

# **The Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024**

## **Final Business and Regulatory Impact Assessment – 2024**

# Introduction

This Final Business Regulatory Impact Assessment (BRIA) relates only to the provisions within the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024. The panels in respect of which these regulations make provision to be convened under section 13J(2) and 13O(2) of the Transport (Scotland) Act 2001 (“the 2001 Act”).

## Executive summary

This BRIA is supplemental to the partial BRIA which was published on 14 July 2021 alongside the public consultation entitled “[Implementing Part 3 \(Bus Services\) of the Transport \(Scotland\) Act 2019](#)”, which considered all the powers related to local bus services available to local transport authorities in the Transport (Scotland) Act 2019 (“the 2019 Act”). This BRIA does not revisit our assessment of the costs connected to those powers. This BRIA only assesses the specific provisions in the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024 and will also consider any potential impacts these regulations would have on the Traffic Commissioner for Scotland and its business.

This document is written subject to the best available information at the time, based on evidence gathered from engagement with relevant stakeholders.

This BRIA is structured into the following sections:

Section 1: provides background to the legislation and gives a brief explanation of the regulations. In particular, it considers the role of the franchising panel(s) and the intended effect of these regulations. This section also considers the two options available to the Scottish Ministers: do nothing or proceed with laying these regulations, noting that franchising is an important tool for local transport authorities to improve bus services in their areas. Finally, it also considers the impact of the regulations on the Traffic Commissioner for Scotland as the franchising provisions in the 2019 Act place new duties on the Traffic Commissioner for Scotland, which include the issuing of notices in relation to the proposed making, variation or revocation of a franchising framework, the appointment and reimbursement of panel members, as well as the administration necessary to convene and operate the panels.

Section 2: provides details of the engagement undertaken within government, with the public and with businesses which has informed this BRIA. It takes account of the direct engagement that took place with the Traffic Commissioner for Scotland about the panel process when it was first introduced under the Transport (Scotland) Bill in 2017, and the subsequent engagement undertaken since 2021, alongside the analysis of the feedback received to our public consultation on the implementation of the bus powers published on 14 July 2021.

Section 3: provides an assessment of the two options and their cost and benefits, noting the financial impact to the Traffic Commissioner. The assessment also recognises the positive benefits to the bus industry if operators win contracts to run

services in a franchised area, and the potential for innovation in service provision. Bringing franchising into full effect delivers an established policy to improve Scotland's bus network and help arrest the decline in patronage. While franchising as a whole may impact on consumers, these regulations have no impact under the Consumer (Scotland) Act 2020, and we do not consider it necessary to carry out a consumers duty impact assessment (see the screening document in Annex A).

Section 4: highlights there are no regulatory impacts and that the regulations do not conflict with the Scottish Government's policy on EU alignment.

Section 5: recommends proceeding with option 2, noting that the implementation of these regulations would assist in bringing the franchising provisions into full effect. While there are no specific plans to review the impact of these regulations, which are scheduled to come into force on 1 November 2024, we will keep the whole franchising process under review.

Section 6: contains the declaration and publication statement.

