
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Transport (Scotland) Act 2019 ([asp 17](#)) (“the 2019 Act”).

Part 2 gives the Secretary of State for Transport and the Secretary of State for Environment, Food and Rural Affairs the power to share information with Scottish local authorities and the Scottish Ministers for any purpose connected to the operation and enforcement of low emission zone schemes created in Scotland under Part 2 of the 2019 Act.

Chapter 1 of Part 3 provides the Competition and Markets Authority (“the CMA”) with enforcement powers in relation to the application of the competition test provided for in section 37 of the Transport (Scotland) Act 2001 ([asp 2](#)) (“the 2001 Act”) to the relevant functions of making and varying bus services improvement partnership schemes, making ticketing schemes on or after 31 October 2023, and varying those ticketing schemes. It also makes procedural provision in relation to the CMA’s exercise of enforcement powers.

Chapter 2 of Part 3 provides for a specific competition test and enforcement regime for certain agreements, decisions and practices between bus operators, in place of the provisions in Chapter 1 of the Competition Act 1998 ([c. 41](#)).

Part 4 makes provision in relation to local services franchises under Chapter 2 of Part 2 of the 2001 Act as substituted by section 38 of the 2019 Act. It provides for certain situations involving franchising frameworks made under the 2001 Act to be treated as a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ([S.I. 2006/246](#)) and makes procedural provision in relation to this.

Part 5 amends section 26 of the Transport Act 1985 ([c. 67](#)) (“the 1985 Act”) which sets out circumstances in which conditions can be attached to a PSV operator’s licence where it appears to a traffic commissioner that an operator has failed to comply with certain requirements. It amends the list of circumstances in section 26(1) of the 1985 Act as follows:

- To replace references, in section 26(1)(b) of the 1985 Act, to section 8(4) (relating to quality partnerships) and section 22(1)(b) (relating to quality contracts) of the 2001 Act with references to provisions inserted by the 2019 Act (section 3F(1) relating to bus services improvement partnerships and section 13B(1)(b) or (3) relating to local services franchising frameworks).
- To add failure to comply with the requirement to provide information under section 3K(2) or 13R(2) of the 2001 Act (which enable a local transport authority to require prescribed relevant information from operators of local services when the authority is exercising functions in relation to bus services improvement partnerships and local services franchising frameworks respectively).
- To add a failure to comply with a requirement under section 6ZA of the 1985 Act (which enables an affected authority to require an operator who has made an application to vary or cancel a service registered under section 6 of the 1985 Act to provide such information as may be prescribed by the Scottish Ministers, within such period as may be prescribed).
- To add a failure to comply with article 28 of this Order (which places an obligation on a relevant operator in receipt of a request for relevant information to comply with such a request).

Part 6 makes provision for revocations and savings. Article 37(1) provides that articles 2 and 4 to 17 of the Transport (Scotland) Act 2001 (Conditions attached to PSV Operator’s Licence and

Competition Test for Exercise of Bus Functions) Order 2001 ([S.I. 2001/2748](#)) (“the 2001 Order”) are revoked. These articles contained provision about interpretation and the competition test for the exercise of bus functions. Paragraph (2) makes savings provision in relation to existing quality partnerships and ticketing schemes to ensure that the existing law in the 2001 Order continues to apply for all purposes relating to the making and varying of those schemes. This will include the power of the CMA to commence an investigation under article 6 in relation to a quality partnership scheme. Paragraph (3) makes savings provision protecting information obtained under the 2001 Order in relation to certain tenders for subsidised services.

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