

## 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 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 website<sup>1</sup> 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

---

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

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*