

Draft Order laid before Parliament under paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No.

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
TRANSPORT

**The Transport (Scotland) Act 2019 (Consequential Provisions
and Modifications) Order 2023**

Made - - - - 2023

Coming into force

Parts 1, 2 and 5

31st January 2023

Parts 3, 4 and 6

31st October 2023

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The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1), 113(2) to (5) and (7) and 114(1) of the Scotland Act 1998^(a).

(a) 1998 c. 46. There are amendments to sections 104, 112, 113 and 114 which are not relevant to this Order.

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act, a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) This Order may be cited as the Transport (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2023.

(2) Parts 1, 2 and 5 come into force on 31st January 2023.

(3) Parts 3, 4 and 6 come into force on 31st October 2023.

(4) Articles 32 to 35 extend to Scotland only.

Interpretation

2.—(1) In this Order—

“the 1985 Act” means the Transport Act 1985(a),

“the 2001 Act” means the Transport (Scotland) Act 2001(b),

“the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018(c).

(2) Words and expressions used in Parts 3, 4 and 6 of this Order have, unless the contrary intention appears, the same meaning as in the 2001 Act.

PART 2

Low Emission Zones

Information sharing

3.—(1) The Secretary of State for Transport and the Secretary of State for Environment, Food and Rural Affairs may provide information to the Scottish Ministers or a local authority for any purpose connected to the operation and enforcement of low emission zone schemes made under Part 2 of the Transport (Scotland) Act 2019(d) (low emission zones).

(2) In paragraph (1) “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(e) (constitution of councils).

(3) Nothing in this article authorises the disclosure of information which would contravene the data protection legislation or any other enactment relating to the disclosure of information, or give rise to the commission of an offence (but the power is to be taken into account in determining whether the disclosure or use would contravene that legislation).

(a) 1985 c. 67.

(b) 2001 asp 2.

(c) 2018 c. 12. Section 3(9) was amended by S.I. 2019/419.

(d) 2019 asp 17.

(e) 1994 c. 39. There are amendments to section 2 which are not relevant to this Order.

PART 3
Bus Services and Ticketing Arrangements and Schemes
CHAPTER 1
Enforcement of the Competition Test

Interpretation

4. In this Chapter—

“the CMA” means the Competition and Markets Authority(**a**),

“the competition test” means the test specified in section 37 of the 2001 Act(**b**) (competition test for exercise of bus functions),

“relevant function” means—

(a) making and varying partnership schemes(**c**),

(b) making ticketing schemes(**d**) on or after the date on which this Part comes into force,

(c) varying ticketing schemes made on or after that date,

and any reference in this Chapter to a proposed exercise of a relevant function is to be construed in accordance with section 37(2) of the 2001 Act.

Investigation by the CMA

5. If at any time the CMA considers that the exercise or proposed exercise of a relevant function may not meet the competition test, the CMA may conduct an investigation.

Provision of information

6.—(1) For the purposes of an investigation under article 5 the CMA may require any person other than a Minister of the Crown within the meaning of the Ministers of the Crown Act 1975(**e**)—

(a) to produce to the CMA or to a person appointed by the CMA, at a specified time and place, any specified document,

(b) to provide the CMA or such a person, at such a time and place, with any specified information,

which the CMA considers relates to any matter relevant to the investigation.

(2) The power conferred by paragraph (1) is to be exercised by a notice in writing indicating the subject matter and purpose of the investigation, and in this article “specified” means—

(a) specified, or described, in the notice, or

(b) falling within a category which is specified, or described, in the notice.

(3) Information required to be provided under paragraph (1) must be provided in the specified manner and form.

(a) Established by the Enterprise and Regulatory Reform Act 2013 (c. 24), section 25.

(b) Section 37 has been relevantly amended by the Transport (Scotland) Act 2019, the schedule, paragraph 3(3).

(c) See section 3B, with section 82(1), of the Transport (Scotland) Act 2001 for the meaning of “partnership scheme”. Section 3B was inserted by the Transport (Scotland) Act 2019, section 35. Section 82(1) is relevantly amended by the Transport (Scotland) Act 2019, the schedule, paragraph 3(9)(a)(iii).

(d) See section 29(3), with section 82(1), of the Transport (Scotland) Act 2001 for the meaning of “ticketing schemes”. Section 29 was relevantly amended by the Transport (Scotland) Act 2019 (asp 17), section 44. There are amendments to section 82(1) which are not relevant to this definition.

(e) 1975 c. 26. See section 8(1) for the meaning of “Minister of the Crown”.

(4) The power conferred by paragraph (1) to require a person to produce a document includes power—

- (a) to require that person to provide an explanation of the document, or
- (b) if the document is not produced, to require that person to state, to the best of that person's knowledge and belief, where it is.

(5) A notice does not have effect to the extent that complying with the notice would involve the disclosure of information which would contravene the data protection legislation or any other enactment relating to the disclosure of information, or give rise to the commission of an offence (but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation).

(6) In this article “information” includes estimates and forecasts.

Failure to comply with a notice

7.—(1) If a person, without reasonable excuse, refuses or fails to comply with a notice under article 6, the CMA may apply to the Court of Session for an order requiring the person to comply with the notice within a time specified in the order.

