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STATUTORY INSTRUMENTS

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**2023 No. 80**

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

PART 3

Bus Services and Ticketing Arrangements and Schemes

CHAPTER 2

Test for Certain Agreements, Decisions and Practices

**Interpretation**

17.—(1) In this Chapter—

“the 1998 Act” means the Competition Act 1998<sup>(1)</sup>,

“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.

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(1) 1998 c. 41.

### **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)(2) 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.

(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).

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(2) Section 39 was amended by [S.I. 2004/1261](#).

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

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- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.