



Transport (Scotland) Act 2001

2001 asp 2

PART 2

BUS SERVICES

[^{F1}CHAPTER 2]

[^{F1}LOCAL SERVICES FRANCHISES]

Financial and competition provisions

36 Agreements providing for service subsidies

(1) Part V of the 1985 Act (expenditure on public passenger transport services) shall be amended as follows.

(2) In section 89 (obligation to invite tenders for subsidised services)—

- (a) in subsection (7), after “section” there shall be inserted “ for the provision of services other than those mentioned in subsection (9) below ”; and
- (b) after subsection (8) there shall be inserted—

“(9) An authority issuing an invitation to tender under this section for the provision of any service for the carriage of passengers by road which requires, for the purposes of Part IV of this Act, a PSV operator’s licence, shall, in determining whether to accept a tender submitted in response to the invitation or which (if any) of several such tenders to accept, have regard in particular to—

- (a) a combination of economy, efficiency and effectiveness;
- (b) the implementation of—
 - (i) their local transport strategy; and
 - (ii) the general policies formulated by them under section 63(2)(b) of this Act or section 9A(1) of the Transport Act 1968 (c.73), as the case may be; and
- (c) the reduction or limitation of traffic congestion, noise or air pollution.

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- (10) In subsection (9)(b)(i) above, “local transport strategy” has the meaning given by section 82(1) of the Transport (Scotland) Act 2001 (asp 2).”.
- (3) In section 90(3) (duty of authority to publish reasons for considering that payment of subsidies to secure service in accordance with accepted tender is conducive to achieving most effective and economic application of funds), for the words from “is conducive” to the end there shall be substituted “ accords with section 89(7), or as the case may be (9), of this Act. ”.
- (4) In section 92(1) (authorities subsidising public passenger transport services not to inhibit competition between persons providing or seeking to provide such services in their area), for the words from “so” to “provide” there shall be substituted “ have regard to the interests of the public and of persons providing ”.

37 Competition test for exercise of bus functions

- (1) The functions to which this section applies are those of—
- (a) making and varying [^{F1}partnership schemes];
 - (b) making and varying ticketing schemes; and
 - (c) inviting and accepting tenders under section 89 or 91 of the 1985 Act (subsidised services).
- (2) For the purposes of this section an authority or authorities propose to exercise a function to which this section applies—
- (a) in the case of the function of making or varying a [^{F2}partnership scheme], once notice of a proposal to make or vary it has been given under [^{F3}paragraph 6(2) or, as the case may be, 14(1) of schedule A1] of this Act;
 - (b) in the case of the function of making or varying a ticketing scheme, once notice of a proposal to make or vary it has been given under section 30(1) of this Act; and
 - (c) in the case of the function of inviting or accepting tenders under section 89 or 91 of the 1985 Act, once it is proposed to invite tenders under section 89(2) or 91(3) of that Act or to accept or not to accept a tender under section 89 of that Act.
- (3) For the purposes of this section the exercise or proposed exercise of a function to which this section applies meets the competition test unless it—
- (a) has or is likely to have a significantly adverse effect on competition; and
 - (b) is not justified by subsection (4) below.
- (4) The exercise or proposed exercise of a function is justified if—
- (a) it is with a view to achieving one or more of the purposes specified in subsection (5) below; and
 - (b) its effect on competition is or is likely to be proportionate to the achievement of that purpose or any of those purposes.
- (5) The purposes referred to in subsection (4) above are—
- (a) securing improvements in the quality of vehicles or facilities used for or in connection with the provision of local services;
 - (b) securing other improvements in local services of substantial benefit to users of local services; and

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- (c) reducing or limiting traffic congestion, noise or air pollution.