(2) An order under paragraph (1) may provide for all of the expenses of, or incidental to, the application to be borne by that person.

Privileged communications

8.—(1) A person is not required by article 6 to produce or disclose a privileged communication.

(2) In paragraph (1) “privileged communication” means—

- (a) communications between a professional legal adviser and a client of that adviser, or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,

being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications.

Notice of decision

9. Before the CMA, as the result of an investigation under article 5, makes a decision that the exercise or proposed exercise of a relevant function does not meet the competition test, the CMA must—

- (a) give written notice to the person or persons likely to be affected by the proposed decision, and
- (b) give that person or those persons an opportunity to make representations.

Publication of decision

10. When the CMA makes a decision after conducting an investigation under article 5, the CMA must publish that decision, together with the reasons for making it.

Enforcement of decisions

11.—(1) If the CMA has made a decision that the exercise or proposed exercise of a relevant function does not meet the competition test, the CMA may give to the local transport authority(a) or authorities by which it was or was to be exercised such directions as the CMA considers appropriate.

(a) See section 82(1) of the Transport (Scotland) Act 2001 (asp 2) for the meaning of “local transport authority”. There are amendments to section 82 which are not relevant to this definition.

- (2) A direction under paragraph (1) may (in particular)—
 - (a) in the case of a proposed exercise of a relevant function, include provision prohibiting the exercise of the function in the manner proposed,
 - (b) in the case of the exercise of a relevant function, include provision requiring the variation or revocation of the scheme made in exercise of that function.
- (3) A direction under paragraph (1) must be given in writing.
- (4) If a local transport authority fail without reasonable excuse, to comply with a direction under paragraph (1), the CMA may apply to the Court of Session for an order requiring the authority to comply with the direction within a time specified in the order.
- (5) An order under paragraph (4) may provide for all of the expense of, or incidental to, the application for the order to be borne by the local transport authority.

Disclosure of information

- 12.—(1) No information which—
 - (a) has been obtained by the CMA in connection with the CMA’s functions under this Chapter, and
 - (b) relates to the affairs of any individual or to any particular business,
 is to be disclosed during the lifetime of that individual or while that business continues to be carried on, unless the condition mentioned in paragraph (2) is satisfied.
- (2) The condition is that consent to the disclosure has been obtained from—
 - (a) the person from whom the information was obtained, and
 - (b) if different, the individual to whose affairs the information relates or the person for the time being carrying on the business to which the information relates.
- (3) Paragraph (1) does not apply to a disclosure of information—
 - (a) made for the purpose of facilitating the performance of any function of—
 - (i) the CMA,
 - (ii) the traffic commissioner^(a),
 - (iii) the Office of Rail and Road^(b),
 - (b) made for the purpose of criminal proceedings in any part of the United Kingdom or in connection with the investigation of a criminal offence triable in any part of the United Kingdom, or
 - (c) made in compliance with the order of a court or tribunal.
- (4) If information is disclosed to the public in circumstances in which the disclosure does not contravene paragraph (1), that paragraph does not prevent its further disclosure by any person.
- (5) A person who contravenes this article is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale^(c).
- (6) Nothing in this article authorises the making of a disclosure which would contravene the data protection legislation or any other enactment relating to the disclosure of information, or give rise to the commission of an offence (but the power is to be taken into account in determining whether the disclosure or use would contravene that legislation).

(a) See section 48 of the Transport (Scotland) Act 2001 (asp 2) for the meaning of “the traffic commissioner”. There are amendments to section 48 which are not relevant to this definition.

(b) Established by the Railways and Transport Safety Act 2003 (c. 20), section 15. Section 15 was relevantly amended by S.I. 2015/1682.

(c) See section 113(9A) to (10) of the Scotland Act 1998 (c. 46) for the limits on criminal penalties. Section 113 was relevantly amended by section 39(2) of the Scotland Act 2012 (c. 11).

False or misleading information

13.—(1) If information is provided by a person to the CMA in connection with the CMA's functions under this Chapter, the person is guilty of an offence if—

- (a) the information is false or misleading in a material particular, and
- (b) the person knows that it is or is reckless as to whether it is.

(2) If a person—

- (a) provides any information to another person, knowing the information to be false or misleading in a material particular, or
- (b) recklessly provides to another person any information which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the CMA in connection with the CMA's functions under this Chapter, the person is guilty of an offence.

(3) A person guilty of an offence under this article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Advice and Information

14.—(1) The CMA must prepare and publish advice and information about—

- (a) the application of the competition test to the making and varying of partnership schemes and ticketing schemes, and
- (b) the enforcement of decisions regarding that test.

(2) The CMA may at any time publish revised, or new, advice or information.

(3) Advice and information published under this article must be prepared with a view to—

- (a) explaining the provisions of this Chapter to persons who are likely to be affected by them, and
- (b) indicating how the CMA expects such provisions to operate.

(4) Advice or information published by virtue of paragraph (3)(b) may include advice or information about the factors which the CMA may take into account in considering whether, and if so how, to exercise a power conferred on it by this Chapter.

(5) Any advice or information published by the CMA under this article is to be published in such form and in such manner as it considers appropriate.

