



**TRANSPORT
SCOTLAND**
CÒMHDHAIL ALBA

Implementing Part 3 of the Transport (Scotland) Act 2019: Bus Services

A consultation

Contents

Ministerial foreword	4
Responding to this consultation.....	6
About this Consultation	6
Purpose of this Consultation	6
How to respond.....	6
Introduction	9
Impact of COVID-19 on public transport	10
Abbreviations	12
Local Transport Authority Bus Services	13
Background.....	13
Consultation Questions.....	13
Bus Service Improvement Partnerships (BSIPs).....	16
Background.....	16
BSIP process	17
Partnership plans	20
What should a partnership plan contain?.....	20
Partnership schemes	20
Consultation questions	21
Exempt services	27
Consultation questions	27
Voting mechanism	28
Qualifying local services and qualifying time.....	28
Multi-operator travel card definition	32
Consultation questions	32
Reviewing and reporting	33
Consultation questions	33
Scrutiny of bus service improvement partnerships.....	34
Provision of information	34
Consultation questions	35
Accessibility of services.....	36
Consultation questions	36
Guidance.....	37
Consultation questions	37

Local Services Franchises	38
Background.....	38
Franchising process.....	39
Franchising assessments	41
Breakdown of the Five Case model promoted by HM Treasury.....	42
Guidance to LTAs on franchise assessments.....	42
Consultation questions	43
Provision of Information for Preparing and Assessing Proposed Franchising Frameworks	44
Consultation questions	44
The audit process.....	45
Guidance to auditors.....	45
Consultation questions	45
Guidance to LTAs for making a new franchise assessment	47
Consultation questions	47
Independent panel appointed by the Traffic Commissioner	48
Consultation Questions.....	48
Functions of the panel	48
Consultation questions	49
Information relating to services	50
Background.....	50
Consultation questions	51
Prescribing the time period for providing information	51
Service Information Operators Must Provide	52
Consultation questions	52
Extent of Permissible Disclosure	52
Consultation question	52
Further Provision and Consultation.....	52
Consultation questions	53
Impact Assessments.....	54
Consultation Questions.....	54
Annex A – Consultation Responses.....	55

Ministerial foreword

High quality bus services are absolutely essential for our communities. This is something which has been brought into even sharper relief by the coronavirus pandemic. People rely on public transport for a wide variety of reasons and whilst bus passenger numbers have continued to decline since the 1960's as private car-use has risen, the role of bus is set to become increasingly important as we turn to face the urgent and harsh realities of climate change.



The importance of bus and its contribution to tackling the climate emergency is encapsulated in the Climate Change Plan and the second National Transport Strategy. Our challenge is to encourage a significant change in behaviour so that we can reduce car kilometres by 20% by 2030 and ultimately achieve the goal of a just transition to net zero by 2045.

Buses can be a convenient, affordable and highly sustainable option. Our landmark investment of £500 million for bus priority infrastructure and for zero emission buses will make them even more so. We have already awarded over £50 million of funding towards 272 battery electric zero emission buses and have ambitious plans to decarbonise our bus fleet further. However, we cannot do this alone and are working with our partners in the Bus Decarbonisation Taskforce to take this forward.

By improving the regulatory framework alongside that investment, we will enable local transport authorities, operators and other partners to significantly improve service quality and efficiency whilst reducing congestion.

The Transport (Scotland) Act 2019 is an important milestone for Scotland's bus regulatory landscape. The Act gives local transport authorities the tools and flexibility they need to provide bus services tailored to the specific needs of their communities. This consultation gives you the opportunity to help inform the development of regulations and guidance to make these tools work.

Implementing the Act will also be vital for local transport authorities as they address the unprecedented impact of the COVID-19 pandemic on Scotland's public transport network. Bus service provision has suffered due to low passenger demand during national lockdowns and the need for physical distancing. Supporting the resurgence of a vibrant bus network with fast, frequent and reliable local bus services will form a vital step in our COVID recovery. As the pandemic abates, encouraging a return to public transport will be a key component of the economic recovery, and a key way to help achieve our climate change targets.

Your feedback will ensure that the regulations and guidance are fit for purpose and help support the resurgence of the vibrant public transport networks that Scotland deserves.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned below the main text.

Graeme Dey MSP

Minister for Transport

July 2021

Responding to this consultation

About this Consultation

Consultation is an essential part of the policy making process. It gives us the opportunity to seek your opinions. This consultation details issues under consideration and asks you questions about what we are proposing. After the consultation is closed we will publish responses where we have been given permission to do so.

Responses are analysed and used as part of the policy making process, along with a range of other available information and evidence.

Purpose of this Consultation

The responses to this consultation will help shape the regulations and supporting guidance for implementing the new bus provisions contained in Part 3 of the Transport (Scotland) Act 2019. These provisions will provide a toolkit of options that can be utilised effectively by local transport authorities to support the resurgence of a vibrant public transport network.

Responses to this consultation will help to inform the Scottish Government's considerations regarding the implementation of the bus provisions contained within the 2019 Act, as well as the development of supporting guidance.

How to respond

To encourage wide participation, the Scottish Government has created a number of ways for you to engage in this consultation. You can respond online, by email or by post. Details of how to do this are highlighted in the following table.

Online

You can use the response form on the Scottish Government's consultation hub, [Citizen Space](#). You can save and return to your response at any time while the consultation is open. Please ensure that your response is submitted before the consultation closes at midnight on 06 October 2021.

You will automatically be emailed a copy of your response after you submit it. If you choose this method, you will be directed to complete the Respondent Information Form, which lets us know how you wish your response to be handled and whether you are happy for it to be made public.

Email

Send us your response in an email to: BusConsultation@transport.gov.scot. Please include a completed Respondent Information Form (Annex A).

Post

Send your response to:

Bus Consultation

Bus Regulatory and Funding Policy Unit

Transport Scotland

Area 2-F North

Victoria Quay

Edinburgh

EH6 6QQ

Please include a completed Respondent Information Form (Annex A).

Deadline

The deadline for responses is 6 October 2021.

Need assistance?

If you need support in answering this consultation or have a query about the consultation process you can send your query to:

BusConsultation@transport.gov.scot

or in writing to:

Bus Consultation

Bus Regulatory and Funding Policy Unit

Transport Scotland

Area 2-F North

Victoria Quay

Edinburgh

EH6 6QQ

Next Steps

After the consultation has closed, we will analyse all of the responses received and use your feedback to help inform our considerations and development of the regulations and supporting guidance on the implementation of the whole package of bus provisions within the 2019 Act.

Where permission has been given, we will make all responses available to the public on [Citizen Space](#).

Introduction

Bus services are an economic and social cornerstone for Scotland. The sector accounts for three quarters of all public transport journeys and is set to play an increasingly important role in achieving a [just transition to net zero by 2045](#). However, bus patronage in Scotland (and the UK) has been declining since the 1960s with the trend continuing through and beyond the privatisation of the sector following deregulation in 1985.

Set against this backdrop, the [Transport \(Scotland\) Act 2019](#) (“the 2019 Act”) develops and refines the regulatory landscape with a suite of new options designed to give local transport authorities (LTAs) the tools and flexibility they need to halt the decline in patronage and improve bus services, tailored to the specific needs of their local areas.

The purpose of this consultation is to help us design the implementation framework set out by the provisions of the 2019 Act which covers partnership working, local services franchising, new powers for LTAs to run their own buses and improvements to the information available to LTAs when services are deregistered. Implementation will be achieved by secondary legislation and guidance where appropriate.

Fundamentally, buses are a local service and work best when they are tailored to meet the needs and circumstances of the local area. Implementing the 2019 Act will help LTAs and bus operators to make services more available, accessible and affordable for all of society. The majority of bus services in Scotland are provided by private operators on a commercial basis under a regulatory framework which includes the Public Passengers Vehicles Act 1981 and the Transport Act 1985 and which covers safety and environmental standards, operator and driver qualifications and compliance with legal obligations, as well as punctuality and reliability of services.

The Scottish Government subsidises a proportion of the overall costs of the bus network (including scheduled and demand responsive services) through the [Bus Service Operators Grant](#) (BSOG). Beyond this, the majority of services are funded by passenger fares and by reimbursement payments from Transport Scotland for carrying passengers under the national concessionary travel scheme for older and disabled people, which [accounts for two fifths](#) of all journeys. The Scottish Government is also working with its partners to set up a national concessionary travel scheme for free bus travel for under 22s.

A substantial minority of bus services are additionally supported by LTAs, in their area to meet local needs. They have [a duty](#) to secure the provision of services to meet public transport requirements within their area that would otherwise not be provided commercially. LTAs also can provide subsidy to operators to provide those services.

Impact of COVID-19 on public transport

The COVID-19 Pandemic has created unprecedented pressures on the public transport network. Bus patronage fell to approximately 15% of pre-pandemic levels during the initial lockdown and has since risen to approximately 40%. However, patronage numbers are still below pre-Covid levels. This is partly due to physical distancing restrictions, which has resulted in more people travelling by private car than public transport.

The impact of the pandemic on demand and revenue has resulted in the Scottish Government providing emergency funding to sustain the bus network in Scotland. Yet, Covid has shown that bus services are a necessity for many individuals, particularly those with lower incomes who are identified as key workers and needing access to their work and essential services.