Textual Amendments

- F1** Words in s. 37(1)(a) substituted (4.12.2023) by [Transport \(Scotland\) Act 2019 \(asp 17\), s. 130\(2\), sch. para. 3\(3\)\(a\)](#) (with s. 126); S.S.I. 2023/250, sch.
- F2** Words in s. 37(2)(a) substituted (4.12.2023) by [Transport \(Scotland\) Act 2019 \(asp 17\), s. 130\(2\), sch. para. 3\(3\)\(b\)\(i\)](#) (with s. 126); S.S.I. 2023/250, sch.
- F3** Words in s. 37(2)(a) substituted (4.12.2023) by [Transport \(Scotland\) Act 2019 \(asp 17\), s. 130\(2\), sch. para. 3\(3\)\(b\)\(ii\)](#) (with s. 126); S.S.I. 2023/250, sch.

38 Grants to bus service operators

- (1) The Scottish Ministers may make grants to operators of eligible bus services towards their costs in operating those services.
- (2) The Scottish Ministers may make provision by regulations as to the method of calculation of grants.
- (3) Subject to any regulations under subsection (2) above, grants under this section shall be of such amount and subject to such conditions (including conditions requiring their repayment in specified circumstances) as the Scottish Ministers may determine.
- (4) A determination under subsection (3) above may be made either generally or in relation to particular cases or classes of case.
- (5) In this section “eligible bus services” means services of a class using public service vehicles (or such services using a class of public service vehicles) prescribed by regulations made by the Scottish Ministers.
- (6) Section 92 of the Finance Act 1965 (c.25) (grants towards duty charged on bus fuel) and section 111 of the 1985 Act (unregistered and unreliable local services: reduction of fuel duty grant) are repealed.

Commencement Information

- I1** S. 38 wholly in force; s. 38 not in force at Royal Assent see. 84(2); s. 38(2) in force at 1.4.2001; S.S.I. 2001/132, art. 2 Sch.; s. 38 in force at 1.7.2002 insofar as not already in force by S.S.I. 2002/291 art. 2(a)

39 Penalties

- (1) Where the traffic commissioner is satisfied that the operator of a local service has, without reasonable excuse—
 - (a) failed to operate a local service registered under section 6 of the 1985 Act;
 - (b) operated a local service in contravention of that section or section [F43F(1) or 13B(1)(b) or (3)] of this Act; F5 ...
- [F6(ba) failed to comply with a requirement under section 6ZA of the 1985 Act,]
- [F7(bb) failed to comply with a requirement to provide information (including a requirement to provide it within a specified time or in a specified form) under section 3K(2) or 13R(2),]

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- (c) failed to comply with section 32(1) or 34(3) of this Act ^[F8]; or]
^[F8](d) failed to comply with a requirement of regulations made under section 181A of the Equality Act 2010,]
the commissioner may impose a penalty on the operator.
- (2) Subject to subsection (3) below, a penalty imposed under subsection (1) above shall be of such amount as the traffic commissioner thinks fit in all the circumstances of the case.
- (3) The amount of a penalty mentioned in subsection (2) above shall not exceed—
- (a) £550; or
 - (b) such other amount as the Scottish Ministers may by order specify, multiplied by the total number of vehicles which the operator is licensed to use under all the PSV operator’s licences held by him.
- (4) Any penalty imposed under subsection (1) above shall be payable to the Scottish Ministers.
- (5) Where a penalty has been imposed on an operator under subsection (1) above, the traffic commissioner shall forthwith give notice in writing to—
- (a) the Scottish Ministers; and
 - (b) the operator.
- (6) Any operator on whom a penalty has been imposed under subsection (1) above may appeal to the Transport Tribunal against the imposition of the penalty.
- (7) Any amount due under this section shall be recoverable as a civil debt.