# Section 1: Background, aims and options

## Background to policy issue

- 1.1. Bus patronage in Scotland (and the UK) has been declining since the 1960s with the trend continuing after deregulation and privatisation under the Transport Act 1985. As a local service, buses work best when services are tailored to meet local needs and circumstances.
- 1.2. While the Transport (Scotland) Act 2001 attempted to set a framework for the improvement of local bus provision, outcomes did not meet expectations. Stakeholder views found in the [Bus Services in Scotland- Improving the framework for delivery public consultation](#) highlighted that elements of the legislation were unclear or over-burdensome thus limiting their uptake and practical effect.
- 1.3. To address this, the Scottish Government amended the [Transport \(Scotland\) Act 2001](#) (“the 2001 Act”) by introducing a range of flexible tools under the [Transport \(Scotland\) Act 2019](#) (“the 2019 Act”) that local transport authorities can use to revitalise their bus networks according to their own needs. These powers include Bus Services Improvement Partnerships, Local Services Franchises, and local authority run services, which sit alongside their existing ability to subsidise services.
- 1.4. The amendments introduced by the 2019 Act build on (and in some cases replace) existing powers for local transport authorities. In particular, the Quality Contracts model found in the 2001 Act is replaced by the Local Services Franchise model. The new Local Services Franchises model is designed to enable local transport authorities to streamline services and develop better integration and control over fares. It also increases the range of situations in which local transport authorities can consider using the franchising option. The model requires a local transport authority to prepare a franchising framework which determines the geographic area of the franchise, what local services are to be provided, the standards to which these services are to be provided, and any new additional facilities to be provided in the area.
- 1.5. The system is designed to ensure that appropriate checks and balances are in place to assess whether a local transport authority’s franchising proposals are robust and deliverable. This structured approach will ensure that decision making is more transparent via a process of rigorous assessment and evidence-based analysis. A key aspect of this is the formation of independent panels that are convened by the Traffic Commissioner to assess franchising proposals.

## Purpose/ aim of action and desired effect

- 1.6. The Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024 set out the role of the panel(s) to be convened under sections 13J(2) and 13O(2) of the 2001 Act. A panel must decide

whether or not to approve the franchising proposal and must consider, among other things, whether the local transport authority has reached a reasonable conclusion in deciding to make, vary or revoke the franchising framework.

- 1.7. A panel will consist of three members appointed for a period by the Traffic Commissioner (TC). To ensure that the panels can carry out their functions effectively, this instrument sets out the eligibility criteria for appointing panel members, which are focussed on ensuring members have appropriate knowledge and experience, and that any real or perceived conflicts of interest are avoided.
- 1.8. This instrument also provides that panel members may receive remuneration at a level to be determined by the TC, and that the Commissioner will be required to pay or reimburse members' reasonable expenses. The TC will also provide administrative support and accommodation appropriate for a panel to discharge its functions.
- 1.9. A panel may invite individuals to submit written evidence as part of its evidence gathering and may hold oral evidence sessions in which the panel determines the procedure to be followed. This approach allows panels to be open and transparent by holding evidence sessions in public to discuss specific aspects of a local transport authority's franchising proposal, particularly if it is causing potential concern to stakeholders.
- 1.10. The instrument also confers powers on the TC to issue guidance or general directions in relation to a panel's decision-making process.

## **Options (considered so far/ still open)**

1.11. This BRIA, considers the impact of the following options:

- Option 1 - Do nothing.
- Option 2 - Proceed with the laying of the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024.

**Option 1** is the baseline scenario. Under this option, the basic requirements for the Traffic Commissioner to convene a panel are in place under the 2001 Act. However, the Act does not provide necessary detail in relation to various aspects of the panels, such as the criteria by which persons may be eligible to be appointed to a panel and the panels' decision-making processes. Without these regulations, it may be difficult for the Scottish Traffic Commissioner to set out transparent processes in respect of the panels. A lack of detail and transparency in the franchising proposal approval process may lead to unnecessary delays and create uncertainty about the effectiveness of the overall franchising model.

**Option 2** involves introducing secondary legislation which makes more detailed provision about the panels. In particular, the regulations make provision about the appointment, removal and replacement of panel members, panel members' remuneration and entitlement to expenses, and the decision-making processes of the panels.

Franchising is an important tool for local transport authorities to improve services in their area. However, it is a significant intervention in the local bus market. The independent panel will assess whether the local transport authority's franchise proposals are robust and deliverable, determining whether they can proceed or not. This structured approach will ensure that decision making is more transparent via a process of rigorous assessment and evidence-based analysis.

**Sectors/ Groups affected**

The sector affected by the options identified above is local government as it is local transport authorities who decide to seek approval for their franchising proposals.

