



## Consultation on Implementation of Part 3 (Bus Services) of the Transport (Scotland) Act 2019 – SPT response

**Committee** Strategy and Programmes

**Date of meeting** 26 November 2021

**Date of report** 28 October 2021

**Report by Acting Chief Executive**

### 1. Object of report

The object of this report is to recommend approval of SPT's draft response to Transport Scotland's consultation<sup>1</sup> on the implementation of Part 3 (Bus Services) of the Transport (Scotland) Act 2019. SPT's response is attached at Appendix 1 and was submitted as draft subject to approval by this Committee within the consultation's deadline of 6 October 2021.

### 2. Background

Further to previous reports<sup>2</sup>, members will recall that the Transport (Scotland) Act 2019 contained various provisions in relation to bus services, including local transport authority-operated bus services, Bus Service Improvement Partnerships (BSIPs) and local bus service franchises. The reason for the consultation is that while the Act received Royal Assent in December 2019, Transport Scotland has a duty to consult on how the bus provisions will be implemented in practice prior to them coming into force. It is important to emphasise that the consultation was not seeking views on the principle of the provisions, as this had been considered during the development of the Act, but the practical implementation of them.

### 3. Outline of proposals

3.1 SPT's draft response is attached at Appendix 1. Key points to note from SPT's response include:

- Local Transport Authority (LTA) Bus Services
  - The consultation notes that an LTA may choose to operate bus services if it is in support of achieving its "general policies". SPT's response highlights the need for clarity and a formal definition of what constitutes an LTA's general policies, noting that within this context it should be the relevant statutory Regional Transport Strategy for the area in question, supported by the relevant Local Transport Strategy or Strategies and the statutory National Transport Strategy.

<sup>1</sup> <https://www.transport.gov.scot/media/50084/implementing-part-3-of-the-transport-scotland-act-2019-bus-services-a-consultation.pdf>

<sup>2</sup> [https://www.spt.co.uk/documents/latest/Ops200821\\_Agenda6.pdf](https://www.spt.co.uk/documents/latest/Ops200821_Agenda6.pdf)

- SPT believes that any guidance in relation to this provision should also cover what happens in the event of a major bus operator in the area ceasing to operate i.e. when the LTA may become the “operator of last resort”. Specifically, the resources and powers which would be available to an LTA in such circumstances to ensure continuation of service for the public.
  - Given the potentially significant undertaking of operating bus services, SPT believes it essential that any guidance highlights to any LTAs considering such a proposal the operational, logistical, legal and financial of such an undertaking and highlights some of the key issues in that regard, including availability of depots, maintenance of vehicles and others.
- Bus Service Improvement Partnerships (BSIPs)
  - SPT is supportive of the proposed methodology and procedure for the development of BSIP plans and schemes but highlight the need for flexibility to be retained in processes to allow for adjustment to objectives and measures in line with changing needs and requirements.
  - The response highlights that the proposed definition of facilities to be considered in the development of a BSIP is too limited as it appears solely to refer to ‘bus infrastructure’. SPT believes that the definition needs to be broader and more expansive with regard to infrastructure which improves the bus network and therefore could include traffic management measures, real time passenger information and others.
  - In relation to the voting mechanism for creation of a BSIP, SPT is supportive of the option proposed which gives a more representative, overall view of the majority of operators in an area. Similarly, in relation to the information an LTA can request of an operator in preparing a BSIP, no information should be excluded in that regard.
- Local Bus Services Franchises
  - SPT is broadly supportive of the majority of proposals in relation to the process for franchising but has significant concerns about the constitution, accountability and role of the “panel” in the proposed process and in how the panel will consider a case for franchising.
  - For example, the consultation document highlights the proposal that, in considering a case for franchising, the Panel must “satisfy itself” that it has reached a “reasonable conclusion” on the proposal. SPT believes this approach to be undemocratic, lacking in transparency and provides room for subjective judgements to be made which may not need to be justified. The panel, in taking the responsibility to make the judgment, must be prepared to justify its decision to all parties including the public in detail.

#### 4. Conclusions

Throughout SPT’s involvement in the development of the Act, key factors have always been ensuring any provisions are workable, equitable and that there is the appropriate level of accountability and transparency in the processes therein. Above all, however, is the need to ensure that whatever provisions are in place, the needs of the passenger are at the centre of any proposals. SPT’s response to this consultation builds on this and while there is broad support for the proposals contained in the consultation document, our response highlights concerns, some of which are significant and which we believe need to be addressed prior to

coming into force. Transport Scotland is now in the process of reviewing responses received and in due course will present final guidance and regulations to the Scottish Parliament for consideration, scrutiny and approval. Officers will continue to update the Committee as matters progress.

