



# Transport (Scotland) Act 2001

## 2001 asp 2

### PART 2

#### BUS SERVICES

#### [<sup>F1</sup>CHAPTER 2]

#### [<sup>F1</sup>LOCAL SERVICES FRANCHISES]

#### *[<sup>F1</sup>Process for making franchising frameworks]*

#### Textual Amendments

**F1** Pt. 2 Ch. 2 substituted for ss. 13-27 and cross-heading (4.12.2023) by [Transport \(Scotland\) Act 2019](#) (asp 17), **ss. 38(2), 130(2)** (with s. 126); S.S.I. 2023/250, sch.

#### [<sup>F1</sup>13C Overview of process

- (1) Before making a franchising framework under section 13K, the local transport authority must—
  - (a) prepare a proposed franchising framework which meets the requirements of section 13D,
  - (b) prepare an assessment of the proposed framework in accordance with section 13E,
  - (c) obtain a report from an auditor in accordance with section 13F,
  - (d) carry out the consultation required under section 13G,
  - (e) make such modifications under section 13H (if any) as they consider appropriate in light of the consultation and, if they consider that it is required under subsection (3) of that section, repeat the steps in paragraphs (b) to (d) of this section,
  - (f) obtain approval to make the proposed framework (or the framework as modified) from a panel convened for that purpose by the traffic commissioner under section 13J,

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- (g) comply with such additional procedural requirements as may be prescribed.
- (2) Where the making of a proposed franchising framework has been approved under section 13J, it may be made by the local transport authority under section 13K.

### **13D Proposed franchising frameworks**

- (1) A proposed franchising framework must specify—
  - (a) the area to which the framework relates,
  - (b) the local services which are to be provided under franchise agreements,
  - (c) that the framework is, in so far as relating to each local service included in it, to come into operation—
    - (i) on a date not earlier than 6 months after the day on which the local transport authority who made it enter into a franchise agreement in respect of that service, or
    - (ii) on such earlier date as the local transport authority may specify,
  - (d) the period during which it is to remain in operation,
  - (e) the standards to which services must be provided under franchise agreements.
- (2) A proposed franchising framework may—
  - (a) provide for the exemption of such local services or such descriptions of local services as the framework may specify, and
  - (b) specify conditions (if any) as to when such exemptions are to apply.
- (3) A proposed franchising framework may provide for such other matters as the local transport authority think fit.
- (4) If a proposed franchising framework relates to an area to which a partnership scheme also relates, the proposed franchising framework—
  - (a) must include—
    - (i) in a case where the partnership scheme relates only to the area to which the proposed franchising framework relates or a part of that area, provision revoking the partnership scheme, or
    - (ii) in any other case, provision varying the partnership scheme so that it ceases to relate to any part of the area to which the proposed franchising framework relates, and
  - (b) may include provision varying the partnership plan or, if appropriate, revoking the plan.

### **13E Assessment of proposed franchising framework**

- (1) A local transport authority which propose to make a franchising framework covering the whole or any part of their area must prepare an assessment of the proposed framework.
- (2) The assessment must—
  - (a) set out how, and to what extent, the local transport authority consider the making of the proposed framework will contribute to the implementation of their relevant general policies,
  - (b) compare the making of the proposed framework to one or more other courses of action available to them to implement those policies,

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- (c) describe the expected effect of the proposed framework on any areas which are adjacent to the area of the framework,
  - (d) set out—
    - (i) how they intend to operate the proposed framework, and
    - (ii) the extent to which they consider that they will be able to secure that local services are operated under franchise agreements,
  - (e) set out their analysis of the financial implications for them of making the proposed framework,
  - (f) set out how they propose to review the effectiveness of the proposed framework once it is made.
- (3) The assessment may include such other matters as the local transport authority think fit.
- (4) In preparing an assessment under this section, a local transport authority must seek views about the proposed franchising framework from operators who, at the time of the assessment being prepared, are providing local services in the area to which the proposed framework relates.
- (5) The Scottish Ministers must issue guidance in relation to the preparation of an assessment under this section, and that guidance may, in particular, include guidance about methods to be used when assessing a proposed framework.

### **13F Audit of proposed franchising framework**

- (1) This section applies if, after preparing an assessment of a proposed franchising framework under section 13E, a local transport authority wish to proceed with the proposed framework.
- (2) The local transport authority must obtain a report from an auditor on the analysis of the financial implications contained in the assessment.
- (3) The auditor's report must state whether, in the opinion of the auditor—
  - (a) the information relied on by the local transport authority in conducting the analysis is of sufficient quality,
  - (b) the analysis of that information is of sufficient quality, and
  - (c) the local transport authority have had regard to the guidance issued under section 13E(5) in preparing the analysis.
- (4) An auditor must, when preparing a report under this section, have regard to any guidance issued by the Scottish Ministers in relation to the preparation of such reports.
- (5) In this section, “auditor” means a person who is eligible to be appointed as a statutory auditor under section 1211 of the Companies Act 2006.

### **13G Consultation on proposed franchising framework**

- (1) This section applies if, after obtaining an auditor's report under section 13F, a local transport authority wish to proceed with the proposed franchising framework.
- (2) The local transport authority must give notice of their intention to make the proposed franchising framework in such manner as they consider appropriate for bringing the notice to the attention of persons in their area.