(6) If the CMA is preparing any advice or information under this article it must consult such persons as it considers appropriate.

Defamation

15. For the purposes of the law relating to defamation, absolute privilege attaches to any decision made or notice given by the CMA in the exercise of any of the CMA's functions under this Chapter.

Fees

16.—(1) The CMA may charge fees in connection with the exercise by it of any of its functions under this Chapter.

(2) Different fees may be charged in connection with different functions and in different circumstances.

CHAPTER 2

Test for Certain Agreements, Decisions and Practices

Interpretation

17.—(1) In this Chapter—

“the 1998 Act” means the Competition Act 1998^(a),

“the Chapter 1 prohibition” means the prohibition imposed by section 2(1) of the 1998 Act (agreements etc. preventing, restricting or distorting competition),

“a qualifying agreement” is an agreement between bus undertakings only,

“a qualifying decision” is so much of any decision by an association of undertakings as relates to the operation of local services,

“a qualifying practice” is a concerted practice by bus undertakings only.

(2) For the purposes of paragraph (1)—

- (a) a “bus undertaking” is an undertaking which is the operator of a local service,
- (b) the involvement of a local transport authority which is not a bus undertaking is to be disregarded,
- (c) a partnership scheme is not to be regarded as a qualifying agreement, qualifying decision or qualifying practice.

(3) A provision of this Chapter which is expressed to apply to, or in relation to, a qualifying agreement is to be read as applying equally to, or in relation to, a qualifying decision or a qualifying practice (but with any necessary modifications).

(4) A reference in this Chapter to the area of an authority is a reference to the area of a local transport authority in whose area the agreement is, or is to be, implemented.

(5) For the purposes of this Chapter the “bus improvement objectives” 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 benefit to users of local services, and
- (c) reducing or limiting traffic congestion, noise or air pollution.

Agreements, decisions and practices to which this Chapter applies

18.—(1) This Chapter applies to a qualifying agreement falling within paragraph (2), unless that agreement (or any of its provisions) constitutes a price-fixing agreement within the meaning given by section 39(9)^(b) of the 1998 Act (limited immunity in relation to the Chapter 1 prohibition).

(2) A qualifying agreement falls within this paragraph if—

- (a) it has as its object or effect the prevention, restriction or distortion of competition in the area of the authority, or the combined area of the authorities, but
- (b) the local transport authority, or any of the authorities, have certified that they have considered all the terms and effects (or likely effects) of the agreement and that in their opinion the requirements mentioned in paragraph (3) are satisfied.

(3) The requirements are that the agreement—

- (a) is in the interests of persons using local services within the area of the authority, or the combined area of the authorities, and
- (b) does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of the bus improvement objectives.

(a) 1998 c. 41.

(b) Section 39 was amended by S.I. 2004/1261.

(4) For the purposes of paragraph (2) the object or effect of a qualifying agreement may be considered either on its own or together with one or more other qualifying agreements.

The prohibition

19.—(1) Any qualifying agreement to which this Chapter applies is prohibited unless it is exempt in accordance with article 21.

(2) The prohibition in paragraph (1) applies in place of the Chapter 1 prohibition.

Agreements and decisions void

20. Any agreement or decision which is prohibited by article 19 is void.

Exempt agreements

21.—(1) A qualifying agreement to which this Chapter applies is exempt if—

- (a) it contributes to the attainment of one or more of the bus improvement objectives,
- (b) it does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, and
- (c) it does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the services in question.

(2) In any proceedings in which it is alleged that the prohibition in article 19 is being or has been infringed by a qualifying agreement any undertaking or association of undertakings claiming the benefit of paragraph (1) must bear the burden of proving that the conditions in that paragraph are satisfied.

Application of provisions of the Competition Act 1998

22.—(1) The provisions of Part 1 of the 1998 Act specified in paragraph (2) apply in relation to the prohibition in article 19 (and a qualifying agreement to which this Chapter applies) as those provisions apply in relation to the Chapter 1 prohibition (and an agreement to which the provisions of the Chapter 1 prohibition applies).

(2) The provisions are—

- (a) in Chapter 1, sections 3, 6, 8, 10 and 10A(a) (excluded agreements and exemptions),
- (b) Chapter 3(b) (investigations and enforcement), except sections 36 to 39 (penalties),
- (c) in Chapter 4(c), sections 46 to 49 (appeals), except section 47F and Schedule 8A,
- (d) Chapter 5(d) (miscellaneous), except section 54 (regulators).

