsection (8) makes it an offence for an affected authority to disclose information which they are not permitted to disclose. Subsection (9) provides that the penalty for such a disclosure is a fine of up to level 5 on the maximum scale (currently £5,000). Further, subsection (10) sets out circumstances where, if the disclosure is attributable to an individual employed by the authority, that individual may also be prosecuted for the offence.
265. Subsection (11) contains the definitions of an economic operator and what is a supported service. It defines an economic operator as any person, public entity or group of persons or entities including any temporary association of undertakings that offers to provide local services on the market. Typically, this will be other bus companies.
266. A supported service is defined as being as one which is subsidised under section 9A(4) of the 1968 Act or section 63(5) of the 1985 Act.

Provision of service information: further provision - inserted [section 6ZC](#)

267. This section enables the Scottish Ministers to make regulations to provide further detail about the duties and processes in inserted sections 6ZA and 6ZB and also to provide for exceptions where the core duty to provide information will not apply.
268. Before making regulations under this section, the Scottish Ministers must carry out a consultation with the various groups who are most likely to be affected by changes to the system, including those who are representative of operators, passenger groups and affected authorities.
269. Subsection (3) amends section 43 of the 2001 Act (power to obtain information about local services). This amendment makes clear that if information requested under section 43 is provided with information requested under section 6ZA(2) of the 1985 Act, the exemption from the prohibition on disclosure of information in section 43(5) (f) does not apply and the information provided cannot be disclosed by virtue of that provision.

**Power to require information about local services – [section 40](#)**

Introduction

270. Section 40 adds a new section 35A to the 2001 Act. The provision confers a power on the Scottish Ministers to require bus operators, local transport authorities and the Scottish traffic commissioner to provide information in relation to local services. It also enables Ministers to require persons who are applying for registration of a local service under section 6 of the Transport (Scotland) Act 1985, or applying to vary or cancel such a registration, to provide information in connection with the application.
271. Creating the requirement by way of regulations offers the Scottish Ministers the ability to adapt the requirements to advances in technology and ensure that the level of technical specification is appropriate.

Information that may be required about services

272. Subsection (2) of section 40 restricts the Scottish Ministers to requiring information solely for the purpose of facilitating the provision of information to users (and potential users) of buses. This is a different purpose from the other powers to obtain information contained in the 1985 Act and 2001 Act<sup>16</sup>, which are focused on local traffic authorities being able to require information in respect of the formulation of their general policies in relation to bus transport or in connection with their duties to secure a suitable service. Further, information obtained under the other powers is more likely to be commercially sensitive and so is subject to strict limitations on its disclosure.

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<sup>16</sup> Such as section 43 of the 2001 Act or the new sections 6ZA, 6ZB and 6ZC of the 1985 Act being inserted by the Act.

*These notes relate to the Transport (Scotland) Act 2019  
(asp 17) which received Royal Assent on 15 November 2019*

273. The information that may be required under the new section is set out in subsection (3). There are two elements to this:
- information about routes, timetable, stopping places, fares and tickets (and changes to them); and
  - information about the operation of services including, in particular, real time information about services when they are running.
274. The power also enables the Scottish Ministers to require the information to be provided in a particular format (subsection (4)(c)) and to a particular standard (which may be a standard which changes over time (subsection (6))). The regulations may also require the information to be provided at a particular time or times (subsection (4)(b)). This may be immediately upon the information becoming available.
275. This range of information coupled with the ability to specify format means that the power can be used to create or support services such as Traveline Scotland or bus tracker applications. The provision in subsection (7) in relation to the disclosure of the information ensures that the Scottish Ministers are able to specify that the information can be used for these purposes without a charge to bus users for accessing it.
276. The provisions anticipate that it is likely that the local transport authority or traffic commissioner may be better placed to provide certain types of information than operators and so the power caters for that too.

**Recipients of the information**

277. The regulations will specify to whom information is to be provided. By virtue of subsection (5), this may only be the Scottish Ministers, local transport authorities, the Secretary of State, or a specified person (most likely a company or statutory body) who is given responsibility for any system which makes information available to the public.

**Consequences of failure to comply**

278. Where a bus operator does not provide information required under the regulations the traffic commissioner may impose a penalty under section 39(1) of the 2001 Act (by virtue of the amendment of that section by section 40(3) of the Act). The penalty that may be imposed is capped in accordance with section 39(3).

**Consultation**

279. Before making any regulations under this section, the Scottish Ministers must consult a range of interested persons, including those bodies that they think represent the interests of operators of bus services, bus users and local transport authorities. The Scottish Ministers must also consult the Competition and Markets Authority and such other people as they consider appropriate.