## 5. Committee action

The Committee is recommended to:

- Note the report; and
- Approve SPT's draft response at Appendix 1.

## 6. Consequences

Policy consequences	<i>In line with the current and developing RTS.</i>
Legal consequences	<i>None at present.</i>
Financial consequences	<i>None at present.</i>
Personnel consequences	<i>None at present.</i>
Equalities consequences	<i>Equality considerations will need to be taken into account should any of the Act's provisions be taken forward for implementation.</i>
Risk consequences	<i>None at present.</i>

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# Consultation on Implementation of Part 3 (bus services) of the Transport (Scotland) Act 2019

## SPT Response

### DRAFT

**NOTE: Text in black is from Transport Scotland's consultation document, and has been included for ease of reference. Text in italics is SPT's proposed response.**

## Local Transport Authority (LTA) 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 Coordinating 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.**

- *The guidance needs to clearly set out the meaning of "LTA's relevant general policies". At present there is no indication as to what this might refer. Without such clarity, there is a danger that any proposal to introduce a municipal bus company – or other provision of the Act - could be subject to challenge. Indeed, conversely, someone wishing to challenge a proposal would have little clarity on the grounds on which to challenge this aspect. This could result in wasteful processes, use of resources and decision making for all parties. SPT believes that the most appropriate definition of "general policies" within this context should be the relevant statutory Regional Transport Strategy for the area in question, supported by the relevant Local Transport Strategy or Strategies and the statutory National Transport Strategy.*
- *Any guidance should reference some of the key issues and impacts of running a bus company – there may be aspects of that which those considering the establishment of a municipal concern may not have considered.*
- *On a broader point, we would suggest that the guidance on which matters should be considered by LTAs when looking at the option to set up a municipal bus operation should be kept high level. Local authorities already have a broad range of duties in relation to obtaining best value for public money and ensuring their operations are affordable. Guidance around the Transport Scotland Act 2019 should reflect this and not place undue and unnecessary additional burdens on them.*

- *Guidance should also cover what happens in the event of a major bus operator in the area ceasing to operate i.e. when the LTA may become the “operator of last resort”. Specifically, what resources and powers would be available to an LTA in such circumstances to ensure continuation of service can be provided for the public.*
- *SPT would highlight the importance of ensuring a consistent, coherent, integrated and complementary set of guidance for utilisation of provisions within the Act as, given its wide ranging scope, there is potential for confusion in that regard. There is reference in the consultation paper to the establishment of a Working Group to review the Guidance, and we would seek clarity on whether this has been established, the terms of reference, when it will meet, and who will be invited to participate. Further, we would emphasise that legislation should be strong enough to enable development of robust guidance without the need for parallel processes and should not be unduly reliant on, for example, case studies as a replacement or alternative to clear guidance.*

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

- *As noted above in our response to Q1. there needs to be clarity in the Guidance on what constitutes an LTA’s ‘relevant general policies’. This is a critical point since as noted such policies may be open to legal challenge at a future date. It is important to get this right to reduce the potential for challenge and ensure a robust framework is in place.*
- *If setting up a bus company, as for anyone else, the responsibility would be on LTA to source information and resources to assist it in creating the bus company.*
- *If the LTA is taking over an existing operator for whatever reason, it should be able to conduct due diligence over that company’s affairs as is normal corporate practice.*

- *As noted in response to Q1, guidance should also cover what happens in the event of a bus operator in the area ceasing to operate i.e. when the LTA may become the “operator of last resort” and what resources and powers are available to it.*

*There are also a range of other operational, logistical and financial considerations that would require to be taken into account by an LTA considering a municipal bus operation. While we acknowledge it is not the intended purpose of any guidance to provide a step by step process for the various ways in which an LTA might run their own services, we consider it would be an essential component of such guidance to alert LTAs to these specific considerations, some of which we note below:*