## Section 2: Engagement and information gathering

### Engagement approach

- 2.1. There was direct engagement with the Scottish Traffic Commissioner about the franchising proposal approval process when it was introduced under the Transport (Scotland) Bill in 2017. However, further engagement took place in 2021, alongside the public consultation mentioned below, which focused on the membership of the panels and their functions under the new franchising model. In preparing these regulations, officials have worked closely with the TC to ensure the legislation supports the Scottish Traffic Commissioner in convening the panels.

### Public Consultation

- 2.2. A public consultation on the [implementation of the bus provisions](#), including the makeup and functions of the panels for the franchising process contained in Part 3 of the 2019 Act took place between 14 July to 6 October 2021. A total of 67 written representations were received from 42 organisations and 25 individuals, including local transport authorities, regional transport partnerships, the Convention of Scottish Local Authorities (CoSLA), trade unions, representatives of bus operators, the third sector, and bus user representatives.
- 2.3. The [analysis of the responses](#) was published on the Transport Scotland website, and where respondents gave permission for their responses to be made public, we also published these on the Transport Scotland website. We have taken full account of the consultation responses in preparing this Scottish statutory instrument.
- 2.4. Regarding the responses to the questions on the make-up and functions of the panel, responses were mixed with local transport authorities and regional transport partnerships stressing the need for the panel process to adopt a “balanced, objective, evidenced-based and transparent perspective, and should not create an undue barrier in exercising the franchising powers inserted in the 2001 Act”.
- 2.5. There were several comments about the make-up of the panel with mixed responses on the skills and experience members should have to undertake the role of a panel member. Another key theme from the responses to the 2021 public consultation was the need to ensure that there are no conflicts of interest, and if a conflict of interest is discovered, this should lead to immediate removal of the relevant person from the panel.

## **Internal SG engagement/ engagement with wider Public Sector**

### **Internal SG engagement**

- 2.6. For the development of these regulations, discussions took place with colleagues within the Transport Scotland Bus, Accessibility and Active Travel Directorate and wider Transport Scotland and Scottish Government.

### **UK/ Devolved Administrations**

- 2.7. As noted above, we also engaged with the TC, which is a non-departmental tribunal public body that is sponsored by the Department for Transport (DfT) and supported by the Driver and Vehicle Standards Agency (DVSA).
- 2.8. Although independent from Government there is a need for the TCs to work closely with UK and Scottish Government officials. This applies in setting and achieving strategic objectives and providing advice when required on draft legislation. We have specifically sought information from the TC on the potential financial impacts of the Scottish Traffic Commissioner's new duties in relation to the franchising powers as the TC noted the likely financial burdens which will arise from the operation of these panels. The TC shared information on the financial costs associated with the operation of the Quality Contract Scheme Boards, one of which was convened in 2011/2012 to consider Nexus' franchising proposals and can be found in section 3 of this assessment.

### **Wider Public Sector**

- 2.9. We have also had regular engagement with the Competition and Markets Authority (CMA) about the overall franchising process, and with local transport authorities both directly and through the Association of Transport Coordinating Officers (ATCO), and CoSLA on the development of the panel process.
- 2.10. The results of the 2021 public consultation and the subsequent engagement, including regular meetings with the stakeholders listed above, have helped to inform the development of these regulations and this feeds into our impact assessment below.

### **International**

- 2.11. Not applicable, as there are no international implications to these regulations.



## **Business / Third Sector engagement**

- 2.12. We received feedback from a number of bus operators on our 2021 public consultation about the implementation of the bus provisions under the 2019 Act. The feedback on the franchising model was focused on the make-up and the functions of the franchising panels. We also received representations from the Confederation of Passenger Transport (CPT) Scotland about the wider franchising powers within the 2019 Act. CPT is recognised by both the UK and Scottish Governments as a national trade association that represents the views of operators for the bus and coach industry. CPT has over 800 members across the UK who range from multi-national operators to small family businesses.