The bus service sector has an increasingly important role to play in meeting Scotland's domestic transport needs in the face of the increasingly urgent realities of the climate crisis. The Scottish Government recently updated its [Climate Change Plan](#) with policies designed to meet emissions targets over the period up to 2032, and help to achieve a just transition to net zero by 2045. Delivery will be achieved under the second [National Transport Strategy](#) which sets out a compelling vision for the transport system we all want for Scotland over the next 20 years. The strategy supports climate action via a range of measures consistent with the Climate Change Plan. These include:

- Reducing car kilometres by 20% by 2030;
- Committing £500 million via our Bus Partnership Fund for bus priorities measures to tackle congestion and raise bus usage;
- Improving the regulatory framework via the Transport (Scotland) Act 2019 by increasing the range of options available to local transport authorities to secure additional bus services to meet local needs;
- Providing £50 million to support bus operators to invest in new zero-emission buses – over 200 of these buses will be built in Scotland helping to support skilled, green manufacturing jobs, as well as reducing transport emissions from the bus sector.

Scotland's bus service landscape is very diverse, reflecting the interplay between a number of key factors. For example, in Moray they do not subsidise scheduled services. These choices are themselves partly a reflection of local conditions, such as population density and demographics, local geography, competition between bus and other modes, variation between (and the relative mix of) urban and rural needs as well as the level of competition between bus operators, the quality and cost of service offered and market size.

As such, a 'one size fits all' approach is unlikely to be appropriate. Transport authorities require a range of tools to give them the flexibility they need to ensure that bus services are tailored to local needs and the right approach is likely to differ from one transport authority to the next.

Regardless of which approach an LTA might take to improve bus service provision in their area – be it partnership working as part of a Bus Service Improvement Partnerships (BSIP), local services franchising or running services themselves (or any combination of these), the LTA should consider how this contributes to the implementation of their relevant general policies¹ and delivers the improvements their local area needs.

¹ Section 48 of the Transport (Scotland) Act 2001

Abbreviations

The 1985 Act - Transport Act 1985

The 2001 Act - Transport (Scotland) Act 2001

The 2019 Act - Transport (Scotland) Act 2019

ATCO - Association of Transport Co-ordinating Officers

BRIA - Business and Regulatory Impact Assessment

BSIP - Bus Service Improvement Partnership

BSOG - Bus Service Operators Grant

CMA - Competition and Markets Authority

DfT - Department for Transport

EP - Enhanced Partnerships

ISAE - International Standard on Assurance Engagements

LTA - Local Transport Authority

NTS - National Transport Strategy

PSV - Public Service Vehicle

QC - Quality Contracts

RTP - Regional Transport Partnership

sQP - Statutory Quality Partnerships

Local Transport Authority Bus Services

Background

The [Transport Act 1985](#) made substantial changes to the model for bus service delivery across the UK by deregulating bus service provision, moving from council-run buses to an open commercial market via a transitional period. In that transitional period, the bus services that councils provided were moved over to companies owned by them, which were then largely sold off. In Scotland, only one of those companies remains in existence today: Lothian Buses Limited. Otherwise, the 1985 Act expressly prevents a council from providing services for the carriage of passengers by road which requires a Public Service Vehicle (PSV) licence, although the island councils (Orkney Islands, Shetland Islands and Western Isles) are exempt from this prohibition.

The West of Scotland Regional Transport Partnership (known as Strathclyde Partnership for Transport (SPT)), retains powers from their former role as a public transport executive, including the ability to carry passengers by road within and to and from the passenger transport area.

During the passage of the Bill which became the 2019 Act, a number of LTAs indicated a desire for a clearer legal framework to afford the option to run their own buses. This was supported by the Scottish Parliament and is provided by section 34 of the 2019 Act which inserts a new section 2A into the 2001 Act, enabling LTAs to provide services for the carriage of passengers by road using vehicles that require a PSV operator's licence to do so.

To do this, the LTA must be satisfied that the provision of such services will contribute to the implementation of their relevant general policies (as defined in the 2001 Act). The 2019 Act also provides that the Scottish Ministers may issue guidance in relation to the exercise of the new functions and that LTAs must have regard to any such guidance.

The 2019 Act is not restrictive in the way LTAs can run their own buses, enabling them to use the power as they see fit within the wider context of their obligations. For example, the LTA may choose to provide services directly, meaning they are the owner of any associated assets (e.g. vehicles), or through an arm's length external organisation. Under the latter scenario, the LTA can provide bus services through an independent commercial organisation with its own management board where the LTA is the main shareholder but is not involved in the day-to-day running of the buses. This would be broadly similar to the model under which Lothian Buses currently operates.

Consultation Questions

The 2019 Act amends section 79(1) (guidance) of the 2001 Act enabling the Scottish Ministers to issue guidance to LTAs in relation to the exercise of their new functions in providing bus services and LTAs must have regard to this in carrying out those functions. This guidance would set out specific matters that LTAs must take into account when considering whether it is appropriate to establish and run local bus services. This would be in addition to the requirement in the legislation that doing so must contribute to the implementation of the LTA's relevant general policies.

We recognise that the best way to ensure that any guidance and information on LTA run services is fit for purpose is to develop it with LTAs. This is why we are convening a dedicated working group with the Association of Transport Co-ordinating Officers (ATCO) to collaboratively develop resources concurrently with this consultation, which will help LTAs if they choose to pursue the option of developing an LTA run bus service.

In advance of bringing into force the powers for LTAs to provide bus services, and in addition to the above working group, we are seeking your views on what any associated guidance should contain, as well as any other resources that may support the implementation of this new function.

It should be noted that the purpose of any guidance issued under the 2001 Act would not be to provide a step by step process for the various ways in which an LTA might run their own services. Guidance would also not cover any of the wider duties and obligations on LTAs or the legal requirements of other regimes such as those governing market competition or subsidy control (formerly state aid). However, this consultation seeks views on what could be provided by way of information and resources in order to support LTAs in exercising the new power as discussed further in this chapter.

This consultation seeks views on whether there is a need to exercise the power to issue guidance, under the 2001 Act (as amended by the 2019 Act), setting out any matters which LTAs must have regard to when exercising their new powers, and if so, what these matters should be.

Question 1: Is there anything which should be set out in guidance that LTAs must have regard to in exercising their new functions for running their own bus services? Please explain your answer.

In addition to the guidance as set out above, we are considering what information would be helpful to LTAs in exploring and carrying out this new function. One possible approach is that this could be an evolving and growing resource of case-studies as LTAs refine and document their emerging experience of running their own bus services.

For example, some things that this could include may be further resources relevant to:

- the wider duties and obligations on local authorities and public bodies
- impact on competition
- subsidy control requirements (formerly “state aid”), and
- management structures such as arm’s length external organisations that may also be helpful

It will, of course, be for each LTA to decide on the best approach for their area but this will aim to provide LTAs with information to assist with consideration of this option. As part of this, LTAs may also wish to consider the development of a business case to help inform the decision-making process as they consider the suite of options available to them (which also include Bus Service Improvement Partnerships (BSIPs) and local services franchising). It should be noted that, as with

those other options, the decision to progress with LTA-run services must be based on how this contributes to implementing the LTA's relevant general policies.

Question 2: What further information and resources would be useful for an LTA considering providing local bus services? Please explain your answer.

Bus Service Improvement Partnerships (BSIPs)

Background

The Scottish Government recognises the importance of partnership working between LTAs and operators to help improve and expand bus services and we believe this approach will deliver multiple benefits.

Partnership takes many forms; at its most basic level it reflects an understanding that co-operation between individuals or organisations can more easily achieve common goals. For bus services, whilst this can be done on a voluntary basis, such an approach has limitations, such as a lack of enforcement in service standards. To help encourage partnership working, statutory Quality Partnerships (sQPs) were introduced under the Transport (Scotland) Act 2001 for LTAs to consider using. An sQP scheme allowed the LTA to determine appropriate local quality standards via a formal and legal partnership and in turn, the transport authority could commit to infrastructure improvements. An sQP had a legal basis which gave it an advantage over voluntary arrangements by giving operators the security and confidence they need to invest.

However, sQPs were found to be difficult to implement because they were inflexible and led by the LTA rather than operating as a true partnership where a shared understanding of the current and future needs for bus services is developed in collaboration with operators.

The 2019 Act addressed this by providing for a new type of statutory partnership in the form of Bus Service Improvement Partnerships (BSIPs). BSIPs differ from sQPs in a number of important ways. These are:

- a requirement for the local transport authority to invest in some way (whether through new facilities or taking certain measures to assist the operators)
- an extensive range of available 'service standards'
- operators are to be involved in the preparation of the partnership plans and schemes and they have a say in whether the plans or schemes are to proceed
- reflecting that involvement, operators in the area of a scheme must provide a service which meets the operational service standards or risk losing the right to operate the service through deregistration; and
- the Traffic Commissioner can refuse an application for registration by an operator if, in the Commissioner's opinion, the operator cannot meet the operational service standards that are applicable in an area

More recently, the [Bus Partnership Fund](#) invited bids from LTAs and operators working towards a BSIP model to help them fund and implement bus priority measures, such as bus corridors and lanes. The range of applications received showcased the wide range of partnership working across Scotland.

To commence the provisions on BSIPs set out in the 2019 Act and make these operational, regulations are required to further develop certain aspects of the model. This consultation invites views on a number of key additional features of BSIPs to be provided for in forthcoming regulations and guidance including:

- information requirements for partnership plans and schemes
- requirements associated with the procedure for preparing, making, postponing, varying and revoking plans and schemes
- what information should be included in a report on the operation of plans and schemes
- the content of notices
- whether any additional descriptions of local services that may or must be exempted from a scheme should be outlined
- what constitutes “facilities” and “measures”
- any conditions for variation and revocation of partnership schemes
- the operation of a partnership voting mechanism
- a range of definitions pertaining to BSIPs; and
- the proposal for future associated guidance for BSIP plans and schemes

In addition to the aspects of BSIPs discussed within this consultation, section 6M of the 1985 Act as inserted by the 2019 Act provides Scottish Ministers with the power to make regulations for appeals against service standards decisions. Work on how this regulation making power might be used is ongoing and is out-with the scope of the current consultation. We will consider what further engagement is required as these proposals develop further.