Textual Amendments

- F4** Words in s. 39(1)(b) substituted (4.12.2023) by [Transport \(Scotland\) Act 2019 \(asp 17\), s. 130\(2\), sch. para. 3\(4\)\(a\)](#) (with s. 126); S.S.I. 2023/250, sch.
- F5** Word in s. 39(1) omitted (26.6.2018) by virtue of [Bus Services Act 2017 \(c. 21\), ss. 17\(6\)\(a\), 26\(2\); S.I. 2018/758, reg. 2](#)
- F6** S. 39(1)(ba) inserted (28.11.2022) by [Transport \(Scotland\) Act 2019 \(asp 17\), ss. 39\(2\), 130\(2\)](#) (with s. 126); S.S.I. 2022/332, reg. 2, sch.
- F7** S. 39(1)(bb) inserted (4.12.2023) by [Transport \(Scotland\) Act 2019 \(asp 17\), s. 130\(2\), sch. para. 3\(4\)\(b\)](#) (with s. 126) (as amended (27.11.2023) by S.S.I. 2023/347, regs. 1(1), 2(7)(a)); S.S.I. 2023/250, sch.
- F8** S. 39(1)(d) and word inserted (26.6.2018) by [Bus Services Act 2017 \(c. 21\), ss. 17\(6\)\(b\), 26\(2\); S.I. 2018/758, reg. 2](#)

40 Repayment of grants towards bus fuel duty

- (1) Section 111 of the 1985 Act (unregistered and unreliable local services: requirement to repay twenty per cent. of bus fuel duty grants) shall be amended as follows (until the coming into force of section 38(6) of this Act).
- (2) For subsection (1) there shall be substituted—
- “(1) Where the traffic commissioner for the Scottish Traffic Area is satisfied that the operator of a local service has, without reasonable excuse—
- (a) failed to operate a local service registered under section 6 of this Act;

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- (b) operated a local service in contravention of that section or section 8(4) or 22(1)(b) or (2) of the Transport (Scotland) Act 2001 (asp 2); or
 - (c) failed to comply with section 32(1) or 34(3) of that Act,
- he may make a determination to that effect.”.
- (3) In subsection (3), for the words “twenty per cent.” there shall be substituted “ such percentage as the traffic commissioner thinks fit ”.
- (4) After subsection (3) there shall be inserted—
- “(3A) The percentage determined under subsection (3) above shall be at least one per cent. but not more than twenty per cent.”.

Commencement Information

- I2** [S. 40](#) wholly in force at 1.7.2001; [s. 40](#) not in force at Royal Assent see [s. 84\(2\)](#); [s. 40\(1\)\(3\)\(4\)](#) in force at 1.4.2001 and [s. 40\(2\)](#) in force at 1.7.2001 by [S.S.I. 2001/132](#), [art. 2 Sch.](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 2 Ch. 3 applied in part by [2019 asp 17 s. 47\(1\)\(2\)](#)
- Pt. 2 Ch. 3 inserted by [2019 asp 17 s. 41\(2\)](#)
- Pt. 2 Ch. 4 heading inserted by [2019 asp 17 sch. para. 3\(2\)](#)
- s. 27B and cross-heading inserted by [2019 asp 17 s. 42\(2\)](#)
- s. 29(3A)-(3C) inserted by [2019 asp 17 s. 44\(2\)\(a\)](#)
- s. 29(7)(8) inserted by [2019 asp 17 s. 44\(2\)\(c\)](#)
- s. 30(3)(ca)-(cc) inserted by [2019 asp 17 s. 44\(3\)\(b\)](#)
- s. 31(1A) inserted by [2019 asp 17 s. 44\(4\)\(a\)](#)
- s. 31(3)(ca) inserted by [2019 asp 17 s. 44\(4\)\(b\)\(iii\)](#)
- s. 31(5)-(7) inserted by [2019 asp 17 s. 44\(4\)\(d\)](#)
- s. 32A inserted by [2019 asp 17 s. 45\(2\)](#)
- s. 32B and cross-heading inserted by [2019 asp 17 s. 46\(2\)](#)
- s. 35A inserted by [2019 asp 17 s. 40\(2\)](#)
- s. 39(1)(ca) inserted by [2019 asp 17 s. 40\(3\)](#)
- s. 79(1)(ca) inserted by [2019 asp 17 s. 48\(2\)\(b\)](#)