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- (3) The notice referred to in subsection (2) must—
- (a) describe the proposed franchising framework, including, in particular, the area to which it would relate,
  - (b) include a statement that the local transport authority consider that the proposed framework will contribute to the implementation of their relevant general policies, and
  - (c) state where copies of the consultation documents listed in subsection (5) may be viewed.
- (4) After giving notice of the proposed franchising framework, the local transport authority must consult—
- (a) all operators of local services in the area to which the proposed framework relates,
  - (b) any other person holding a PSV operator's licence or community bus permit who, in the opinion of the authority, is likely to be affected by the proposed framework,
  - (c) such organisations appearing to the authority to be representative of employees of such operators as they think fit,
  - (d) such organisations appearing to the authority to be representative of users of local services as they think fit,
  - (e) each local transport authority and Transport Partnership whose area is, in the opinion of the authority, likely to be affected by the proposed framework,
  - (f) the traffic commissioner,
  - (g) the chief constable of the Police Service of Scotland,
  - (h) the Competition and Markets Authority,
  - (i) such other persons as the authority think fit.
- (5) The consultation documents are—
- (a) the proposed franchising framework,
  - (b) a report on the assessment prepared under section 13E, including, in particular, a description of how the local transport authority consider the proposed framework will contribute to the implementation of their relevant general policies,
  - (c) the report obtained from the auditor under section 13F,
  - (d) such other documents (if any) that the local transport authority think will assist the consultees in considering the proposed framework.

### **13H Modification of proposed franchising framework**

- (1) This section applies where, following consultation under section 13G, a local transport authority consider it appropriate to modify the proposed franchising framework.
- (2) The local transport authority may make such modifications to the proposed franchising framework as they consider appropriate.
- (3) If the local transport authority consider that the modifications materially affect any part of the assessment prepared under section 13E that relates to a matter set out in subsection (2) of that section, they must prepare a new assessment of the proposed framework as modified.

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- (4) Sections 13E to 13G apply to any new assessment of the proposed framework as modified as they apply to the original proposed framework.
- (5) The Scottish Ministers must issue guidance in relation to the circumstances in which a local transport authority must prepare a new assessment of a proposed framework.

### **13I Application for approval of the proposed franchising framework**

- (1) This section applies where, following a consultation under section 13G, a local transport authority—
  - (a) either—
    - (i) do not make any modifications to the proposed franchising framework, or
    - (ii) make modifications to the proposed framework, but consider they are not required to prepare a new assessment of the proposed framework under section 13H(3), and
  - (b) decide to proceed with making the proposed framework (as originally proposed or as modified).
- (2) The local transport authority must—
  - (a) request that the traffic commissioner convene a panel under section 13J(2) for the purpose of considering whether to approve the making of the proposed franchising framework, and
  - (b) provide the traffic commissioner with the documents listed in subsection (3).
- (3) The documents are—
  - (a) the consultation documents listed in paragraphs (a) to (c) of section 13G(5),
  - (b) the assessment (or the most recent assessment) prepared under section 13E,
  - (c) a summary of the responses received to the consultation carried out under section 13G and any action (other than a modification under section 13H) that was taken to address the responses,
  - (d) a description and explanation of any modifications made to the proposed franchising framework under section 13H.

### **13J Approval of proposed franchising frameworks**

- (1) This section applies where the traffic commissioner has received a request to convene a panel under section 13I(2)(a).
- (2) The traffic commissioner must—
  - (a) give notice of the local transport authority seeking approval for the proposed franchising framework in such manner as the commissioner considers appropriate for bringing the notice to the attention of persons in the area of the authority,
  - (b) appoint three persons to form a panel to decide whether or not to approve the making of the proposed framework,
  - (c) provide the panel with the documents listed in section 13I(3), and
  - (d) provide the panel with any representations made to the commissioner in connection with the approval of making the proposed framework.
- (3) A notice given under subsection (2)(a) must state—

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- (a) that representations may be made to the traffic commissioner in relation to the application for approval of the making of the proposed franchising framework, and
  - (b) the period within which such representations may be made.
- (4) The panel may decide—
- (a) to approve the making of the proposed franchising framework,
  - (b) to approve the making of the proposed framework subject to the local transport authority making such modifications to the proposed framework as the panel may specify, or
  - (c) not to approve the making of the proposed framework.
- (5) In making its decision under subsection (4), the panel must consider whether the local transport authority have—
- (a) complied with the process set out in section 13C(1),
  - (b) had regard to the guidance issued by Scottish Ministers under section 13E(5),
  - (c) given appropriate weight to any matter prescribed for the purposes of this section, and
  - (d) otherwise, reached a reasonable conclusion in deciding to make the proposed franchising framework.

### **13K Making of franchising framework**

- (1) This section applies where a panel convened under section 13J has approved the making of a proposed franchising framework.
- (2) The local transport authority may, not later than 6 months after the date of the approval, make the franchising framework.
- (3) Not later than 14 days after the date on which a franchising framework is made, the local transport authority must—
  - (a) give notice of their having made the framework in such manner as they consider appropriate for bringing the notice to the attention of persons in their area, and
  - (b) send a copy of the framework to the traffic commissioner.
- (4) A notice under subsection (3)(a) must state where a copy of the franchising framework may be viewed.
- (5) A franchising framework is, in so far as relating to a local service included in it, to come into operation—
  - (a) in a case where the framework specifies the date on which it is to come into operation in respect of that service, on the date so specified, and
  - (b) subject to section 13M, in a case where no date is specified in the framework, on such date as is specified in or determined under the franchise agreement entered into in respect of the service.]

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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\(2\)\(b\)](#)