Finally, we expect to develop relevant guidance to accompany the implementation of BSIP provisions and will consider what further engagement might be necessary. This consultation invites initial views on this as part of question 19.

BSIP process

It should be noted that before a decision is taken to proceed with a BSIP, the LTA should consider the range of options available to them (i.e. LTA run services, BSIPs and franchising) to ensure the option chosen is best suited to local circumstances. In addition, developing one of the options would not preclude an LTA from developing any of the other ones in the toolkit.

The diagram below outlines the process for the formation of a BSIP starting with informal discussion between the LTA, operators and other key stakeholders and concluding with the establishment of an effective review cycle.

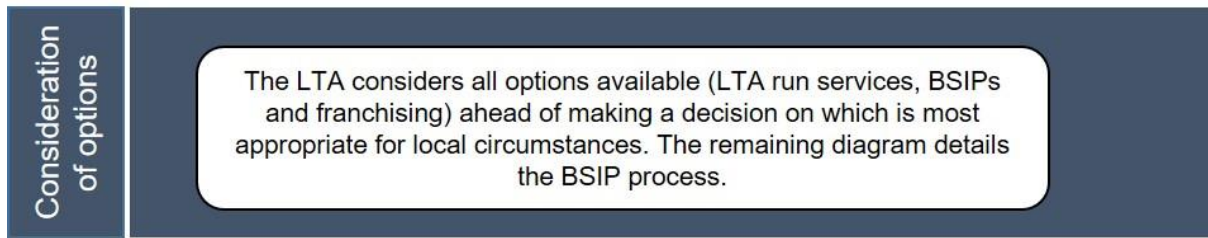


Figure 1. Consideration of options stage – LTAs need to consider all options of the toolkit before making a decision.

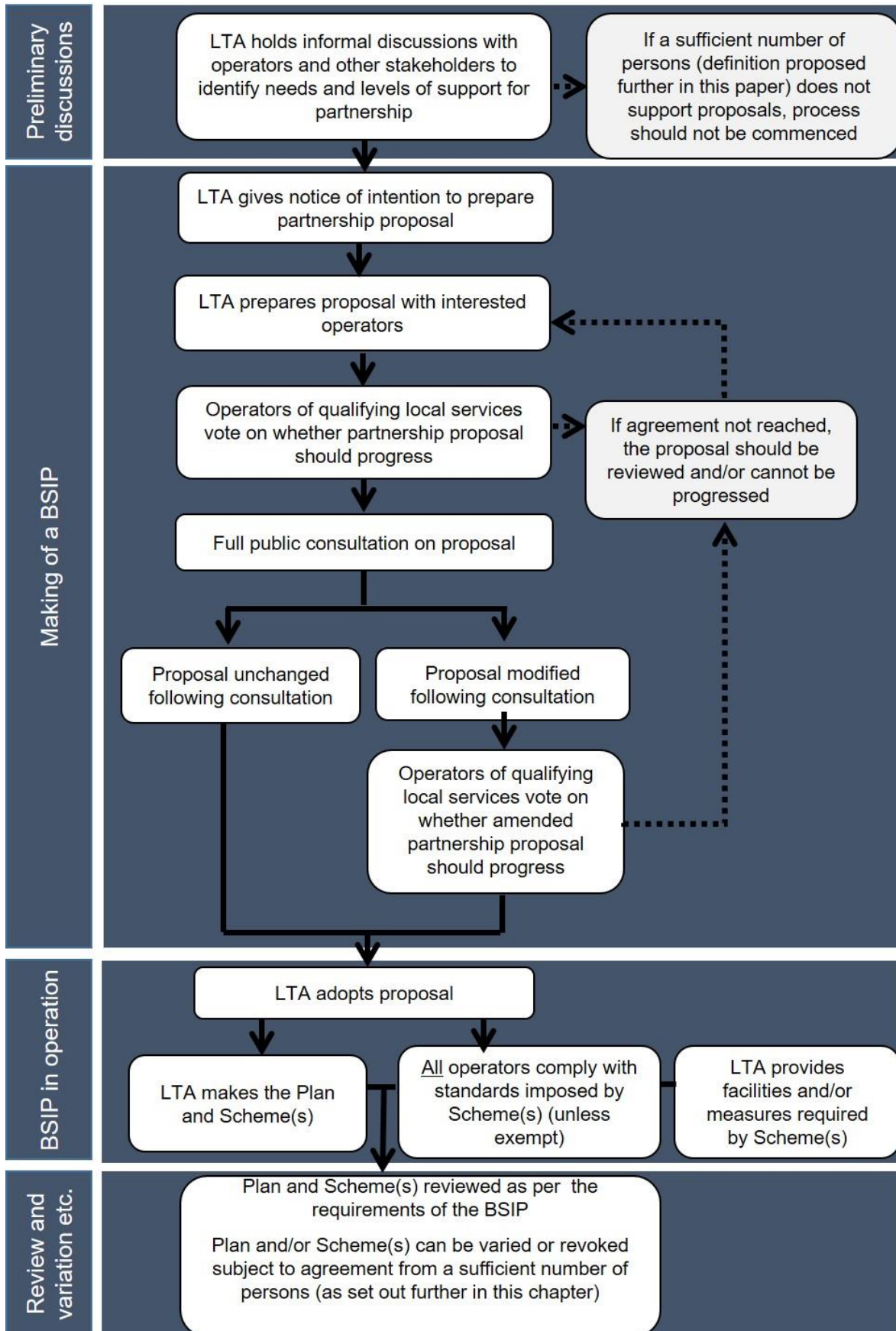


Figure 2. Bus service improvement partnership process – the chart explains the steps that LTAs must follow in creating a BSIP, including consultations, adopting proposals & making plans.

Partnership plans

A BSIP is underpinned by a partnership plan, formulated by the LTA with the operators in their area.

What should a partnership plan contain?

A partnership plan specifies the area and the period to which a plan relates and sets out:

- an analysis of the local services
- policies relating to the local services
- objectives to be met within the period of the plan regarding the quality and effectiveness of the local services provided
- describes how the partnership scheme (or schemes) made at the same time as the plan is intended to assist in implementing the policies and meeting the objectives of the plan
- describes the intended effect of any scheme (or schemes) on areas which are adjacent to the plan's area

It must also:

- describe the proposals for obtaining the views of users of local services in the area about how well the plan and the partnership scheme (or schemes) are working, and
- specify how the plan is to be reviewed and the dates by which reviews are to be completed

Partnership schemes

The new provisions relating to BSIPs² outline that a partnership scheme or schemes should be made alongside the plan to assist in its implementation and the plan should make reference to how this will help in achieving the objectives.

A partnership scheme may relate to the whole of the area of a partnership plan or any part of it.

What should a partnership scheme contain?

A partnership scheme must contain a requirement for at least one facility to be provided or measure to be taken under the scheme by the LTA:

- Facilities will typically take the form of an investment in infrastructure, such as providing improved bus stops, whereas measures will relate to taking actions, such as restricting the number of times in a year that local authority roadworks occur on key bus corridors.
- It may contain a requirement on a local transport authority or operator to take some other action designed to facilitate the operation of the scheme; this

² Generally contained in chapter 1 and schedule A1 of the 2001 Act as inserted by the 2019 Act.

might include publicising the scheme or committing to meet on a regular basis to discuss matters.

The scheme will also contain the standards of service that are expected of the operators of local services which have one or more stopping places in the area of the scheme.

Once a partnership scheme is in place it will apply to all operators of local services within the area of the scheme (unless exempted by the scheme, which is discussed further below). Once the scheme has been agreed and made, failure to comply with the operational service standards of the scheme can lead to an operator being deregistered as an operator of a local service and therefore unable to provide services in that area. It is also open to the Traffic Commissioner to issue penalties for non-compliance.

The new provisions³ grant a general power to Scottish Ministers to make regulations about plans and schemes including in a number of specific ways (e.g. on their form and content). We consider that the provisions relating to the content of the new partnership plans and schemes (as outlined above⁴) is expansive and we are not at this stage proposing to make regulations on further content or form of plans or schemes. Further, we consider that these provide enough flexibility to accommodate local variation in partnerships.

Consultation questions

Question 3: Do you have any further comments in relation to the form and content of plans and schemes?

Preparation, variation and revocation of plans and schemes

A new schedule A1⁵ outlines the procedures to be followed in relation to the preparation, making, variation and revocation of plans and schemes, including requirements for consultation and the publication of notices. Notice requirements are discussed further in this chapter.

Schedule A1 sets out that the partnership proposal, including the preparation of a plan or scheme or its proposed changes in the case of variation, should be done with the participation of operators of qualifying local services and with the collaboration of such invited persons as wish to participate. Thereafter the LTA may not progress the plan or scheme proposal or proposed changes in the case of variation, where a sufficient number of persons who are operators of qualifying local services object to the proposal or changes being made.

The definition of what constitutes a “qualifying local service” and a “sufficient number of persons” is discussed further in this chapter under the “voting mechanism” subheading.

³ Section 3M of the 2001 Act as inserted by section 35 of the 2019 Act

⁴ And contained in chapter 1 of the 2001 Act as inserted by the 2019 Act

⁵ Schedule A1 of the 2001 Act as inserted by section 36 of the 2019 Act

Once the partnership proposal or changes to this in the case of variation have been drawn up, schedule A1 sets out a requirement to consult. The same applies in relation to the decision to revoke a partnership plan or scheme. The consultees are identified as follows:

- all operators in the area likely to be affected by the proposal;
- organisations considered by the LTA to represent users of local services;
- any other affected LTA or RTP;
- the Traffic Commissioner;
- the chief constable of the Police Service of Scotland;
- the Competition and Markets Authority, and
- any other persons that the LTA sees fit to consult.

