

## POLICY NOTE

### THE BUS SERVICES IMPROVEMENT PARTNERSHIPS (OBJECTIONS) (SCOTLAND) REGULATIONS 2024

SSI 2024/72

The above instrument was made in exercise of the powers conferred by sections 3M and 81(2) and paragraph 26 of schedule A1 of the Transport (Scotland) Act 2001 (“the 2001 Act”). The instrument is subject to the affirmative procedure.

**Purpose of the instrument:**

The purpose of this instrument is to specify the processes whereby certain operators of particular local bus services may object to the making, variation or revocation of a bus services improvement partnership plan or scheme prepared by a local transport authority under the 2001 Act, and for determining whether a sufficient number of those operators have objected.

#### Policy Objectives

The purpose 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 can 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 (Quality Partnerships and Quality Contracts), substituting them with Bus Services Improvement Partnerships (BSIPs) and Franchising Frameworks.

The new schedule A1 of the 2001 Act, inserted by section 36 of the 2019 Act, sets out the procedures that local transport authorities must follow when they make, vary or revoke a BSIP plan or scheme. An important part of these procedures is that operators of qualifying local services will have the opportunity to object to the proposed making, variation or revocation of a plan or a scheme. The local transport authority can only progress with their proposal in relation to a BSIP plan or scheme if a sufficient number of operators of qualifying local services do not object.

These regulations set out which operators will qualify, by reference to the services that they operate, as having a right to object and the processes for determining whether a sufficient number of those operators have objected. A key aim of these regulations is to ensure that the arrangements are mutually acceptable to the parties to a scheme and to balance the right of local transport authorities to bring forward proposals for BSIP plans and schemes against the right of operators to object to what is being proposed.

#### “Qualifying local services”

Regulation 2 specifies which local services are “qualifying local services” for the purposes of schedule A1 of the 2001 Act. This prescribes the detailed definition of these services that will apply when the local transport authority is making, varying or revoking a BSIP plan or scheme. The definition of “qualifying local services” is intended to include all local services which may have an interest, financial or otherwise, in the specific area, and where the Traffic Commissioner has accepted an application for registration of that service, unless they are excluded. This regulation further specifies which services are excluded from the objection

mechanism. The intention is to keep the objection mechanism balanced and grant equal opportunities for both local transport authorities and operators to contribute to, and in the case of operators to object to, BSIP plans or scheme proposals. For this reason, excluded from the objection mechanism are local authority run services and services where the local transport authority retains all the revenue, services where the operator has had an application for cancellation of a service in the area of a BSIP plan or scheme accepted by the Traffic Commissioner, and community services operating under a permit under section 22 of the Transport Act 1985.

The policy decision not to exclude long-distance and interurban services if they have a stopping place in the area of the BSIP plan or scheme was made to reflect the unique challenges that impact rural Scotland.

### **“Qualifying time”**

Regulation 3 prescribes “qualifying time” for the purposes of Parts 2 and 3 of schedule A1 of the 2001 Act. The qualifying time is defined as the working day immediately before the day on which the local transport authority issues notice to operators in connection with a proposal to vary or revoke a BSIP plan or scheme. This means that operators of qualifying local services on the working day before such notices are given will be able to participate in the objection mechanism. Similar provision is not required in these Regulations in connection with the making of a BSIP plan or scheme, as this is already specified in Part 1 of schedule A1 of the 2001 Act.

### **Means of making objections**

Regulation 4 sets out how objections can be made and the information that is required to be included with those objections.

### **“Sufficient number of persons”**

Regulation 5 prescribes how the objection process will determine whether a “sufficient number of persons” have objected. This is the minimum number of operators needed to object for the progress of that particular proposal to be halted. This number is determined by the number of objectors as a proportion of the total number of operators of “qualifying local services” in the area of the BSIP, and on the registered distance of those “qualifying local services” operated in the BSIP area as a percentage of the registered distance of all “qualifying local services” operated in that area.

The process requires two different calculations based on the numbers of operators objecting out of the total number of operators in the area, and the proportion of the total operated distance that these objectors represent. If the objecting operators meet either test, so that they are deemed to constitute a sufficient number of objectors, the next stage of the development of the BSIP plan or scheme cannot go ahead. The objection mechanism is designed to be proportionate and allow all operators of “qualifying local services” to participate in the making, variation and revocation of a BSIP plan or scheme. In addition, it intends to prevent a single operator with sufficient market share in the BSIP area from effectively having a sole veto on the proposals. Therefore, subsidiaries of the same operator or holding company are to be treated as one operator for this purpose. This is to prevent operators from splitting into a number of subsidiaries in order to increase their influence over the objection mechanism.

## **Content of notices**

Regulation 6 makes provisions about the content and service of certain notices under schedule A1 of the 2001 Act that relate to objections.

## **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 consultation asked questions about the definitions of qualifying local services (including which services should be excluded), the definition of qualifying time and the proposed mechanism to determine if a sufficient number of persons have objected. The main themes from the public consultation on the objection mechanism related to the definition of "qualifying local service". The key issue being that the definition, as consulted on, combined 'a qualifying local service' with 'an operator of a local service', and an operator is not a service and a local service cannot object. These regulations reflect those comments and the term "operator of a local service" is not used in the definition.

There was broad agreement with the proposed exclusions of certain services from the objection mechanism. There were some calls for discretion to exclude services for each plan/scheme to ensure each BSIP proposal accurately reflects the local challenges of the plan or scheme area to maximise the benefits a BSIP could bring. The policy decision not to exclude long-distance and interurban services, as well as, services that have a stopping place in the area of the BSIP plan or scheme but have less than 10% of mileage within that area, was made to reflect the unique challenges that impact rural Scotland.

The definition of 'qualifying time' resulted in a split of responses, those who agreed mainly felt that the proposed definition would ensure that all current operators providing, or those due to provide, a registered local bus service would be included. Among those who disagreed, the key theme was a perception of an error in the definition. Consultees highlighted the different references in the Act and their implications on "qualifying time". This has been addressed in the drafting by prescribing the definition of "qualifying time" for the variation and revocation of a BSIP plan and scheme separately.

Respondents neither agreed nor disagreed with the proposed mechanism to determine whether a sufficient number of operators have objected. The key reason being that both proposed options might provide a suitable model in most situations. 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 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 prescribe the processes where operators of certain local bus service may object to the making, variation or revocation of bus services improvement partnership plans and schemes by an LTA under schedule A1 of the 2001 Act (inserted by section 36 of the 2019 Act), and 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 the objection process 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 processes for objecting to BSIP plans and schemes contained in section 36 were likely to be minimal because the process is designed to make the partnership an active collaboration.

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*

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<sup>1</sup> <https://www.transport.gov.scot/publication/implementing-part-three-of-the-transport-scotland-act-2019-bus-services-analysis-of-consultation-responses>