In developing the 2019 Act and the subsequent regulations, we have had regular meetings with CPT to discuss the bus provisions, including a virtual workshop that was held in March 2021 to discuss in more detail the implementation of the new bus provisions. Among other things this addressed the franchising framework model and its operation.

### **Public consultation**

- 2.13. In July 2021, we published a public consultation about the implementation of the new bus provisions, in which we examined in more detail the functions and makeup of the panels when considering local transport authorities' franchising proposals. The analysis indicated that 22 responses were received which appeared to agree with the policy approach to these regulations, stressing the importance of the decisions of the panels being fully justified, transparent and accountable. We do not intend to re-run the public consultation on the principle of the franchising approval process or on these regulations.

### **Other stakeholders**

- 2.14. Relevant stakeholder groups, including Strathclyde Partnership for Transport (SPT), trade unions, such as the Scottish Trades Union Congress (STUC), Unison and individual bus operators have provided feedback in relation to the development of these regulations.

## Section 3: Costs, impacts and benefits

### Quantified costs to businesses

#### 3.1. Option 1 – Do nothing.

Under this option, the basic requirements for the TC to convene a panel are in place under the 2001 Act. However, the Act does not provide necessary detail in relation to different aspects of the panels, such as the criteria by which persons may be eligible to be appointed to a panel and the panels' decision-making processes. Without these regulations, it may be difficult for the Traffic Commissioner to set out transparent processes in respect of the panels. A lack of detail and transparency in the franchising proposal approval process may lead to unnecessary delays and create uncertainty about the effectiveness of the overall franchising model.

3.2. **Option 2** - Proceed with the laying of the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024. While there will be little to no costs to local transport authorities or bus operators in relation to these regulations, we do expect the TC to incur costs because of the legislation. The costs relate to the setting up and operation of these panels. The establishment and operation of these panels is a new duty for the TC. While the costs will fall on the TC in the first instance, there is an expectation that expenditure will be reimbursed by the Scottish Ministers. We will be engaging with the DfT, DVSA and the TC on the development of a Memorandum of Understanding (MOU) to address the potential costs associated with these additional duties that the Traffic Commissioner for Scotland has under the new franchising model.

3.3. We acknowledge the costs will vary depending on the number of panels that the TC needs to convene to approve the making, varying, or revoking of a franchising framework. The costs will cover matters such as the recruitment and training of panel members, accommodation costs, remuneration, expenses, and associated costs for operating the panel. An illustration of the breakdown of the potential costs is provided in the paragraphs below.

3.4. For the purpose of illustration, when the TC was required to establish a Quality Contract Scheme (QCS) Board in 2011/12 under sections 126A to 126E of the Transport Act 2000 (as inserted by the Local Transport Act 2008) to consider Nexus' proposed QCS, the costs in setting up the Board were as follows:

<b>Description</b>	<b>Amount</b>
The cost is made up of a Deputy Traffic Commissioner to cover for the Traffic Commissioner panel chair, fees and expenses for panel members and a supporting member of staff and miscellaneous costs, including accommodation and postage.	<b>£186,447.71</b>

3.5. The Scottish franchising panel model, as set out in these regulations, is more closely based on the 'School Closure Review Panel', which was introduced via the [Schools \(Consultation\) \(Scotland\) Act 2010](#) by the '[Children and Young People \(Scotland\) Act 2014](#)'.

3.6. The Convener of the School Closure Review Panels appoints three members to form a panel to review the school closure proposal and ultimately decide on whether to consent, or refuse to consent, to the proposal. The panel must consider whether, in making the proposal, the local authority has failed to comply with its statutory responsibilities and whether it has failed to take proper account of any relevant material considerations. A breakdown of the costs associated with operating the [School Closure Review Panel in 2023](#) is below:

<b>Cost Breakdown</b>	<b>Amount</b>
Administrative, business, financial and payroll services (including staff costs and office overheads)	£74,046.06
Training and accommodation hire	£1,749.17
Fees for the Convener	£ 1,543.06
Fees for the panel members	£ 1,021.14
Expenses for the Convener and panel members	£ 576.62
Legal expenses	£0.00
<b>Total</b>	<b>£ 78,936.05*</b>

\*This is an increase of £2,058.22 on the expenditure for 2022.