Following consultation, the LTA might consider it appropriate to modify the proposal in line with comments received. In this case, the LTA must put the modified proposal to operators of qualifying local services and reach an agreement before proceeding to make the proposal.

An LTA may, if they consider it appropriate, postpone the coming into operation of a partnership scheme by such period as they think fit, but it must not be postponed for periods which in total exceed 12 months.

An LTA may vary a partnership plan or scheme if they are satisfied that the scheme, as varied, will contribute to the policies set out in the relevant partnership plan, the LTA's relevant general policies, bring benefits to local services' users, or reduce or limit traffic congestion, noise or air pollution.

As outlined above, the 2019 Act inserts new provision into the 2001 Act which sets out specific detailed procedures for the preparation, making, postponement, variation and revocation of plans and schemes. We would not propose to set out further provision in regulations in relation to the procedure, which we consider to be versatile and comprehensive.

Question 4: Do you have any additional comment relating to the procedures for the preparation, making, postponement, variation and revocation of plans and schemes? Please include any comments on matters that may be helpful to consider for inclusion in secondary legislation.

The LTA may vary or revoke any plan or relevant scheme, subject to the objection process discussed above, and must give the reason for this in any notices.

Separately, there is provision at section 3B(10)⁶ that gives LTAs the power to set out bespoke circumstances for the variation or revocation of the scheme as suited to local circumstances, and procedures set under the scheme itself should be followed in this case. (There is also specific provision about the change of operating model

⁶ Section 3B(10) of the 2001 Act as inserted by the 2019 Act.

allowing for the LTA to revoke a partnership scheme if they are making a franchising scheme, without complying with Schedule A1⁷.)

Scottish Ministers can make regulations about the conditions that may be specified in a scheme for its variation or revocation. Such conditions might be that a bespoke voting mechanism must still meet certain standards, or certain parties must be consulted. Without live examples of how BSIPs operate in practical terms, nor evidence of the appetite to utilise this power, at this stage we do not consider it necessary to include specific conditions relating to bespoke variation or revocation. However, we would welcome your views on the matter.

Question 5: Do you consider any conditions are necessary for the variation or revocation of a scheme (where the scheme itself makes bespoke provision for this)?

Yes/No

Question 5A: Please provide further information, including what conditions, if any, should be specified and why.

Notices

Procedures relating to the making, variation and revocation of partnership plans and schemes include a range of notice requirements. These are outlined in schedule A1⁸ and summarised in Table 1 below.

Table 1. List of notices as part of the making, variation and revocation (including any postponement or modification) of a partnership plan and/ or scheme

Action	Stages of process and notice requirements
Making	<ul style="list-style-type: none"> • Preliminary notice • Notice of proposal and period for objections • Notice of, and consultation on, partnership proposal • Notice of modifications • Making of partnership plan or scheme and giving notice to that effect • Postponing the coming into operation of the scheme and giving notice to that effect
Variation	<ul style="list-style-type: none"> • Preliminary notice • Notice of draft changes and period for objection • Notice and consultation on changes • Notice of modifications • Making the variation and giving notice to that effect

⁷ Section 3I (3) of the 2001 Act as inserted by the 2019 Act

⁸ Schedule A1 of the 2001 Act as inserted by the 2019 Act

Action	Stages of process and notice requirements
	<ul style="list-style-type: none"> • Postponing the coming into operation of variation and giving notice to that effect
Revocation	<ul style="list-style-type: none"> • Notice of proposal to revoke • Notice of intention to revoke and period for objections • Revoking the plan or scheme and giving notice to that effect

The 2019 Act inserts new provision into the 2001 Act which outlines the content of notices⁹. Some examples are presented in the following paragraphs.

In relation to the preliminary notice, required where the LTA intends to prepare a partnership proposal or vary a partnership plan or scheme, or a notice of proposal to revoke, they must give notice of their intention in such manner as they consider appropriate for bringing the notice to the attention of persons in their area.

Notices relating to the initial partnership proposal as well as its variation and associated period for objections should contain:

- full details of the partnership proposal or of the changes prepared in the case of variation
- a statement advising of the effect of objections; and
- [a statement of] the period within which objections may be made (which may not be less than 28 days)

In relation to the notice of intention to revoke, this must contain all of the above as well as state the date on which the plan or scheme is to be revoked and the reason for revoking the plan or scheme.

In relation to notice of, and consultation on, the partnership proposal where making or varying the proposal, this must contain full details of the proposal (or changes to this in the case of variation) and state where such details may be inspected. The same notice requirements apply in the making of a partnership plan or scheme and giving notice, as well as in making the variation and giving notice.

Where the LTA has decided to postpone the coming into operation of variation, the notice must include the content in the paragraph above as well as a statement of the LTA's reasons for deciding to postpone.

Further, where the LTA is revoking the plan or scheme, they should, within 14 days of the revocation, give notice to the consultees outlined in the section on [“Preparation, variation and revocation of plans and schemes”](#).

⁹ The notice requirements are all set out in new schedule A1 of the 2001 Act, as inserted by the 2019 Act.

Taking into account the wide notice requirements, we consider that there is adequate provision set out in the 2019 Act for LTAs to follow in relation to the form and content associated with notices and do not intend to make further detailed provision at this stage. We consider that LTAs will be best placed to decide on the most appropriate way of publishing notices in their area taking into account the size and scope of the BSIP proposals.

Question 6: Do you have any further comments on the content, form or publicising of the notices listed in Table 1? Please include these below.

Facilities and measures

As part of the making of a partnership plan and scheme, the LTA must outline their commitment through investing in at least one facility or measure. Facilities will typically take the form of an investment in infrastructure, such as providing improved bus stops, while measures relate to taking actions, such as restricting the number of times in a year that local authority roadworks occur on key bus corridors.

This consultation seeks your views on the definition of facilities and measures for the purposes of regulations. The proposed definitions are as follows:

Facilities are associated with the investment in infrastructure, including but not limited to the provision of improved bus stops and bus priority measures such as bus lanes, gates and corridors, and guided busways.

Measures should be regarded as actions associated with improving bus travel times, including but not limited to, restriction of road works on key bus corridors and priority signalling.

Question 7: Do you agree or disagree with the above definition of facilities?

Agree/ Disagree/ Neither agree or disagree

Question 7A: If you disagree, how should this be amended/ what should this contain?

Question 8: Do you agree or disagree with the above definition of measures?

Agree/ Disagree/ Neither agree or disagree

Question 8A: If you disagree, how should this be amended/ what should this contain?

[The Existing Facilities in Quality Partnership Schemes \(Scotland\) Regulations 2001](#) make provision for existing facilities to form part of a quality partnership scheme (as introduced by the Transport (Scotland) Act 2001). This specifies that existing facilities may form part of a quality partnership scheme where they were provided for no more than 5 years before the scheme is proposed. In addition, existing facilities which were provided for more than 5 years but less than 10 years before the date the scheme is proposed may form part of a quality partnership scheme, but only where the consent of all bus operators using those facilities has been obtained.

Question 9: Should existing facilities form a part of a partnership plan/ scheme?

Yes/ No

Question 9A: If yes, should there be a time restriction and why?

Exempt services

The new BSIP provisions outline the service standards which may be imposed as part of a partnership scheme, including the vehicles used, maximum fares, ticketing, pricing of multi-operator travel cards, the provision of information to the public and the dates on which the timing of local services may be changed. Service standards are effective in relation to all operators of local services that have one or more stopping places in that area, and are not exempted from the scheme.

Section 3C(4)¹⁰ provides that a scheme may not impose a standard in relation to the use of vehicles under permits granted under section 22 of the 1985 Act. Section 22 services operate without a view to profit and use vehicles to provide a community bus service.

Section 3B(4)¹¹ provides that a partnership scheme may provide for the exemption of certain descriptions of local services. In addition, this can include conditions as to when such exemptions are to apply. There is therefore discretion for the LTA to consider whether any services should be excluded from the scheme taking into account their local context. Section 3M(2)(b)¹² gives a power to Scottish Ministers to make regulations about the descriptions of local services that may or must be exempted from a scheme.

We are interested in your views on whether any further provision is required to specify which services may or must be exempt in schemes, and if so, any evidence to support this.

The distinction between exempted services and excluded services, which are those local services not permitted to vote in the voting mechanism, is discussed further in this section.

Consultation questions

Question 10: Do you consider any further services may or must be exempted from the service standards of the scheme (beyond services under section 22 of the 1985 Act as detailed above)?

Yes/ No

Question 10A: If yes, please comment on what services should be exempt. Please explain your answer.

¹⁰ Section 3C(4) as inserted into the 2001 Act by the 2019 Act

¹¹ Section 3B(4) as inserted into the 2001 Act by the 2019 Act

¹² Section 3M(2)(b) as inserted into the 2001 Act by the 2019 Act

Voting mechanism

Paragraph 26 of schedule A1¹³ provides a power for Scottish Ministers to define:

- Descriptions of qualifying local services for the purposes of the schedule
- What constitutes a sufficient number of persons for the purposes of the voting mechanism¹⁴; and
- How the qualifying time is to be determined¹⁵

Qualifying local services and qualifying time

There is a power¹⁶ to define descriptions of qualifying local services for the purposes of the voting procedure. This will determine which operators of local services can take part in the voting mechanism, and as such, are relevant to the “[sufficient number of persons](#)” calculation which is set out further below.

We proposed that ‘qualifying local services’ are defined as:

A qualifying local service is an operator of a local service which has one or more stopping places in the relevant area and is not an excluded service.

