

Net Zero, Energy and Transport Committee

2nd Meeting, 2024 (Session 6)

Tuesday, 16 January 2024

Cover note: The Bus Services Improvement Partnerships and Local Services Franchises (Provision of Information) (Scotland) Regulations 2023 (2023/368)

Title of Instrument:	The Bus Services Improvement Partnerships and Local Services Franchises (Provision of Information) (Scotland) Regulations 2023 (2023/368)
Type of Instrument:	Negative
Laid Date:	7 December 2023
Circulated to Members:	8 December 2023
Meeting Date:	16 January 2024
Minister to attend meeting:	No
Motion for annulment lodged:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	29 January 2024

Background

1. The general principles and policy aims of enabling joint working between local transport authorities and operators with a view to develop and expand bus services in local areas can be traced back to 'bus quality partnerships' derived in the [Transport \(Scotland\) Act 2001](#) ('the 2001 Act'). This legislation was later amended through the [Transport \(Scotland\) Act 2019](#), which introduced the current iteration of these schemes known as Bus Service Improvement Partnerships ('BSIPs').

2. The 2019 Act also amended the 2001 Act to give local transport authorities the power to set up 'local franchising services'. These are services specified by local transport authorities that are run by operators on their behalf following a competitive tendering process.

Purpose

3. Sections 3K and 13R of the 2001 Act enable a local transport authority to require an operator of a local bus service in the local transport authority's area to provide them with "relevant information" relating to specified functions connected to bus services improvement partnerships and local services franchises. The purpose of this instrument is to specify the meaning of "relevant information" for the purposes of sections 3K and 13R of the 2001 Act.

4. An electronic copy of the Regulations is available at:
<https://www.legislation.gov.uk/ssi/2023/368/contents/made>

5. A copy of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

Delegated Powers and Law Reform Committee consideration

6. At its meeting on 19 December 2023, the DPLR Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. [Read the Official Report – 19 December 2023](#).

Procedure for Negative Instruments

7. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

8. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument. At present no motion to annul has been laid for this instrument.

9. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be

entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument.

10. If no motion to annul has been laid then, at the conclusion of consideration of the instrument, the Committee will be invited that agree to make no recommendation in relation to the instrument.

Recommendation

11. The Committee is invited to consider any issues which it wishes to raise on this instrument.

Clerks
Net Zero, Energy and Transport Committee

Annexe

Scottish Government Explanatory Note

EXPLANATORY NOTE (This note is not part of the Regulations)

These Regulations specify the information that a local transport authority may require from an operator under sections 3K and 13R of the Transport (Scotland) Act 2001 (“the 2001 Act”).

Section 3K(2) of the 2001 Act enables a local transport authority to require an operator of a local service in the local transport authority’s area to provide the local transport authority with relevant information relating to functions listed in section 3K(1) connected to bus services improvement partnerships. Section 3K(11) provides that the meaning of “relevant information” is to be specified in regulations made by the Scottish Ministers. Regulation 2 of these Regulations specifies the types of information that are “relevant information” for the purposes of section 3K.

Section 13R(2) of the 2001 Act enables a local transport authority to require an operator of a local service in the local transport authority’s area to provide the local transport authority with relevant information relating to functions listed in section 13R(1) connected to local services franchises. Section 13R(11) provides that the meaning of “relevant information” is to be specified in regulations made by the Scottish Ministers. Regulation 3 of these Regulations specifies the types of information that are “relevant information” for the purposes of section 13R.

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

Scottish Government Policy Note

POLICY NOTE

THE BUS SERVICES IMPROVEMENT PARTNERSHIPS AND LOCAL SERVICES FRANCHISES (PROVISION OF INFORMATION) (SCOTLAND) REGULATIONS 2023

SSI 2023/368

The above instrument was made in exercise of the powers conferred by sections 3K(11), 13R(11) and 81(2) of the Transport (Scotland) Act 2001 (“the 2001 Act”). This instrument is subject to the negative procedure.

Purpose of the instrument: Sections 3K and 13R of the 2001 Act enable a local transport authority to require an operator of a local bus service in the local transport authority’s area to provide them with “relevant information” relating to specified functions connected to bus services improvement partnerships and local
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services franchises. The purpose of this instrument is to specify the meaning of “relevant information” for the purposes of sections 3K and 13R of the 2001 Act.

Policy Objectives

The intention of the Transport (Scotland) Act 2019 (“the 2019 Act”) is to provide local transport authorities with access to a range of flexible tools that they could use to revitalise their local bus networks according to their own needs. The 2019 Act builds on (and in some cases replaces) existing powers that were available to local transport authorities under the 2001 Act. In particular, the 2019 Act replaces the Quality Partnerships and Quality Contracts models provided in the 2001 Act with Bus Services Improvement Partnerships (“BSIPs”) and Franchising Frameworks.

The new powers contained in sections 3K and 13R of the 2001 Act enable local transport authorities to obtain and share relevant information to develop effective and evidence-based plans for improving local bus services, either through the introduction of a BSIP scheme or a Franchising Framework. The aim of these regulations is to set out the categories of information that can be requested by an authority in connection with their BSIP and franchising functions respectively.