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- (a) Section 3 was amended by the Enterprise Act 2002 (c. 40), section 207, Schedule 25, paragraph 38(2) and Schedule 26. Section 6 was amended by the Enterprise Act 2002, Schedule 25, paragraph 38(5); the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 5, paragraph 2; and S.I. 2004/1261. Section 8 was amended by the Enterprise Act 2002, Schedule 25, paragraph 38(7); and the Enterprise and Regulatory Reform Act 2013, Schedule 5, paragraph 3. Section 10 was amended by the Enterprise Act 2002, Schedule 25, paragraph 38(8); the Enterprise and Regulatory Reform Act 2013, Schedule 5, paragraph 4; and S.I. 2019/93. Section 10A was inserted by S.I. 2019/93.
 - (b) Chapter 3 was relevantly amended by the Criminal Justice and Police Act 2001 (c. 16), Schedule 2, paragraph 21; the Enterprise Act 2002, sections 198 and 203(2) and Schedule 25, paragraph 38(19) to (27) and (32) to (34); the Enterprise and Regulatory Reform Act 2013, sections 39, 40, 42(2), 43 and 45, Schedule 5, paragraphs 5 to 19 and 24 to 25, Schedule 13, paragraphs 2 and 3 and Schedule 15, paragraph 9; S.I. 2004/1261; and S.I. 2019/93, as amended by S.I. 2020/1343.
 - (c) Chapter 4 was relevantly amended by the Enterprise Act 2002, section 17, 18 and 19 and Schedule 5, paragraphs 2 to 4 and Schedule 26; the Enterprise and Regulatory Reform Act 2013, Schedule 5, paragraphs 26 to 28; the Consumer Rights Act 2015 (c. 15) Schedule 8, paragraphs 3 to 9; S.I. 2004/1261; S.I. 2017/385; and S.I. 2019/93.
 - (d) Chapter 5 was relevantly amended by the Enterprise Act 2002, section 20 and Schedule 5, paragraphs 5 and 6, Schedule 25, paragraphs 38(37) to (40) and (42) to (45) and Schedule 26; the Communications Act 2003 (c. 21) section 371(5) and (7); the Enterprise and Regulatory Reform Act 2013, Schedule 5, paragraphs 29 to 32 and 34 to 39; the Consumer Rights Act 2015, Schedule 8, paragraphs 13 to 15; S.I. 2004/1261; S.I. 2017/385; and S.I. 2019/93, as amended by S.I. 2020/1343.

PART 4

Bus Services: Local Services Franchises

Interpretation

23.—(1) In this Part—

“affected local services” means local services which, during the period of operation of the franchising framework^(a), the relevant operator would be required by virtue of section 13B(1)(b) or (3) of the 2001 Act^(b) (effects of franchising framework) to cease providing,

“personal data” has the same meaning as in section 3(2) of the Data Protection Act 2018^(c) (terms relating to the processing of personal data),

“principally connected” has the meaning determined under article 25,

“relevant employee” means an employee whose employment with a relevant operator is principally connected with the provision of affected local services,

“relevant information” has the meaning given in article 26,

“relevant operator” means an operator of affected local services,

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006^(d),

“transferring employee” means an employee of a relevant operator whose contract of employment becomes, under the operation of this Part, a contract of employment with a new operator,

“working time”, in relation to an employee, means any period during which an employee is working at the disposal of the employee’s employer and is carrying out the activities or duties assigned by the employer, but does not include any period during which the employee is undertaking any work experience or training for employment provided in accordance with a training course or programme.

(2) The following expressions have the meaning given in TUPE^(e)—

- (a) “assigned”,
- (b) “appropriate representatives”, and
- (c) “employee”.

(3) Where two or more local transport authorities have acted jointly to make a franchising framework, a reference to a local transport authority is to be read as a reference to the authorities acting jointly.

Application of TUPE

24.—(1) Paragraph (3) applies to a situation in which—

- (a) at the time when a franchising framework comes into operation, affected local services cease to be provided by a relevant operator in the area to which the relevant franchising framework relates, and

(a) See section 13A, with section 82(1), of the Transport (Scotland) Act 2001 (asp 2) for the meaning of “franchising framework”. Section 13A was inserted by the Transport (Scotland) Act 2019 (asp 17), section 38. Section 82(1) was relevantly amended by the Transport (Scotland) Act 2019, the schedule, paragraph 3(9)(a)(i).

(b) 2001 asp 2. Section 13B was inserted by the Transport (Scotland) Act 2019 (asp 17), section 38.

(c) 2018 c. 12. Section 3 has been amended for purposes which are not relevant to this Order.

(d) S.I. 2006/246.

(e) See regulation 2(1) of S.I. 2006/246 for the meanings of “assigned” and “employee”. See regulation 13(3) of S.I. 2006/246 for the definition of “appropriate representatives”.

- (b) at the same time, a person begins to provide local services in that area under a franchise agreement^(a).
- (2) Paragraph (3) also applies to a situation in which—
 - (a) affected local services cease to be provided by a relevant operator before the coming into operation of the franchising framework, and
 - (b) at the same time as those local services cease to be provided, a person begins to provide local services under an agreement with the local transport authority entered into by reason of the cessation of the local services referred to in sub-paragraph (a).
- (3) Any situation to which this paragraph applies is to be treated as a relevant transfer for the purposes of TUPE (whether or not TUPE would otherwise apply).
- (4) For the purposes of TUPE, the organised grouping of employees^(b) that is subject to the relevant transfer consists of those employees of the relevant operator whose employment is principally connected with the provision of the affected local services referred to in paragraph (1)(a) or (2)(a).