2021 was the most recent year in which a School Closure Panel was convened , with a panel convened on 2 August 2021 to consider two call ins. [The expenditure breakdown for 2021](#) was as follows:

<b>Cost Breakdown</b>	<b>Amount</b>
Administrative, IT, financial and payroll services including staff costs and office overheads	£56,855.16
Training and recruitment and accommodation hire	£0
Additional costs, including annual report, IT, and postage	£560
Fees for Convener	£ 2,800.00
Fees for panel members	£ 9,800.00
Expenses for the Convener and panel members	£ 22.92
Legal expenses	£458.40
<b>Total</b>	<b>£ 70,496.48</b>

## **Other impacts**

3.7. During our recent engagement with the TC, we sought further information from them about potential costings to convene panels for the purpose of considering whether to approve a local transport authority's franchising proposals, particularly as they are not currently in receipt of any funding from Scottish Ministers.

3.8. We will be engaging with DfT, DVSA and the TC on the development of an MOU to address the costs associated with the additional duties that the Traffic Commissioner for Scotland has under the new franchising model. The costs will include those connected with the recruitment of panel members, and the setting up and operation of the franchising panels.

## **Scottish firms' international competitiveness**

3.9. These regulations do not impact Scottish firms' international competitiveness.

## **Benefits to business**

3.10. These regulations will not provide any direct benefits to business. However, where a local transport authority implements a franchising framework, operators will only be able to provide services within the geographic area of the framework if they enter into a contract with the local transport authority.

3.11. Although the local transport authority will determine the geographic area for their franchise, and the services to be provided and to what standard, the overall franchising policy does provide opportunities for bus operators to be innovative in how they deliver and operate the local services, should they be successful in winning contracts.

## **Small business impacts**

3.12. These regulations will not provide any direct benefits to small businesses, however, the overall policy for franchising should provide some benefits for bus operators by providing them opportunities to be innovative in the way they deliver local bus services.

## **Investment**

3.13. These regulations will not directly affect investment. However, bringing the bus franchising provisions into full effect under the 2001 Act will deliver an established policy to improve Scotland's bus network and help arrest the decline in patronage.

## **Workforce and Fair Work**

3.14. These regulations will not directly affect workforce or Fair Work First Principles. However, should a local transport authority decide to proceed with a franchise and obtain approval to make a franchising framework under the 2001 Act, they will be required to take account of the workforce and Fair Work First principles, including the requirements under the Transfer of Undertakings (Protection of Employment) Regulations 2006 should staff need to be transferred to a new operator.

## Climate change/ Circular Economy

3.15. We do not consider that these regulations will have an effect on circular economy principles.

## Competition Assessment

3.16. Having considered the Competition and Markets Authority (CMA) five competition assessment questions, which are below, we can confirm that there should be no competitive advantage to any individual or group due to the introduction of these regulations. These regulations are designed to deliver greater scrutiny and transparency to the franchising process.

- Will the measure directly or indirectly limit the number or range of suppliers? **No.**
- Will the measure limit the ability of suppliers to compete? **No.**
- Will the measure limit suppliers' incentives to compete? **No.**
- Will the measure affect consumers' ability to engage with the market and make choices that align with their preferences? **No.**
- Will the measure affect suppliers' ability and/or incentive to introduce new technologies, products, or business models? **No.**

Finally, the CMA is a mandatory consultee as part of the franchising process and will be able to provide feedback to a local transport authority on their franchising proposals.

## Consumer Duty

3.17. No assessment is required as the panels in respect of which provision is made in the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024 will not impact consumers. In addition, the local transport authorities making the franchising proposals which will be considered by the panels are not considered to be consumers under the definition in the Consumer (Scotland) Act 2020. See Annex A for further information.