“Relevant information” for the purpose of bus services improvement partnerships (“BSIPs”)

Regulation 2 specifies the types of information that are “relevant information” for the purpose of section 3K of the 2001 Act (related to BSIPs). The categories of information set out in regulation 2 are all intended to help the local transport authority when they are exercising their functions related to BSIPs. The categories include, in particular, information about the total registered distance of relevant local services, and whether an operator of a relevant local service is a subsidiary, and these categories of information are intended to help a local transport authority to determine a sufficient number of persons for the purposes of the objections mechanism found in the BSIP regime. Regulation 2 also restricts the meaning of “relevant information” to information that the operator possesses or controls, and which relates to the preceding five years. This is intended to ensure operators are not unduly burdened under the new information-gathering provisions. Also, the categories of “relevant information” each relate to “relevant local services”, and which services are “relevant local services” depends on the BSIP function being exercised by the local transport authority; this is to ensure the scope of local transport authorities’ information-gathering powers is no wider than is necessary to effectively exercise their functions. For example, where the local transport authority is preparing and making a BSIP plan or scheme, the “relevant local services” are the local services operating in the local transport authority’s area, or any part of it, because the local transport authority may have not yet identified the area to be covered by the BSIP plan or scheme. By contrast, where the local transport authority is reviewing the effectiveness of an existing BSIP plan or scheme, the “relevant local services” are those in the area covered by that BSIP plan or scheme.

“Relevant information” for the purpose of local services franchises

Regulation 3 specifies the types of information that are “relevant information” for the

purpose of section 13R of the 2001 Act (related to local services franchises). Regulation 3 follows the same structure as regulation 2. First, regulation 3 sets out categories of information that may be “relevant information”, and these are all intended to help the local transport authority when they are exercising their functions related to local services franchises. The meaning of “relevant information” for franchising purposes is also restricted to information that the operator possesses or controls and which relates to the preceding five years, to ensure operators are not unduly burdened under the new information-gathering provisions. Finally, as with BSIPs, the categories of information are each related to “relevant local services” and the meaning of this term changes depending on the franchising function being exercised by the local transport authority. This is to ensure the scope of local transport authorities’ information-gathering powers is no wider than is necessary to effectively exercise their functions.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU.

Consultation

A public consultation on the implementation of the bus provisions contained in Part 3 of the 2019 Act took place between 14 July to 6 October 2021. A wide range of stakeholders were consulted, including local transport authorities, regional transport partnerships, CoSLA, trade unions, representatives of bus operators, the third sector, and bus user representatives. There were 42 organisations who responded to the consultation and commented on the information questions within the document.

The public consultation asked questions about the information that should be included and excluded from the “relevant information” that may be required by authorities in connection with their BSIP and franchising functions, and whether there were any circumstances in which “relevant information” should not be able to be required. A theme that emerged from the responses was local authorities and regional transport partnerships generally favoured a wide range of information being “relevant information”, whereas operators generally favoured a more limited range of “relevant information”.

There was a perception from local transport authorities, regional transport partnerships, and trade unions that “information provision should be mandatory rather than optional”. Some respondents commented that no information should be excluded from the definition of “relevant information”, while other responses noted specific types of information that should be excluded. In addition, some responses referred to types of information that should be included within “relevant information”, including financial data, types of vehicles used, passenger numbers, ticket sales data and fare structures.

The regulations have been developed to set out types of information that may be required as “relevant information”, including many of the types of information noted for inclusion in the consultation responses. Also, while some responses referred to

additional processes, restrictions or exclusions for commercially sensitive information, the regulations do not make special provision for such information. This is because it is not considered necessary to do so as the 2019 Act contains provisions governing the disclosure of “relevant information” obtained by local transport authorities, and the Act makes it an offence to breach those restrictions. The analysis report published in March 2022 is available on the Transport Scotland website¹ and contains fuller analysis of the responses received.

Following the public consultation, we have had subsequent discussions with key stakeholders, including ATCO, CoSLA, Bus Users Scotland and CPT to obtain views to inform the development of these regulations. Officials also engaged with public sector organisations, including the Office of the Traffic Commissioner for Scotland and the Competition and Markets Authority, on technical elements of the regulations.

Impact Assessments

It is not considered necessary to conduct impact assessments for this instrument. These regulations make detailed provision about the relevant information that may be required by local transport authorities under sections 3K and 13R of the 2001 Act (inserted by sections 35 and 38 of the 2019 Act), and they do not seek to change the policy intent of those sections of the 2001 Act. The following impact assessments were conducted in relation to the implementation of the bus provisions contained in Part 3 of the 2019 Act (including sections 35 and 38 and the information requirements to which these regulations relate): -

- An Equalities Impact Assessment
- A partial Business and Regulatory Impact Assessment
- A Child Rights and Wellbeing Impact Assessment
- An Islands Screening Assessment
- A Fairer Scotland Duty Impact Assessment

There are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations.

Financial Effects

As stated above a partial Business and Regulatory Impact Assessment (“BRIA”) was completed for the implementation of Part 3 of the 2019 Act. This concluded that the financial impacts of implementing the information requirements contained in sections 35 and 38 were likely to be minimal because the legislation is building on the information that operators may already provide to local transport authorities as part of their wider functions under the 2001 Act.

A BRIA has not been completed for this instrument as it has no financial effects on the Scottish Government, local government, or business.

Scottish Government
Transport Scotland

December 2023

¹ [Implementing Part Three of the Transport \(Scotland\) Act 2019: Bus Services - Analysis of Consultation Responses | Transport Scotland](#)