- *The arrangements for and requirements of applying for Operator Licensing.*
- *The need to consider appropriate depot premises*
- *Local Bus Service Arrangements including registration of services with the Traffic Commissioner and associated compliance elements.*
- *Compliance with drivers’ hours regulations*
- *The need to ensure effective arrangements for the rostering and timetabling of services, vehicles and staff*
- *In addition to drivers and vehicle support, any bus company would require the employment of appropriately accredited and professional staff including Transport Managers, Engineering, commercial, supervisory, HR, financial, training and clerical. TUPE may be relevant in all of the above, if a service or contract is being taken over from another operator. Also trade union arrangements for staff, if applicable.*
- *There would also be a requirement to ensure suitable fleet and public liability insurance, arrangements for staff pensions and compliance with company law.*
- *The purchase and maintenance of suitable vehicles for the routes operated would be required with prices currently in the range of £125,000 for a small bus to £150,000 for a larger single decker and up to c£200,000 for double decker. Further, the cost of electric / hybrid / hydrogen buses is significantly higher. Use of non-compliant vehicles is an offence under PSV Accessibility Regulations 2000. Vehicles must also meet current environmental and accessibility requirements.*
- *Other arrangements to be factored include: Purchase and installation of suitable ticket machines, back office and concession reimbursement arrangements with Transport Scotland; Fares / cash collection methods on-bus, reconciliation in office and banking; promotion / publicising services via production & circulation of timetables, internet, apps, website; CCTV and regulations surrounding its use on vehicles; compliance with GDPR legislation.*

*We note reference in the consultation text above to competition issues and it will be essential that future guidance makes explicit that LTAs considering the establishment of a local bus operation do so fully aware of the commercial nature of the bus market and that any local authority bus company will be subject to market competition and to UK legislation governing competition.*

## **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 BSIPs 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 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 provisions 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 above) 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.

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

*SPT support the proposed form and content of plans and schemes, and welcomes the flexibility provided in creating them which will allow local/regional circumstances to be taken into consideration.*

#### **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.

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.**

*Guidance should advise on the appropriate duration of a BSIP and appropriate timescales for review and monitoring. There should be flexibility built into to the process to enable changes to the objectives and measures in line with due process and agreement of BSIP members.*

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 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)?**

**No**

*We do not consider that any conditions should be included in guidance at this stage. While it is sensible to have clear and consistent rules around variation and revocation, there must also be discretion and flexibility available to LTAs to accommodate unforeseen or emergency situations such as where a bus company becomes insolvent and this should be reflected in guidance.*

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

*n/a*

## **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**

- 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**

- 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

## **Action Stages of process and notice requirements**

- Postponing the coming into operation of variation and giving notice to that effect

### **Revocation**

- 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 notices. 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". 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.**

*Consideration should be given to an emergency provision to accommodate immediate revocation, or revocation within the suggested notice periods detailed.*

### **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?**

**Disagree**

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

*See response at Q8 which covers both facilities and measures.*

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

**Disagree**

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

*Response below covers Questions 7A, 8 & 8A*

*We acknowledge that consultation document is not intended as the specific draft guidance; however, it is likely to significantly influence the final text of the guidance. It is on this basis that we make the following comments.*

*SPT is concerned that the proposed definition of facilities indicates that the LTA will need to commit to investment in 'bus' infrastructure specifically, whereas investments in other infrastructure (e.g. traffic management including upgrading of technology and systems) can also have benefits for bus services. Also, the inclusion of specific examples of bus infrastructure in the definition could lead to problems around inclusion of, for example, real time passenger information, as a 'qualifying' investment in a BSIP. SPT feels that the definition needs to be clearly broad and expansive with regard to infrastructure which improves the bus network, but also recognise this could lead to challenges in agreeing a scheme.*

*We are concerned that the definition of measures appears to prejudge the purpose and agreed objectives/outcomes of a specific BSIP by including a specific objective (i.e. improving bus journey times) in the definition. References to "improving bus travel times" in the definition of measures, could be just as valid if they maintain bus speeds but improve bus service reliability by removing buses from variable or occasional congestion problems. Simply saying "improving bus services" in the second line of the definition would suffice.*

*Additionally, the proposed definition may overlap with the definition of facilities (e.g. priority signalling). Clarity is needed to avoid such assumptions.*

*The consultation document also notes that the LTA must, at least, invest in either a facility or a measure. A facility is defined as "investment in infrastructure". It does not mention or seek to define 'bus infrastructure'. The text in this regard would benefit from removal of the word "including" in the second line, as that could suggest that at least one of the examples should be included in the facilities scheme/schemes.*