Determination of “principally connected” employment

- 25.—**(1) For the purposes of article 24(4) the determination as to whether a person’s employment is “principally connected” with the provision of affected local services is to be made by agreement between the parties or, where there is no agreement, in accordance with paragraph (5).
- (2) After a local transport authority make a franchising framework they must issue a consultation notice to—
 - (a) operators of affected local services, and
 - (b) appropriate representatives of employees employed on those affected local services.
 - (3) Any notice issued for the purposes of paragraph (2) must set out—
 - (a) the proposed criteria for determining if a person’s employment is principally connected with affected local services, which may include particular individual roles,
 - (b) the consultation process and the agreement sought,
 - (c) the periods over which the consultation process will take place,
 - (d) the parties to be issued with a consultation notice, and
 - (e) what constitutes agreement between the parties.
 - (4) If there is agreement between the parties for the purposes of paragraph (1), the local transport authority must notify the parties and publish the details of the agreement.
 - (5) If there is no agreement for the purposes of paragraph (1), a person’s employment is treated as “principally connected” with the provision of affected local services if that person spends, on average, at least half of their working time—
 - (a) assigned to the provision of affected local services, or
 - (b) assigned to activities connected wholly or mainly to the provision of affected local services.
 - (6) In this article, “the parties” means—
 - (a) the local transport authority that have made a franchising framework,
 - (b) the operators of affected local services, and
 - (c) appropriate representatives of employees working on those affected local services.

(a) See section 13A of the Transport (Scotland) Act 2001 for the meaning of “franchise agreement”. Section 13A was inserted by the Transport (Scotland) Act 2019, section 38.

(b) See S.I. 2006/246, regulation 2(1) for the meaning of “organised grouping of employees” within TUPE.

Meaning of “relevant information”

26.—(1) For the purposes of articles 27 and 28, “relevant information” means—

- (a) relevant employee information, and
- (b) information about the identity of appropriate representatives of relevant employees.

(2) For the purposes of paragraph (1)(a) “relevant employee information”, in relation to a relevant employee, means—

- (a) such of the particulars of employment that an employer is obliged to give to an employee by virtue of section 1 of the Employment Rights Act 1996^(a) (statement of initial employment particulars),
- (b) such information about any collective agreements, as defined in section 178(1) of the Trade Union and Labour Relations (Consolidation) Act 1992^(b) (collective agreements and collective bargaining), in respect of a relevant employee,
- (c) such information describing the affected local services with which a relevant employee’s employment is principally connected, including the proportion of a relevant employee’s working time assigned to those affected local services, and
- (d) such other information,

as the local transport authority making a request under article 27 consider necessary in order to enable any person considering entering into a franchise agreement, or any other agreement for the provision of local services in the circumstances described in article 24(2), to calculate the costs and liabilities likely to arise from the application of TUPE to such an agreement.

Request for relevant information

27.—(1) At any time after a local transport authority have made a franchising framework the authority may issue a request to a relevant operator for such relevant information as may be specified by the authority.

(2) A request made under paragraph (1)—

- (a) must specify the date by which the relevant operator is to respond to the request, which must be not less than 21 days from the date on which the request is issued,
- (b) must contain sufficient information about the franchising framework to enable a relevant operator to determine which of their employees would be relevant employees for the purposes of that request,
- (c) must only request such relevant information as the local transport authority consider necessary in order to carry out their functions in relation to the application of TUPE in connection with the franchising framework, and
- (d) must not include a request for personal data, except to the extent that such a request is for information about the identity of appropriate representatives.

(3) If a relevant operator in receipt of a request for relevant information made under paragraph (1) is of the opinion that the requirement specified in paragraph (2)(b) has not been satisfied, the relevant operator must—

- (a) within 14 days from the date on which the request is received, give notice in writing to the local transport authority of that opinion, and
- (b) describe the information which, in the opinion of the relevant operator, is required in order to satisfy the requirement in paragraph (2)(b).

^(a) 1996 c. 18. Section 1 was amended by S.I. 2018/1378 and S.I. 2019/731.

^(b) 1992 c. 52.

(4) If the local transport authority receive notice in accordance with paragraph (3)(a) the authority must—

- (a) supply to the relevant operator such information as seems to the local transport authority to be necessary, taking into account the description of information supplied in accordance with paragraph (3)(b), in order to enable the relevant operator to respond to the request made under paragraph (1), and
- (b) specify a revised date by which the relevant operator is to respond to the request made by virtue of paragraph (1), which must be not less than 21 days from the date on which the information described in sub-paragraph (a) is received by the relevant operator.

(5) If a request has been made under paragraph (1) and the local transport authority no longer require relevant information they must notify the relevant operator.

(6) A request does not have effect to the extent that—

- (a) complying with the request would involve the disclosure of information which would contravene the data protection legislation or any other enactment relating to the disclosure of information, or give rise to the commission of an offence (but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation), or
- (b) the person to whom the request applies would be entitled to refuse to comply with the request in or for the purposes of proceedings in a court in England and Wales, Northern Ireland or, as the case may be, Scotland.

Obligation on relevant operator in receipt of request for relevant information

28.—(1) Subject to paragraphs (2) and (3), a relevant operator must respond to a request for relevant information made in accordance with article 27 within the period which applies by virtue of article 27(2)(a) or (4)(b).