## **Section 4: Additional implementation considerations**

### **Enforcement/ compliance**

4.1. Not applicable. There is no significant change to enforcement, sanctions, and monitoring in relation to these regulations.

### **UK, EU and International Regulatory Alignment and Obligations**

#### **Internal Market/ Intra-UK Trade**

4.2. These regulations will have no impact on the internal market or intra-UK trade.

#### **International Trade Implications**

4.3. These regulations will have no impact on international trade.

#### **EU Alignment consideration**

4.4. It is not expected that these regulations will have any EU implications and there is no identified conflict with the Scottish Government's policy on EU alignment.

#### **Legal Aid**

4.5. There are no legal aid implications associated with these regulations.

#### **Digital impact**

4.6. These regulations will not have a digital impact.

#### **Business forms**

4.7. Not applicable as no new business forms will be made under these regulations.

## **Section 5: Next steps and implementation**

### **Recommendations/ preferred options**

5.1. Option 2 is recommended as these regulations, set out a structured approach for how the franchising panels are to be convened and operated. Among other things, they set the eligibility criteria for the recruitment of panel members and make provision about the processes for panels to consider written and oral evidence. These regulations therefore assist to bring the franchising provisions into full effect.

### **Implementation considerations/ plan**

5.2. These regulations are expected to come into force on 1 November 2024.

### **Post implementation review**

5.3. There are no specific plans to monitor or review the impact of these regulations. However, we will keep the operation of the whole franchising process under review and will revisit it as needed.

# Declaration

I have read the Business and Regulatory Impact Assessment, and I am satisfied that it represents a fair and reasonable view of the expected costs, benefits, and impact of the policy, and that these have been taken into account when making the policy decision. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

I am also satisfied that officials have considered the impact on consumers as required by the [Consumer Scotland Act 2020](#) in completion of the Consumer Duty section of this BRIA.

Signed:

A handwritten signature in black ink that reads "Jim Fairlie". The signature is written in a cursive style with a large initial 'J'.

Date: 16/08/2024

Minister's name: Jim Fairlie MSP

Minister's title: Minister for Agriculture and Connectivity

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## ANNEX A

Title of the programme/proposal's decision	The Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024
Programme/proposal/ decision implementation date	1 November 2024
Directorate/Division/Service/Team	Bus Regulatory and Funding Policy Unit
Responsible officer for taking decision	Sharon Wood, Bus Policy Manager
Who else participated in taking the decision	Bridget Bryden, Bus Regulatory Policy Team Leader
Was the decision taken by a partnership?	No.
Rationale for decision	<p>These regulations relate to the approval process within the bus franchising model inserted into the Transport (Scotland) Act 2001 ("the 2001 Act") by the Transport (Scotland) Act 2019. The regulations focus on the make-up and functions of the panel(s) that are to be convened by the Traffic Commissioner to consider whether to approve local transport authorities' franchising proposals. While franchising as a whole will have a positive impact on consumers, these regulations do not have an impact on the consumer duty under the Consumer (Scotland) Act 2020 ("the 2020 Act").</p> <p>Local transport authorities are not considered to be consumers under the definition in the 2020 Act. They are the bodies responsible for determining which of the bus powers under the 2001 Act to use in improving local services and, if franchising is chosen, they are responsible for preparing the franchising framework and assessment to introduce the franchise.</p> <p>Furthermore, these regulations do not amend the overall Scottish Government's legislative approach to net zero. The socio-economic impacts of the Scottish Government's transport policy are to provide local transport authorities with the tools necessary to</p>

	revitalise local bus networks in their areas and ensure that everyone has accessible public transport regardless of where they live in Scotland.
<p>Declaration:</p> <p>I confirm that the decision not to perform a consumer duty assessment has been authorised by:</p> <p>Name and job title: Bridget Bryden, Bus Regulatory Policy Team Leader</p> <p>Date: 8 August 2024</p>	