*In general, SPT considers that measures should be extended to include actions that improve the attractiveness of bus services rather than being narrowly defined.*

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**

*SPT believes there should be scope for existing facilities to form part of a BSIP. SPT and partner local authorities have invested substantially in bus passenger facilities, bus stations, real time passenger information and urban traffic management systems across the Strathclyde region over the past decade and more and, on many routes, the infrastructure remains of a very good standard and continues to deliver benefits for passengers.*

*In particular, a facility that has only been in place for 1-2 years and hasn't been fully optimised should be included within the scope of the partnership plan / scheme. Further, a facility that is planned to be provided in the near future but obviously has not resulted in benefits as yet (e.g bus speeds / reliability) should also be included. Such planned facilities as these are valid since they contribute to BSIP objectives even if they are not being directly delivered by the BSIP intervention programme.*

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

*There should be no time restriction as the facilities previously provided may still be fit for purpose despite the length of time since they were constructed or installed.*

#### **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.

**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)?**

**No**

*The flexibility afforded to the LTA should be sufficient in dealing with any other matters. However, we would suggest that specific reference be made to the position of Community Transport in the Guidance.*

*While we note that 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, it would be welcome if Scottish guidance were to follow the approach in England, where Community Transport Services are exempted but where reference is made as follows from the National Bus Strategy:*

*“We would encourage LTAs and community transport operators to co-operate together and with commercial bus operators to deliver BSIP outcomes – using, for example, a separate contractual agreement, a memorandum of understanding or, for section 22 operators, a voluntary partnership agreement.”*

- [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1002507/national-bus-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002507/national-bus-strategy.pdf) Para 1.7, Page 5

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

*n/a*

### **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 mechanism; and
- How the qualifying time is to be determined

### **Qualifying local services and qualifying time**

There is a power 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.

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**

*We would agree with the proposed definition whilst noting that under the current BSIP proposals, a Partnership Board would have the power to alter the voting mechanism by agreement. This is an important feature of the voting mechanism as proposed and it is important that this power is retained in the finalised Guidance.*

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

*There could be circumstances where there are very few operators in an LTA area and this could result in one large operator dictating service standards and imposing them on other operators to their detriment. The voting mechanism set out above broadly encompasses this situation and helps mitigate that risk.*

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

**Yes**

**Question 12A: Please explain your answer.**

*Excursions / tourism and interurban coach services should be excluded as these do not fall within the accepted definition of a local bus service.*

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 process. 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.*

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**

**Question 13A: Please explain your answer.**

*To ensure that no operator currently providing a service is excluded.*

**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 14: 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).**

***Neither agree or disagree***

**Question 14A: Please explain your answer.**

*There are 3 large operators in the SPT region, each of which operates about 20% or more of the total registered mileage in the region. This means that, under option 1, there is a potential situation, dependent upon the spatial extent of the proposed BSIP, that any one large operator, supported by any single small operator, could object to a BSIP scheme being made; however, this outcome would not necessarily reflect the majority view of operators. Therefore, SPT prefers option 2 as it is more likely to result in an outcome reflecting the overall view of operators.*

### **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 smartcard 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.

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

***Agree***

**Question 15A: Please explain your answer.**

*It seems sensible to follow the definition as set out in the Block Exemption Scheme since this is a legally recognised and accepted definition. This will support consistency of approach and help to any future issues or challenges that may arise.*

## 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.

**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**

**Question 16A: Please explain your answer.**

*The suggested approach seems reasonable. The decision at this stage not to introduce a reporting format through regulations is welcome given, as noted, the varying bus market contexts.*

*We would however, and building on our points earlier in this response in relation to a clear definition of what constitutes 'general policies', suggest the scope of reporting in terms of 'general policies' should be defined in clearer terms. From SPT's perspective – and like Regional Transport Strategies and Local Transport Strategies - this should reflect wider local, regional and national policies in relation to areas such as reducing inequalities, promoting inclusive growth and tackling climate change rather than any potentially narrower definition of 'general policies' which may be included within a BSIP's objectives e.g around issues of reliability, affordability, reduced journey times.*

## 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
- 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

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

*No information should be absolutely excluded. To make a BSIP, LTAs will be required to invest in facilities and/or measures and it is essential that this investment is focused on specific problems with an identifiable solution, and that the benefits of the investment can be measured and monitored. This requires sufficiently comprehensive data to ensure problems are understood at network and route levels and that the objectives and outcomes of the BSIP can be measured and monitored at both operational (e.g. journey times) and strategic levels (e.g. modal shift).*