In general terms, this model approaches the voting mechanism from the starting point that if operators run local services in the area (whether they are exempted from the requirements of the scheme or not) they should be permitted to take part in the voting mechanism. This approach means that we would seek to define categories of local services in regulations that are excluded from the definition of qualifying local services, and as such, excluded from the voting mechanism.

The English Enhanced Partnership model (which the BSIP model is similar to) works on the basis that particular types of services should only be excluded from the voting mechanism if certain criteria apply. These are:

- (a) the operators bear little or no financial risk or burden of implementing the scheme requirements; and
- (b) that the inclusion of those operators at (a) is likely to have a material effect on the overall outcome of the objection mechanism

For Enhanced Partnerships, gross contract services, excursions and tours and services that are local service for 10% or less of the overall distance are excluded from the operator objector mechanism. Under this model, these services may not necessarily be exempted from the requirements of the scheme, but given the application of the criteria at (a) and (b) above, they are considered not eligible to vote in the operator objector mechanism.

¹³ Paragraph 26 of schedule A1, as inserted into the 2001 Act by the 2019 Act

¹⁴ Sufficient number of persons is relevant to paragraph 5(1), 7(4), 17(4) and 24 of schedule A1

¹⁵ For the purposes of paragraphs 13(a), 14(1), 15(1), 17(2) and (4), 23(1) and 24 of schedule A1

¹⁶ At paragraph 26 of schedule A1 as inserted into the 2001 Act by the 2019 Act

Our proposed approach above distinguishes the scheme exemptions from the voting mechanism and ensures that all operators of local services would retain the entitlement to vote, even if exempted from the scheme requirements, which could help to protect smaller operators.

The only services that are proposed to be excluded from the vote are those which would meet the criteria at (a) and (b) which we consider would include excursions or tours, where all passengers travel together on a journey, as well as interurban or long-distance services not used for local journeys, which are local services for only a small percentage of the overall distance covered by the service. That means that whilst those services could be required to comply with the service standards, they would not be considered a qualifying local service for the purposes of the voting mechanism due to the application of the criteria at (a) and (b) above.

Question 11: Do you agree or disagree with the above definition of “qualifying local service”?

Agree/Disagree/ Neither agree or disagree

Question 11A: Please explain why and provide any relevant evidence.

Question 12: Do you consider any services should be excluded from voting (for example excursions or interurban services)?

Yes/No

Question 12A: Please explain your answer.

The power to determine the qualifying time allows flexibility via regulations to set the time period over which certain procedures should apply. The procedures are those relating to which local services should be notified about certain aspects of the process¹⁷. For example, further flexibility could be required to be applied to these BSIP procedures if it appears that operators are being excluded from the voting mechanism (perhaps due to deregistration), but in fact still have an interest in the BSIP. The power could be used to ensure that all operators with an interest, or which had an interest previously, are included in the process where appropriate. Plan or scheme revocation raises similar questions, but potentially more acutely as revocation may take place sometime after operators have been involved in a BSIP and either ceased to operate or are deregistered.

With no evidence as to how BSIPs might operate in this regard however, we currently propose that for the purposes of the regulations, we define the qualifying time in all the places where this is relevant as:

The working day immediately before the day on which a notice of objection is given.

¹⁷ These are set out at paragraphs 13(a), 14(1), 15(1), 17(2) and (4), 23(1) and 24 of schedule A1 of the 2001 Act, as inserted by the 2019 Act

This is similar to the definition set out in relation to [Enhanced Partnerships](#) in England which share many similarities with the BSIPs model. It ensures that all those operators that provide services immediately prior to the notice being issued are invited to take part.

Question 13: Do you agree or disagree with the definition of “qualifying time” as set out above?

Agree/Disagree/ Neither agree or disagree

Question 13A: Please explain your answer.

Sufficient number of persons in relation to the voting mechanism

We have considered various options for accommodating the voting rights of operators in each LTA, to help inform the development of a suitable voting mechanism. Parameters considered include patronage, vehicle kilometres, operator number and service levels. In developing the voting mechanism, we wanted to ensure that no single operator has a disproportionate voting power and that the metric chosen is indicative of an operator’s presence in an area.

It should be noted that the 2019 Act provides that a bespoke voting mechanism can be used when the scheme is varied or revoked. The below proposed mechanism is only required to be used in the making of the scheme.

One of the methods considered was the allocation of votes by share of patronage in each respective LTA. For this analysis, two data sources were used to inform our decisions, these being the Department for Transport (DfT) [bus survey](#) and concessionary card data held by Transport Scotland. The DfT data anonymises small operators and due to its nature, it does not include all of the small operators. Aggregated estimates of these missing figures were calculated using concessionary bus data, as such small operators may not be correctly captured in the analysis and should be treated with caution.

Bus kilometres by operator by LTA was another method to determine the voting system. This would be determined by the share of vehicle kilometres run by each bus operator in the local authority in question. The data for this also comes from the DfT bus survey. This data anonymises small operators and due to its nature as a survey it does not include all of the small operators. These could not be estimated due to the lack of comparable data.

Another option explored was the number of operators. Data used included the DfT bus survey and Traveline and concluded that only three local authorities did not have 3 or more operators, with only one of these local authorities below 3 operators in both datasets. The average number of operators per LA is between 6-9, which is sufficient to allow competitive voting in most LTAs.

Finally, we considered the number of services provided by LTAs. This was based on data coming from Traveline on the levels seen in February 2021. It should be noted that this included the number of services available but not how many buses operate that route nor the amount of patronage or distance on each route.

Based on the above, we propose the following model based on registered service distance to be used to determine what constitutes a “sufficient number of persons”. It should be noted that this is similar to the voting mechanism in place for Enhanced Partnerships, which have similarities with BSIPs, and is set out within the [Enhanced Partnership Plans and Schemes \(Objections\) Regulations 2018](#). The key difference is the threshold identified due to differences in the number of operators within the Scottish context.

Either of the options within the model can be adopted by the BSIP. Where one or more operators are subsidiaries of another operator in the relevant area, we consider those operators are to be treated as one operator for the purposes of this voting mechanism.

Where the total number of all operators of qualifying local services in the relevant area

- is 3 or more, at least 2 of those operators are objectors
- is less than 3, all of those operators are objectors; and
- the registered distance of all qualifying local services operated by the objectors in the relevant area is at least 20% of the registered distance of all such services operated by all operators in that area

or

- the number of objectors is at least 50% of the total number of operators of qualifying local services in the relevant area; and
- the registered distance of all qualifying local services operated by the objectors in the relevant area is at least 10% of the registered distance of all such services operated by all operators in that area

Question I4: Do you agree or disagree with the voting mechanism as proposed above? (either of the options within the model can be adopted by the BSIP).

Agree/ Disagree/ Neither agree or disagree

Question I4A: Please explain your answer.

Multi-operator travel card definition

The 2019 Act gives Scottish Ministers a power to define the term “multi-operator travel cards” by regulations. In deciding whether to define this term, we have considered the definition set out in [Competition Act 1998 Public Transport Ticketing Schemes Block Exemption Order 2001](#). In that Order multi operator travel cards are defined as a ticket (or tickets) “entitling the holder to make three or more journeys on specified local public transport services operating on three or more routes provided that:

- a) these routes are not substantially the same; and
- b) in practice, the ticket is not substantially used by passenger as a multi-operator individual ticket or a through ticket

In the context of these provisions, “card” can refer to any evidence of a contractual right to travel, including physical card or token, a smartcard¹⁸ or a digital ticket provision available on a mobile phone or smart device.

In order to ensure that multi-operator travel cards are competition law compliant in the context of BSIP, we would propose at this stage to simply adopt the definition in the Block Exemption Order set out above.

Consultation questions

Question 15: Do you agree or disagree with the proposed definition of a “multi-operator travel card”?

Agree/Disagree/ Neither agree or disagree

Question 15A: Please explain your answer.

¹⁸ a micro-chipped card that stores your travel ticket, or retains monetary credit to be deducted on use

Reviewing and reporting

A BSIP scheme must specify how its operation is to be reviewed and the dates by which reviews are to be completed under section 3B(9)¹⁹. Section 3J²⁰ sets a requirement for the LTA to publish a report in each 12 month period of the operation of a scheme on its effectiveness. In its preparation, the LTA must consult the Traffic Commissioner and other persons they consider appropriate, as well as consider any representations made to them (as part of a consultation or otherwise).

These provisions do not specify the content of the review or report in relation to scheme effectiveness. We consider it may be helpful to outline in associated BSIP guidance what the review and report should cover to help inform the assessment of effectiveness. This could include:

- the effect of the scheme on local services, including running times/ delay
- how the scheme has contributed to achieving the objectives set out in the partnership plan; and
- how the scheme has contributed to achieving the general policies outlined in the partnership plan

At this stage, we do not consider it necessary to introduce a reporting format through regulations. This is to ensure flexibility to accommodate varying bus market contexts.

Consultation questions

Question 16: Do you agree or disagree with the proposed content of reviews and reports on the operation of a plan or scheme to be outlined in guidance?

Agree/Disagree/ Neither agree or disagree

Question 16A: Please explain your answer.

¹⁹ Section 3B(9) of the 2001 Act as inserted by the 2019 Act.

²⁰ Section 3J of the 2001 Act as inserted by the 2019 Act.

Scrutiny of bus service improvement partnerships

The 2019 Act inserts a new section 6N into the 1985 Act which sets out powers for the Traffic Commissioner to intervene where a BSIP scheme is in operation and it appears to the Traffic Commissioner that the LTA may not be complying with their obligations under a partnership scheme.

The Traffic Commissioner may investigate the LTA actions and require the provision of information to support the investigation within such period as the Commissioner specifies when requiring the information.