(2) Paragraph (3) applies where a local transport authority make a request for relevant information under article 27 and either—

- (a) the operator does not have any or all of the information requested, and is unable to obtain the information at a reasonable cost, or
- (b) the operator is unable, by virtue of the prohibition contained in paragraph (7)(b), to respond to the request.

(3) Where this paragraph applies—

- (a) the operator must, within 14 days from the date on which the request is received, give notice in writing to the local transport authority that the operator is unable to respond to the request, explaining why it is not possible to provide any or all of the relevant information requested, and
- (b) the obligation imposed by virtue of paragraph (1) does not apply to the operator in respect of any of the relevant information in relation to which the operator has given notice under sub-paragraph (a).

(4) If, having received notice under paragraph (3)(a), the local transport authority issue a revised request for relevant information—

- (a) this article applies to the revised request as if it had been a request made under article 27, and
- (b) the revised request must specify the date by which the relevant operator is to respond to the revised request, which—
 - (i) must be not less than 21 days from the date on which the revised request is received by the operator, or
 - (ii) must be, in a case where either of the circumstances described in paragraph (2) applied to the request made under article 27, but the operator failed to inform the

authority of that fact within the period specified in paragraph (3)(a), not less than 21 days from the date on which the period specified in paragraph (3)(a) expired.

(5) If a request is made under article 27, the relevant operator must continue to provide revised relevant information about the identity of the appropriate representatives to the local transport authority if that information changes after the response is provided in accordance with paragraph (1).

(6) If paragraph (5) applies, the obligation on the operator to provide revised relevant information continues until that operator receives notice that it is no longer required for the purposes of article 27.

(7) In responding to a request for relevant information made under article 27 a relevant operator—

- (a) must take such steps as are reasonable in the circumstances to ensure that the information provided is complete and accurate, and
- (b) must not disclose personal data, except to the extent necessary in order to satisfy a request for information about the identity of appropriate representatives.

Allocation arrangements

29.—(1) After making a franchising framework the local transport authority must consult—

- (a) relevant operators, and
- (b) appropriate representatives of relevant employees,

about the proposed allocation arrangements.

(2) The allocation arrangements must—

- (a) identify organised groupings of relevant employees, or classes of relevant employees within such organised groupings, and
- (b) identify for each organised grouping of relevant employees or, as the case may be, class of relevant employees within such organised groupings, the franchise agreement to which each organised grouping or class of relevant employees is to be assigned.

(3) After the end of the consultation required under paragraph (1), the local transport authority must publish details about the allocation arrangements made in accordance with this article and notify—

- (a) relevant operators, and
- (b) appropriate representatives of relevant employees.

(4) For the purposes of this article a class of relevant employees is to be defined with reference to one or more of—

- (a) the identity of the relevant operators by whom relevant employees are employed,
- (b) the organised grouping to which the relevant employees belong,
- (c) any identifiable sub-groups to which the relevant employees belong, in a case where the organised grouping is divided into sub-groups by the relevant operator for the purpose of organising the responsibilities of relevant employees, and
- (d) the characteristics of the work undertaken by relevant employees when working for a relevant employer, including in particular—
 - (i) the nature of the duties undertaken, and
 - (ii) the times and the places at which those duties are normally undertaken.

Revised allocation arrangements

30.—(1) This article applies in the circumstances set out in paragraph (2) if, at any time before the date on which a franchising framework comes into operation, an application is made to the traffic commissioner^(a) for the cancellation or variation of a registration under section 6 of the 1985 Act^(b) (registration of local services) with respect to services which are affected local services.

(2) The circumstances referred to in paragraph (1) are that—

- (a) the effect of the application is that affected local services would cease to be provided before the coming into operation of the franchising framework, and
- (b) the local transport authority who made the franchising framework propose to enter into an agreement with a person, by reason of the cessation of those services, to provide replacement local services in the period between their cessation and the coming into operation of that franchising framework.

(3) As soon as reasonably practicable after the local transport authority have received a copy of the application described in paragraph (1), the authority must consult—

- (a) relevant operators, and
- (b) appropriate representatives of relevant employees,

about the revised allocation arrangements which the authority propose to make in respect of an organised grouping of relevant employees, or classes of relevant employees within such an organised grouping, affected by the circumstances described in paragraph (2).

(4) The local transport authority must finalise and publish the revised allocation arrangements before entering into an agreement for the provision of replacement local services in circumstances described in paragraph (2).

(5) For the purposes of this article “revised allocation arrangements” means allocation arrangements described in article 29 revised to take account of any application made under paragraph (1) in circumstances described in paragraph (2).

Pensions

31. Any situation which, by virtue of article 24, is to be treated as a relevant transfer for the purposes of TUPE is also to be treated as a relevant transfer within the meaning of TUPE for the purposes of—

- (a) sections 257 and 258 of the Pensions Act 2004^(c) (pension protection on transfer of employment), and
- (b) any regulations made under section 258 of that Act.

Duty to secure pension protection

32.—(1) Paragraph (2) applies to a local transport authority which have made a franchising framework and which—

- (a) enter into a franchise agreement with a person under the franchising framework, or
- (b) enter into, in the circumstances described in article 24(2), any other agreement with a person for the provision of local services in the area to which the framework relates.