*In addition, we have a number of concerns about the proposed approach to information provision as follows:*

- *We are concerned that the information listed under 'may include the following categories' is likely to become the only information that may be requested.*
- *We also believe that information provision needs to be mandatory and unambiguous; this is based upon our previous experiences with sQPs and the considerable challenges around information sharing.*
- *With the introduction of 'free' bus travel for under 22s, over 40% of bus travel will be funded by public purse and yet obtaining detailed data on patronage remains challenging. The inequitable nature of this situation emphasises the importance of ensuring a wide range of data is available.*
- *Further, data needs to be collectable in such a manner that effective BSIP forward planning can take place. As such, data covering the information set out in this consultation document needs to cover all services at a local authority, city and regional level (depending on the scope of the BSIP), individual bus services and corridors.*
- *In general terms, SPT would advocate the establishment of a central repository of transport data covering all modes, including bus services, to enable accessible and consistent information on bus services to be available to LTAs. Such a repository would of course be subject to robust rules around maintaining commercial confidentiality. Data specific to BSIPs could be accessed via this wider repository.*
- *We are also concerned that the reference to "How and when a local service operated by an operator is used by passengers" is too vague and open to interpretation. This needs to be more clearly defined and should instead make specific reference here to comprehensive data on patronage at both aggregate and disaggregate (by individual service) levels and all levels in between e.g by corridor.*
- *Finally we would highlight that the approach to information provision in England is such that LTAs have the power to require such comprehensive information to be released.*

*In addition to the information set out in the consultation, we would suggest that this should be widened to cover a range of other areas, including:*

- *The number, location and severity of vehicular accidents and passenger accidents within buses.*
- *Information about Vehicle emissions and fleet age including the mechanical condition of vehicles and the number of breakdowns experienced.*

- *Information about fare revenues by ticket type and service should be eligible for requests, if ticketing improvements are going to form part of the BSIP.*
- *Information about the total number of journeys undertaken by passengers on the local services operated by the operator in the area;*
- *Information about the structure of fares for journeys on those local services;*
- *Information about revenue received from those local services, including information about revenue attributable to particular types of fares or derived from journeys undertaken on particular parts of those local services;*
- *Information about the total distance covered by vehicles used by the operator in operating those local services;*
- *Information about persons employed by the operator in the provision of those local services;*
- *Information about journeys that the operator has forecast will be undertaken by passengers on those services and revenue that the operator has forecast will be received from those services;*
- *Information about journey speeds and reliability*
- *Information about journey patterns*
- *Information on varied or cancelled services*

*In general, the scope of the information that can be requested and must be provided should be drawn as widely as possible and certainly should include any information relating to bus operations, bus passengers and bus fares that, acting reasonably, could be considered relevant to making an effective BSIP.*

*We are not attempting in any way to set out a comprehensive list within this consultation response to the range of information that could reasonably ensure the effective development, measurement and success of a BSIP. We would welcome further consideration be given to this area, perhaps through the working group noted in the consultation document, to ensure BSIPs are able to draw on the appropriate and necessarily comprehensive range of data.*

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

*Yes, for example where this breached commercial confidentiality. However, this circumstance could be addressed through some form of non-disclosure agreement.*

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

*No*

**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 Act<sup>23</sup> 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.

**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?**

*We support the requirements as set out above but would suggest that consideration needs to be given to people with a wider range of disabilities and should include audio information and consideration of non-visible disability.*

*Consideration should also be given to the needs of parents / guardians and carers.*

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

*No*

## **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.

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

*We would welcome greater emphasis within the guidance on the need to promote a bus network that integrates well with other transport modes, including, for example, integration with rail/ferry timetables, participation in multi-modal ticketing arrangements or schemes and carriage of bikes on buses.*

## **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.

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 policies
- 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.