Where an investigation has been carried out, the Traffic Commissioner must prepare and publish a report on the investigation. This must set out whether the commissioner considers that the LTA is complying with its obligations under the scheme and if this is not the case, the commissioner may make appropriate recommendations, including specifying remedial actions that should be undertaken by the LTA. There are no proposals in relation to this feature of BSIP, and this is noted here for context only.

Provision of information

Section 3K²¹ outlines the provision of information requirements in BSIPs where LTAs can request relevant information from operators for the purposes of the preparation and making of a partnership plan or scheme. It may also be requested for the purposes of reviewing the effectiveness of a plan or scheme or determining whether and how to vary or revoke a plan or scheme.

Regulations will set out what constitutes “relevant information” for these purposes and may also specify circumstances in which information may not be required by the LTA. It should be noted that information required under these provisions may only be used for the specific purpose for which it was gathered. Its disclosure out-with these circumstances and permitted persons is an offence. In this context, permitted persons are an LTA, any person providing services to the local transport authority in connection with the function being exercised, and Scottish Ministers in circumstances where they are required to act jointly with the LTA.

At this stage we consider that relevant information will include only that information which pertains to the area of the plan or scheme, and may include the following categories:

- How and when a local service operated by an operator is used by passengers
- How and when the local service is likely to be used by passengers once the plan or scheme has been made or varied
- The structure of fares for journeys on the local service
- The types of tickets used by passengers, and by particular types of passenger, on the local service

²¹ Section 3K of the 2001 Act as inserted by the 2019 Act.

- Time taken for journeys, and parts of journeys, on the local service including information about adherence to timetables at all times or at certain times of the day
- The total distance, in miles or kilometres, covered by all vehicles used by the operator in operating qualifying local services in the relevant area
- The vehicles used by the operator in providing the local service, including information about the age of those vehicles, emissions and types of fuel or power
- The result of any activities undertaken with a view to promoting increased passenger use of the local service
- The particulars of the local service's registration

Consultation questions

Question 17: What type of information should be excluded from the definition of relevant information and why?

Question 17A: Are there any circumstances in which it should not be possible for the Local Transport Authority to require relevant information?

Question 17B: Do you have any further comments on the provision of information within Bus Service Improvement Partnerships?

Accessibility of services

The current operational services standard at section 3C(3)²² provides that requirements can be imposed about “the vehicles that are to be used to provide services” in a BSIP. This is a very general power for LTAs to propose operational service standards that would include a broad range of accessibility requirements.

There are a number of existing duties under the [Equality Act 2010](#) for LTAs to comply with when exercising their functions under the 2001 Act. Further, [the Public Service Vehicle Accessibility Regulations 2000](#) prescribe requirements for buses to ensure that they are accessible for disabled passengers, depending on the size, age and purpose of the bus. Buses covered by these regulations must have:

- space for a standard wheelchair
- a boarding device to enable wheelchair users to get on and off, such as a ramp
- a minimum number of priority seats for disabled passengers
- handrails to assist disabled people
- colour contrasting handrails and steps to help partially sighted people
- easy to use bell pushes; and
- equipment to display the route and destination

Taking into account the generality of section 3C(3)(a) of the 2001 Act²³ and the existing obligations that are in force in relation to LTAs and local service operators, we would like to seek your views as to what further guidance may be required with regard to how disability access could be enhanced using the existing provisions of the Act and how plans and schemes may further highlight accessibility for disabled persons and persons with limited mobility.

Consultation questions

Question 18: What further guidance is required on how a partnership scheme and plan may consider the accessibility of bus services for disabled people and people who have limited mobility?

Question 18A: Do you have any further comments in relation to accessibility of bus services in the context of Bus Service Improvement Partnerships?

²² section 3C(3) of the 2001 Act as inserted by the 2019 Act

²³ as inserted by the 2019 Act

Guidance

Scottish Ministers have general powers to issue guidance relating to any of the options within the toolkit, including BSIPs, to LTAs. While this consultation does not focus on the detail of the guidance relating to this at this stage, we would welcome your views on what any guidance should contain beyond matters and processes discussed already in this chapter.

Consultation questions

Question 19: What information, beyond the processes and considerations outlined in this chapter, should any guidance on Bus Service Improvement Partnerships contain?

Local Services Franchises

Background

Franchising is a system that allows an LTA to award exclusive rights to run certain bus services to the most competitive bidder for a set period. During this period, no other operator can run those services.

Part 3 of the 2019 Act makes provision (through amendments to the 2001 Act) which enables LTAs to create and operate local bus services under a new franchising model. This new approach replaces the quality contracts scheme originally provided in the 2001 Act and it does so in view of the recognised limitations of that scheme.

The new franchising provisions are designed to increase the range of situations in which a local transport authority can consider using the franchising model option and the system is designed to ensure that appropriate checks and balances are in place to assess whether a LTA's franchise proposals are robust and deliverable. This more structured approach will ensure that decision making is more transparent via a process of rigorous assessment and evidence-based analysis.

A number of different franchise models have been adopted in the UK and across Europe; the most widespread model, similar to that in London, is one in which all of the services are franchised to a number of different operators.

The franchising model provided by the 2019 Act involves the LTA putting in place an overarching franchising framework beneath which it can enter into franchise agreements with bus operators. The basic principles of franchising frameworks as provided by the 2019 Act are summarised as follows:

A franchising framework sets out

- the area to be covered
- the services to be provided
- the standards to be met; and
- any other matters (such as additional facilities to be provided in the framework area) as the LTA considers appropriate

It will also:

- have the effect of displacing the standard arrangements for providing local services within the framework area, and
- prevent operators from providing services in the area otherwise than under a franchise agreement (subject to certain exceptions)

Other key facts about Franchising Frameworks

- may cover a whole or part of a LTA area
- can cover combined LTAs areas, or
- can focus on specific routes

The [explanatory notes](#) to the 2019 Act provide a comprehensive explanation of the new provisions on franchising and this consultation does not propose to repeat what is said there. Instead, we will focus on the particular areas of operation of the new franchising provisions for which the views of consultees will help us develop secondary legislation and supporting guidance.

As highlighted earlier in this consultation paper, we would expect LTAs to engage with stakeholders and with members of the local community when considering and comparing the various bus options (i.e. LTA run services, BSIPs or franchising) to determine if franchising is worth embarking upon and whether it will contribute to the implementation of their relevant general policies as required by the Act.

Franchising process

The following diagram outlines the steps that an LTA needs to complete before it can implement a franchising framework.

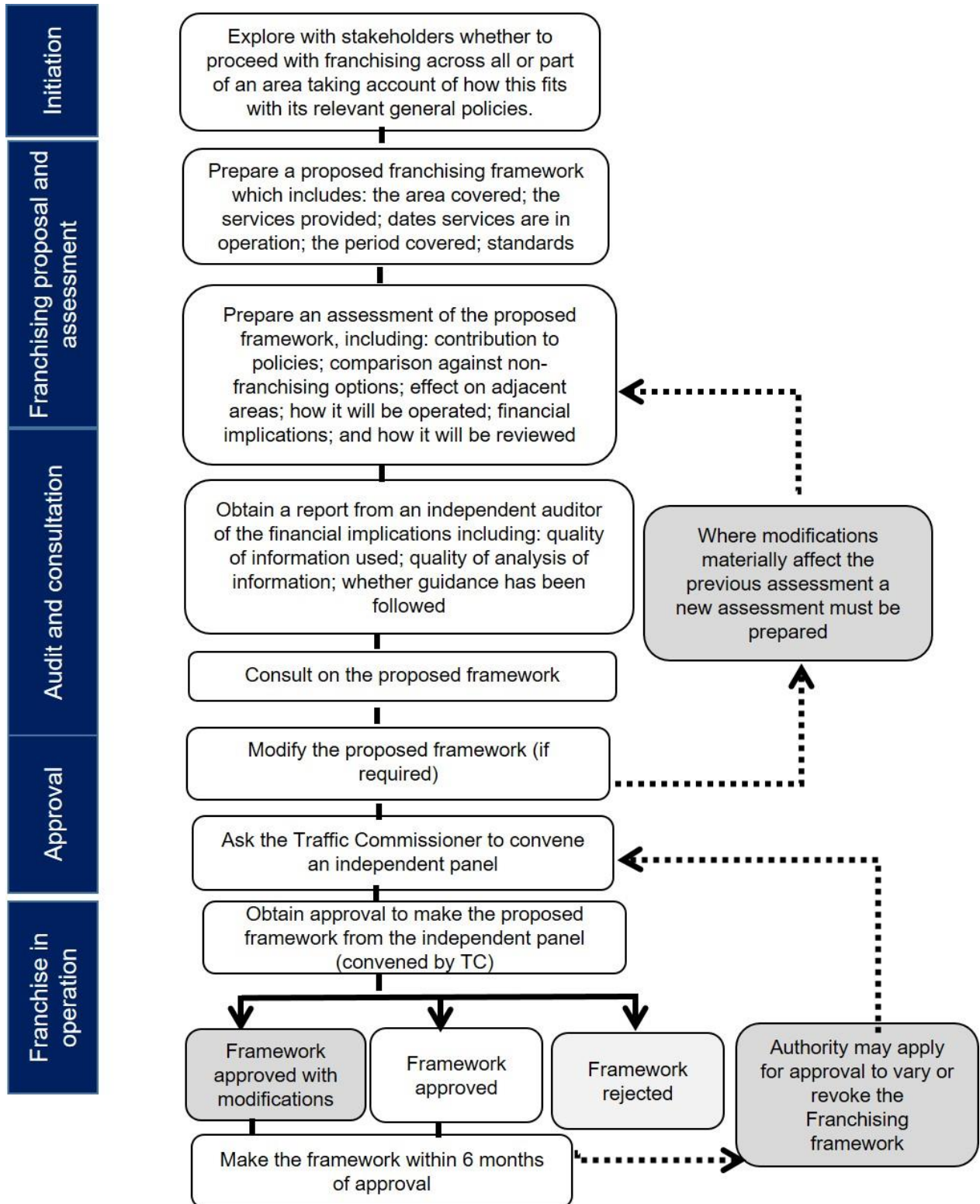


Figure 3. Franchising process – set out steps LTAs must follow when creating a Franchising Framework and assessment. This includes obtaining an independent audit of their assessment, consulting on their proposed framework and seeking approval via an independent panel appointed by the Traffic Commissioner.