(a) See section 48 of the Transport (Scotland) Act 2001 (asp 2) for the meaning of “the traffic commissioner”. There are amendments to section 48 which are not relevant to this definition.

(b) 1985 c. 67. Section 6 was relevantly amended by the Transport (Scotland) Act 2001 (asp 2), sections 45 and 46 and Schedule 2, paragraph 4(2).

(c) 2004 c. 35. Section 257 was amended by the Pensions Act 2007 (c.22), Schedule 7, Part 6, and S.I. 2006/246. Section 258 was amended by the Pensions Act 2014 (c. 19), Schedule 13, paragraph 73.

(2) The local transport authority must ensure that any agreement mentioned in paragraph (1) is made, in the event of there being any transferring employees, on terms—

- (a) that require the person to secure pension protection for every transferring employee,
- (b) that, where there are transferring employees, require the person—
 - (i) to procure a pensions statement which satisfies the requirements specified in article 35, and
 - (ii) to provide every transferring employee with a copy of any part of the statement which relates to that employee, and
- (c) that, so far as relating to—
 - (i) the requirement to secure pension protection described in sub-paragraph (a), and
 - (ii) the requirement to procure and provide the statement described in sub-paragraph (b),are enforceable against the person by every transferring employee.

Meaning of pension protection

33. For the purposes of article 32(2)(a) pension protection is secured for a transferring employee if, after the change in employer, the transferring employee has rights to acquire a pension which—

- (a) are the same as the rights the transferring employee had as an employee of the relevant operator, or
- (b) count, under article 34, as being broadly comparable to, or better than, those rights.

Broadly comparable

34.—(1) For the purposes of article 33(b), the rights to acquire pension benefits count as being broadly comparable to, or better than, the rights which the transferring employee had as an employee of the relevant operator—

- (a) if the rights satisfy the condition specified in paragraph (2), or
- (b) if, in the situation described in paragraph (3), the rights satisfy all of the alternative conditions specified in paragraph (4).

(2) The condition is satisfied if the rights to acquire pension benefits that the transferring employee would have as an employee of the new operator mean that the employee would suffer no material detriment overall in terms of the employee's future accrual of pension benefits.

(3) The situation is that there are exceptional circumstances which mean that it would not be reasonably practicable for the new operator to grant rights to the transferring employee which satisfy the condition specified in paragraph (2).

(4) The alternative conditions are satisfied if—

- (a) the rights to acquire pension benefits granted to the transferring employee include arrangements to pay compensation to the transferring employee, and
- (b) the arrangements to pay compensation described in sub-paragraph (a) are such that the compensation is sufficient to offset the material detriment which would otherwise be suffered by the transferring employee.

Pensions statement

35.—(1) The pensions statement procured by a person entering into an agreement under a requirement specified in accordance with article 32(2)(b)(i), must be obtained in writing from a Fellow of the Institute and Faculty of Actuaries.

(2) The pensions statement must certify—

- (a) that, to the extent that the principles can be applied, the person making the statement has formed the opinion contained in the statement having had regard to the guidance for assessing broad comparability between two sets of pension scheme benefits set out in

Annex A to HM Treasury’s note ‘Fair Deal for staff pensions: staff transfer from central government’ dated October 2013(a), and

- (b) that, in the opinion of the person making the statement, the new operator’s pension scheme offers relevant employees rights to acquire pension benefits which meet the requirements of article 33 on the date the statement was made.

PART 5

Amendment of the Transport Act 1985

Conditions attached to PSV operator’s licence

36.—(1) Section 26(1) of the 1985 Act(b) (conditions attached to PSV operator’s licence) is amended as follows.

(2) In paragraph (b) for “section 8(4) or section 22(1)(b)” substitute “section 3F(1) or section 13B(1)(b) or (3)”(c).

(3) After paragraph (bb) insert—

“(bba) the operator has 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) of the Transport (Scotland) Act 2001(d),

(bbb) the operator has failed to comply with a requirement under section 6ZA(e) of this Act,

(bbc) the operator has failed to comply with a requirement under article 28 of the Transport (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2023”.

PART 6

Revocation and Savings

Revocation and savings

37.—(1) Articles 2 and 4 to 17 of the 2001 Order (interpretation and competition test for exercise of bus functions) are revoked.

(2) Despite their revocation by paragraph (1), articles 2 and 4 to 17 of the 2001 Order continue to have effect as they did immediately before the coming into force of this Order for all purposes in relation to—

- (a) the making and varying of quality partnership schemes(f),

(a) The note is available from the [www.gov.uk](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/262490/PU1571_Fair_Deal_for_staf_pensions.pdf) website (Fair Deal for staff pensions: staff transfer from central government (publishing.service.gov.uk) at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/262490/PU1571_Fair_Deal_for_staf_pensions.pdf).

(b) Section 26(1) was relevantly amended by the Bus Services Act 2017 (c. 21), section 17(4), and by S.I. 2001/2748 and S.I. 2013/1644.

(c) Section 3F was inserted by the Transport (Scotland) Act 2019 (asp 17), section 35 and section 13B was inserted by the Transport (Scotland) Act 2019, section 38.

(d) Section 3K was inserted by the Transport (Scotland) Act 2019, section 35 and section 13R was inserted by the Transport (Scotland) Act 2019, section 38.

(e) Section 6ZA was inserted by the Transport (Scotland) Act 2019, section 39.

(f) See section 3(3) of the Transport (Scotland) Act 2001 (asp 2) for the meaning of “quality partnership scheme”. Section 3 of the Transport (Scotland) Act 2001 was repealed by section 35(2) of the Transport (Scotland) Act 2019.

(b) the making and varying of ticketing schemes^(a) made before the coming into force of this Part.

(3) Despite its revocation by paragraph (1), article 14 of the 2001 Order continues to have effect as it did immediately before the coming into force of this Order in relation to inviting and accepting tenders under sections 89 or 91 of the 1985 Act (subsidised services).

(4) In this article “the 2001 Order” means the Transport (Scotland) Act 2001 (Conditions attached to PSV Operator’s Licence and Competition Test for Exercise of Bus Functions) Order 2001^(b).

Name
Secretary of State
Office of the Secretary of State for Scotland

Date

(a) See section 29(3), with section 82(1), of the Transport (Scotland) Act 2001 for the meaning of “ticketing schemes”. Section 29 was relevantly amended by the Transport (Scotland) Act 2019 (asp 17), section 44. There are amendments to section 82(1) which are not relevant to this definition.

(b) S.I. 2001/2748. References to “Director” were amended to “CMA” by S.I. 2014/549, Schedule 1, paragraph 31.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Transport (Scotland) Act 2019 (asp 17) (“the 2019 Act”).

Part 2 gives the Secretary of State for Transport and the Secretary of State for Environment, Food and Rural Affairs the power to share information with Scottish local authorities and the Scottish Ministers for any purpose connected to the operation and enforcement of low emission zone schemes created in Scotland under Part 2 of the 2019 Act.

Chapter 1 of Part 3 provides the Competition and Markets Authority (“the CMA”) with enforcement powers in relation to the application of the competition test provided for in section 37 of the Transport (Scotland) Act 2001 (asp 2) (“the 2001 Act”) to the relevant functions of making and varying bus services improvement partnership schemes, making ticketing schemes on or after 31 October 2023, and varying those ticketing schemes. It also makes procedural provision in relation to the CMA’s exercise of enforcement powers.

Chapter 2 of Part 3 provides for a specific competition test and enforcement regime for certain agreements, decisions and practices between bus operators, in place of the provisions in Chapter 1 of the Competition Act 1998 (c. 41).

Part 4 makes provision in relation to local services franchises under Chapter 2 of Part 2 of the 2001 Act as substituted by section 38 of the 2019 Act. It provides for certain situations involving franchising frameworks made under the 2001 Act to be treated as a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) and makes procedural provision in relation to this.

Part 5 amends section 26 of the Transport Act 1985 (c. 67) (“the 1985 Act”) which sets out circumstances in which conditions can be attached to a PSV operator’s licence where it appears to a traffic commissioner that an operator has failed to comply with certain requirements. It amends the list of circumstances in section 26(1) of the 1985 Act as follows:

- To replace references, in section 26(1)(b) of the 1985 Act, to section 8(4) (relating to quality partnerships) and section 22(1)(b) (relating to quality contracts) of the 2001 Act with references to provisions inserted by the 2019 Act (section 3F(1) relating to bus services improvement partnerships and section 13B(1)(b) or (3) relating to local services franchising frameworks).
- To add failure to comply with the requirement to provide information under section 3K(2) or 13R(2) of the 2001 Act (which enable a local transport authority to require prescribed relevant information from operators of local services when the authority is exercising functions in relation to bus services improvement partnerships and local services franchising frameworks respectively).
- To add a failure to comply with a requirement under section 6ZA of the 1985 Act (which enables an affected authority to require an operator who has made an application to vary or cancel a service registered under section 6 of the 1985 Act to provide such information as may be prescribed by the Scottish Ministers, within such period as may be prescribed).
- To add a failure to comply with article 28 of this Order (which places an obligation on a relevant operator in receipt of a request for relevant information to comply with such a request).

Part 6 makes provision for revocations and savings. Article 37(1) provides that articles 2 and 4 to 17 of the Transport (Scotland) Act 2001 (Conditions attached to PSV Operator’s Licence and Competition Test for Exercise of Bus Functions) Order 2001 (S.I. 2001/2748) (“the 2001 Order”) are revoked. These articles contained provision about interpretation and the competition test for the exercise of bus functions. Paragraph (2) makes savings provision in relation to existing quality partnerships and ticketing schemes to ensure that the existing law in the 2001 Order continues to apply for all purposes relating to the making and varying of those schemes. This will include the power of the CMA to commence an investigation under article 6 in relation to a quality

partnership scheme. Paragraph (3) makes savings provision protecting information obtained under the 2001 Order in relation to certain tenders for subsidised services.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

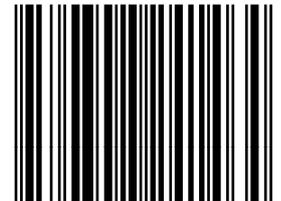
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