Franchising assessments

A franchising assessment comprises a business case that is not just financially sound but also proposes improvements to how the local bus network will operate and meet the needs of the local area. For example, the proposed franchising framework can set out the routes the network will cover, the frequency and level of service, the quality of service, as well as the setting or capping of fares.²⁴

The assessment should consider how franchising will address wider issues, such as integration across transport modes and alignment with wider socioeconomic objectives (e.g. concessionary travel, improving accessibility, etc.).

There are several mandatory elements of the franchise assessment, including:-

- Setting out, to what extent, the LTA considers the making of a franchise framework will contribute to the implementation of their relevant general policies²⁵
- Comparing the making of the proposed framework to one or more other courses of action available to them;
- Setting out how they will intend to operate the proposed framework;
- Setting out how they will be able to secure local services for the area under the franchise framework;
- Setting out their analysis of the financial implications of making the proposed franchise framework, and
- Setting out how they will propose to review the effectiveness of the proposed framework once it is made.

Further into the process the LTA must also appoint an independent auditor to determine whether the financial implications of the franchise proposals are viable.

When developing the assessment LTAs will be expected to follow the [Five Case Model](#) for developing business cases which is recommended by HM Treasury. The figure below sets out the five key dimensions that an LTA will need to cover as part of their franchising assessment.

²⁴ Generally contained in chapter 1 and schedule A1 of the 2001 Act as inserted by the 2019 Act.

²⁵ Section 48 of the Transport (Scotland) Act 2001

Breakdown of the Five Case model promoted by HM Treasury

The Five Case model is applicable to policies, strategies, programme and projects and comprises of five key dimensions, which are:

- **The Strategic Case** – the LTA must demonstrate how the franchise option provides a synergy and holistic fit with local and regional transport partnership strategies. The strategic case also looks at existing arrangements, business justification, scope, benefits and risks, etc.
- **The Economic Case** – considers the public value to society, including the wider social and environmental effects.
- **The Commercial Case** – demonstrates that the preferred option will result in a viable procurement and well-structured deal between the public sector and service providers.
- **The Financial Case** – demonstrates the affordability and funding of the preferred option, including support of stakeholders and public.
- **The Management Case** – demonstrates the robust arrangements that will be in place to deliver, monitor and evaluate the preferred option.

When preparing the franchising assessment the LTA should also compare the proposed franchising framework with other options, which could include voluntary arrangements to assess whether the franchise approach would implement the policies in a way that is holistic, transparent and robust.

The needs of local bus users should also be a key consideration throughout the development of the franchising assessment, particularly in relation to social considerations such as the needs of people on low incomes or with limited mobility. As such, LTAs should undertake early engagement with stakeholders, including bus users, on their proposals.

Guidance to LTAs on franchise assessments

The 2019 Act will insert a new Chapter 2 into the 2001 Act which replaces the previous provisions for quality contracts. The new section 13E(5) of the 2001 Act states that the Scottish Ministers must issue guidance in relation to the preparation of an assessment for a proposed franchising framework and that guidance may, in particular include guidance about methods to be used when assessing a proposed framework.

If proceeding to the next stage of the franchising process an independent auditor will consider, among other things, whether the LTA has had regard to this guidance (see page 40). The Scottish Ministers can also more generally issue guidance to LTAs in relation to the exercise of their franchising functions and LTAs must have regard to such guidance. This consultation seeks your views on the content of this guidance to support LTAs in the development of detailed franchising assessments.

Consultation questions

Question 20: What should the guidance to LTAs on preparing a franchising assessment contain? Please explain your answer.

Provision of Information for Preparing and Assessing Proposed Franchising Frameworks

At present, LTAs can gather some information from bus operators under section 43 of the 2001 Act in connection with the formulation of their relevant policies. This includes:

- passenger journey numbers
- bus mileage, and
- structure of fares for those journeys

The 2019 Act will insert section 13R into the 2001 Act and gives LTAs more powers to require further relevant information from operators of local services in their area when the LTA is exercising certain functions in connection with local franchising.

Local transport authorities will be able to request such relevant information in the course of preparing and making a franchising framework. What constitutes relevant information will be prescribed in regulations and those regulations can also specify circumstances in which such information, or types of information, may not be required by an LTA.

At this stage we consider that relevant information will include only that information which pertains to the area of a franchising framework and the assessment of it, which may include the following:

- Information about the fixed and variable costs incurred by the operator in operating the local service.
- The vehicles used by the operator in providing the local service, including information about the age of those vehicles, emissions and types of fuel or power.

The regulations may also specify circumstances in which relevant information (or types of relevant information) may not be required by the LTA.

Consultation questions

Question 21: What relevant information do you think LTAs should be able to require from bus operators for the purpose of preparing and assessing a proposed franchising framework? Please explain your answer.

Question 21 A: In preparing and assessing a proposed franchising framework, are there any circumstances in which you think the LTA should not be able to require relevant information (or types of relevant information)? Please explain your answer.

The audit process²⁶

Once an LTA has produced an assessment of their proposed franchising framework and they wish to proceed with their proposals, they must obtain a report from an auditor on the financial analysis contained in the assessment. The requirement for an external audit of the franchising proposals is specifically intended to ensure that the evidence to support the financial aspects of the LTA's assessment are assured before the franchise progresses to the next stages, which include the consultation on and finalising of the proposals.

The auditor's report must state whether, in the opinion of the auditor²⁷:

- the information relied on by the local transport authority (in conducting the analysis) is of sufficient quality;
- the analysis of that information is of sufficient quality, and
- the local transport authority has had regard to the guidance issued by the Scottish Ministers²⁸ on the assessment of the proposed franchising framework in preparing the analysis.

In practice, we expect that the role of the auditor will largely be to evaluate the assessment of the proposed franchising framework as a business case using the [International Standard on Assurance Engagement \(ISAE 3000\)](#) approach. Using the ISAE 3000 approach auditors can consider the quality of the information and the processes the LTA used for analysing the information for their proposal/ business case. This approach was used by auditors to analyse the [Transport for Greater Manchester franchise assessment](#), which was evaluated in 2020.

Guidance to auditors

Section 13F(4) of the 2001 Act (as to be inserted by the 2019 Act) specifies that auditors, when preparing their reports, must have regard to any guidance issued by Scottish Ministers in relation to the preparation of such reports.

Consultation questions

**Question 22: What should be included in the guidance for auditors?
Please explain your answer.**

After receiving the auditor's report, the LTA will decide if they should proceed with their proposed franchising framework proposal. If it decides to proceed, they must give public notice of their intention to make the proposed framework to persons in their area and must also consult the following:

²⁶ The audit is specifically reviewing a business case from local transport authorities who wish to proceed with a franchising scheme. While the auditor will consider the financial implications of the business case, they also must consider the wider impacts of the scheme.

²⁷ Section 13F(5) of the 2001 Act as to be inserted by the 2019 Act -defines an independent auditor who must have a recognised professional qualification and is eligible to be appointed as a statutory auditor under section 1211 of the Companies House Act 2006.

²⁸ Section 13E(5) of the 2001 Act as to be inserted by the 2019 Act.

- all operators of local services in the area in which the proposed franchise framework relates
- any other person holding a Public Service Vehicle (PSV) operator's licence or community bus permit, who in the LTA's opinion may be affected by the framework
- such organisations appearing to be representative of employees of such operators
- such organisations appearing to be representative of users of local services
- the Traffic Commissioner
- the Chief Constable of Police Scotland
- the Competition and Markets Authority, and
- such other persons the LTA thinks fit

The consultation documents, which must be made available to the public, are:

- the proposed franchise framework
- a report on the assessment of the proposed franchising framework, including a description of how the LTA consider the proposed framework will contribute to the implementation of their relevant general policies
- the report obtained from the auditor, and
- such other documents (if any) the LTA thinks will assist the consultees in considering the proposed framework

Guidance to LTAs for making a new franchise assessment

Should the consultation findings suggest that modifications to a proposed franchising framework are required, and these will materially affect any of the key parts of the franchising assessment previously prepared (as described on page 38), the LTA will need to undertake a new franchise assessment. This will also involve repeating the report from the auditor and consultation steps of the process.

The Scottish Ministers must issue guidance in relation to circumstances in which an LTA must prepare a new assessment (due to modifications that materially impact the key elements of the assessment of the proposed franchise framework). We therefore seek your views on what this guidance should contain.

Consultation questions

Question 23: What should be included in guidance to LTAs in relation to the circumstances in which the LTA must prepare a new assessment of a proposed framework? Please explain your answer.

Independent panel appointed by the Traffic Commissioner

After following all of the previous steps in the process for developing the proposed franchising framework, carrying out the assessment and obtaining the report from an auditor as well as publicising and consulting on the proposals, an LTA may then decide to proceed with making the framework.

To do this, the LTA must request that the Traffic Commissioner convenes a panel for the purpose of considering whether to approve the making of the proposed franchising framework. To assist in the panel's deliberations, the LTA must provide the Traffic Commissioner with certain documents, which include:

- the proposed franchising framework
- a report on the prepared assessment, including a description of how the LTA considers the proposed framework will contribute to the implementation of their relevant general policies (see page 11)
- the report obtained from the auditor
- the full, and most recent, assessment of the proposed franchising framework prepared by the LTA
- a summary of the responses received to the consultation and
- a description and explanation of any modifications made to the proposed franchising framework following consultation

The Traffic Commissioner will then give notice that an LTA is seeking approval for their franchising framework which will allow people to make representations to the Commissioner that will be provided to the panel for their deliberations.

The Traffic Commissioner must appoint three people to form a panel to decide whether or not to approve the making of a proposed franchising framework.

In creating the criteria for potential panel members, we are interested in your views in the make-up of the panel.

Consultation Questions

Question 24: Do you have any views on the constitution of the panel, including any criteria for potential panel members? If so, please explain.

Question 24 A: Do you have any views in relation to the appointing, removing or replacing members to the panel and why? If so, please explain.

Functions of the panel

The panel appointed by the Traffic Commissioner will consider all the documents and any representations provided and may decide to:

- Approve the making of a proposed franchising framework
- Approve the making of the proposed franchising framework subject to the LTA making such modifications to the framework as the panel may specify, or
- Not approve the making of the proposed franchise framework

When considering whether to approve a franchise framework, the panel must satisfy itself that the LTA has:

- Complied with the process set out for making the franchise framework
- Had regard to any guidance issued by Scottish Ministers in relation to the assessment of a proposed franchising framework
- Given appropriate weight to any matter which the Scottish Ministers have prescribed in regulations for such purposes, and
- Otherwise, reached a reasonable conclusion in deciding to make the proposed franchising framework

To assist in the development of secondary legislation underpinning the panel and its functions, we are seeking your views in relation to any process that should be followed by the panel in making decisions. For example, whether the panel should hold hearings when considering a proposed franchise framework and, if so, how long they should last. We are also seeking views on what, if any, matters should be set out in regulations so that the panel, in reaching their decision, is obliged to consider whether the LTA has given appropriate weight to those matters.

Consultation questions

Question 25: Do you have any views about the process that the panel should follow in making their decision? If so, please explain.

Question 25 A: Are there any matters which you think should be prescribed in regulations that the panel must be required to consider (in relation to whether the LTA has given appropriate weight to such matters)? If so, please explain.

Information relating to services

Background

As well as making new provision for local authority-run services, bus service improvement partnerships and franchising (as covered previously in this consultation), [section 39](#) of the 2019 Act inserts new provision into the Transport Act 1985 (“the 1985 Act”) to allow LTAs to obtain certain specific information from an operator when the operator proposes to vary or cancel the registration of a local service.

This information relates to the number of passengers using the service, the journeys made by those passengers, the fares paid by them and the revenue obtained for operating the service. The information requested by the LTA must relate to the authority’s obligation to ensure that there is a sufficient bus service provision in their local area in line with their relevant general policies.

Feedback from LTAs suggests that in many cases the information is provided as they would wish. The provisions in the 2019 Act are designed to ensure consistent compliance across operators to facilitate more effective competition in the bus market following recommendations made by the [Competition Commission](#) in 2011.

The LTA will be able to share this information in certain limited circumstances with those who may wish to bid to provide a similar service to the one being withdrawn or varied. The 2019 Act provides that where an operator does not provide the information (or does not provide it quickly enough), the Scottish Traffic Commissioner will be able to impose a financial penalty on the operator.

To protect the commercial interests of operators, the 2019 Act provides additional controls for the protection of revenue data. Patronage data is more readily accessible (i.e. it can be provided on request). In both cases, however, the information may be shared with other authorities if they have an interest in a particular route.

When supplying the information, the operator can request that the LTA does not disclose it on the basis that disclosure would be harmful to the operator’s interests. If such a request is made then the operator must provide evidence to allow the authority to assess and decide on disclosure of information.

Further information on these provisions is provided in paragraphs 237 to 279 of the [explanatory notes](#) to the 2019 Act.

This consultation seeks your views on a number of options associated with the operation of these provisions to inform the development of secondary legislation and guidance as appropriate.

Consultation questions

At present, [regulations](#) require operators to notify the LTA 28 days before they submit an application to the Office of the Traffic Commissioner to amend, vary or cancel a service and a voluntary arrangement is in place whereby operators provide service information to the relevant local transport authority.

The 2019 Act makes provision to formalise this process in terms of both the timescale for providing the information and the form and content of the information.

Prescribing the time period for providing information

Section 39 of the 2019 Act provides a regulation-making power at new section 6ZA(2) of the 1985 Act allowing the specification of the period in which service information can be required of the operator by the local transport authority in the event of a service variation or cancellation.

Alongside this, section 39 of the 2019 Act also introduces the power for Ministers to prescribe the period of time for the operator to supply the information requested by the LTA under new section 6ZA(5)(a) of the 1985 Act.

We are interested in your views on what these prescribed timescales should be.

Question 26: How long should an LTA be given to require the provision of service information and why? Please explain your answer.

Question 27: How long should an operator be given to provide that information and why? Please explain your answer.

Service Information Operators Must Provide

The 2019 Act provides that the Scottish Ministers are to prescribe in regulations the service information that operators are to provide to LTAs. For this purpose Ministers may prescribe information relating to patronage (i.e. information about passenger numbers, journeys and fares) and information relating to revenue (i.e. information about the revenue obtained from operating the service). The information to be prescribed might vary in different situations (e.g. for when a service is cancelled compared with when a service is varied).

Consultation questions

Question 28: What considerations might need to be taken into account when determining what revenue and patronage information an operator should be required to provide to an LTA under new section 6ZA(2) of the 1985 Act. Please explain your answer.

Question 29: Do you have any views on what specific information should be prescribed? If so, please explain.

Question 30: Do you have any views on what specific information should not be prescribed? If so, please explain.

Extent of Permissible Disclosure

Section 39 of the 2019 Act inserts a new section 6ZB into the 1985 Act which sets out the limited circumstances in which information obtained by an affected authority may be disclosed. In doing so, it draws a distinction between patronage and revenue information such that revenue information has a narrower group of potential recipients with additional controls on what may be disclosed. In both cases, the information can be shared with other affected authorities (who may not then disclose the information to anyone else). Under new section 6ZB(2)(c) of the 1985 Act, Scottish Ministers can also make regulations to prescribe other persons to whom patronage information can be disclosed.

Consultation question

Question 31: What other persons do you think patronage information should be disclosed to and why?

Further Provision and Consultation

The 2019 Act inserts new section 6ZC into the 1985 Act to allow the Scottish Ministers to make regulations to provide further detail about the duties and processes²⁹. This also includes the ability to provide for exceptions where the core duty to provide information may not apply.

²⁹ sections 6ZA and 6ZB as inserted by the 2019 Act

New section 6ZC(1)(a) of the 1985 Act allows regulations to be made to exclude or modify new section 6ZA of that Act in specified circumstances.

Consultation questions

Question 32: Under what circumstances might the application of new section 6ZA of the 1985 Act require to be excluded or modified? Please explain your answer.

New section 6ZC(1)(c) of the 1985 Act allows regulations to be made to require operators to keep records of such information as may be specified in those regulations.

Question 33: Should operators be required to keep records of information and if so, what information should they keep? Please explain your answer.

New section 6ZC(1)(e) of the 1985 Act allows regulations to be made about the form and content of the information operators may be required to supply to LTAs under new section 6ZA.

Question 34: Do you have views as to the form and content of the information operators may be required to provide under new section 6ZA of the 1985 Act including how it should be delivered? If so, please explain.

Impact Assessments

The 2019 Act received Royal Assent on 15 November 2019. This consultation seeks views on implementing its provisions for bus services. In doing so, the public sector equality duties require the Scottish Government to pay due regard to the following:

- eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010
- advance equality opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a relevant protected characteristic

We would like to use this consultation process to seek your views on the likely equality effects on protected characteristics, including children and young people, elderly and island communities via the following question.

Consultation Questions

Question 35: Do you have any views on the contents of the impact assessments published in association with this consultation paper?

We have also produced a partial Business and Regulatory Impact Assessment (BRIA) which builds on the [BRIA](#) which accompanied the Transport (Scotland) Bill. We would also like your input to help us identify any additional business and regulatory impacts for businesses, the public sector and voluntary and community organisations as a consequence of implementing the provisions of the 2019 Act via the following question.

Question 36: Do you have any comments on the information contained in the partial BRIA including the options, costs and benefits discussed?

Annex A – Consultation Responses

Respondent Information Form

Please note this form must be completed and returned with your response.

Are you responding as an individual or on behalf of an organisation?

Individual

Organisation

Your full name or the organisation's name

Phone Number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

Publish response without name (Please note this does not apply to organisations)

Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss.



**TRANSPORT
SCOTLAND**
CÒMHDHAIL ALBA

Transport Scotland
Buchanan House, 58 Port Dundas Road,
Glasgow, G4 0HF
0141 272 7100
info@transport.gov.scot
www.transport.gov.scot

ISBN: 978-1-911672-11-1
© Crown copyright 2021

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Further copies of this document are available, on request, in audio and large print formats and in community languages.

Any enquiries regarding this document should be sent to us at info@transport.gov.scot

This document is also available on the Transport Scotland website: www.transport.gov.scot

Published by Transport Scotland, July 2021
Produced for Transport Scotland by APS Group Scotland
PPDAS897286 (07/21)

Follow us:

 [transcotland](https://www.facebook.com/transcotland)  [@transcotland](https://twitter.com/transcotland)
transport.gov.scot



Scottish Government
Riaghaltas na h-Alba