### **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.

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

*SPT is supportive of the proposed approach to franchise assessment outlined on pages 41 and 42 of the consultation document.*

*However, the guidance should:*

- clarify the process that needs to be followed and set out Minister's expectations on how the Five Case Model will be developed and the interface with STAG;*
- clarify the need to compare the proposed franchising framework with other options is only required whilst making the strategic and economic cases;*
- set out the anticipated role of statutory assessment processes in the preparation of the franchising assessment;*
- specify the criteria that must be taken into account by the auditor when compiling their reports;*
- specify the matters that must be taken into account by the LTA when selecting an auditor; and*
- Set out broad expectations for engaging with bus passengers and/or the general public in the preparation of the franchising framework.*

**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.

**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.**

*In addition to cost and vehicle data, as noted above, SPT believes that LTAs should be able to request, at minimum, revenue data related to passenger and ticketing usage and operational data related to performance. SPT considers this information essential for LTAs to prepare a franchising assessment in line with the requirements of the Five Case Model including assessing different options.*

**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.**

*No – as per reasons set out in response to Q21.*

### **The audit process**

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 auditor:

- 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 Ministers 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.

### Question 22: What should be included in the guidance for auditors?

**Please explain your answer.**

*As proposed in the consultation document, the ISAE 3000 approach should form the basis of guidance to auditors. As noted under question 17, the guidance should specify the criteria that must be taken into account by the auditor when compiling their reports. The guidance must require auditors to provide clear and detailed reasons for their decisions.*

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:

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

Transport Scotland

- 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.

**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.**

*Given the significant costs likely to have been incurred in the preparation of a franchising proposal, the guidance should be clear and specific on how to prepare a new assessment – including whether there is or isn't a need to revise particular sections etc. – and on exactly what a new assessment is expected to demonstrate.*

### **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

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.

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

*The panel must be required to commit to undertaking their review in a balanced, objective, evidence-based and transparent way. Panel members must not be allowed to refuse a franchise because they object to the principle of franchising; the case being made for the franchise should be allowed to be judged on its own merits.*

*Panel members should have an appropriate professional or public background – legal, financial, transport, planning, current / former elected members, community involvement, passenger representative.*

*The make-up of the panel must take into account the Equality Act (2010).*

*Panel members must not have any financial or personal interest in the outcome of their decision.*

*Panel members must be protected from any potential personal repercussions or litigation arising from their decision.*

*Panel members must comprise a mixture of skills including legal, financial and industry expertise, to enable an effective and appropriate assessment to be undertaken.*

**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.**

*SPT is concerned that the Panel model is potentially inherently risk averse, and may also lack accountability. Following on from our observations about the panel set out above we would elaborate as follows:*

*The Panel must include someone knowledgeable on bus service operations and legislation, and who has had direct experience of the bus industry. Upskilling an individual without such prior knowledge and experience to an appropriate level would be impractical.*

*However, someone that has extensive industry involvement is unlikely to have entirely independent and objective views about the industry. The selection process therefore needs to:*

- be transparent, with a person specification prepared and used to guide selection;*
- involve the LTA, not simply be left to the TC's discretion; and*
- address head-on the issue of entrenched views, ensuring anyone that is incapable of taking a properly independent view should be rejected*

*The selection of this panel is pivotal; it cannot be left to unclear selection processes and potential influence from outside forces with entrenched views from across the spectrum.*

### **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.

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

- *The process for the Panel to follow in making their decision must be specified and detailed criteria applied in that regard.*
- *The Panel must be required to justify their decision in detail.*
- *The Panel should hold public hearings in making their assessment – this should be similar to the “public inquiry” approach taken in deliberating land-use planning applications by Reporters.*
- **SPT, in the strongest terms, do not support the proposal that the Panel must “satisfy itself” that it has reached a “reasonable conclusion” on the proposal. This approach is undemocratic, lacking in transparency, and provides room for subjective judgements to be made which will not need to be justified. The Panel, in taking the responsibility to make the judgment, must be prepared to justify its decision to all parties – including the public – in detail.**

- **SPT is concerned that the Panel as constituted will by nature be risk averse since it may be open to legal challenge. There is a significant risk that the panel, unless sufficiently empowered, will be reluctant to approve the making of a franchise framework even where the business case covers all necessary objectives.**

**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**

- *As noted in our response to Q.25 above.*
- *A key criteria which the Panel must give appropriate weight to is the LTA's "general policies" (RTS, LTS) and any other adopted public policy in the area. General policies are subject to a rigorous process of development, consultation, and approval and are the official public policy for the area in question. However, as noted in earlier responses the definition of 'general policies' requires to be clearly defined.*

## **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.

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.**

*There should be no prescribed limit. It may take time for an LTA to consider and analyse information provided depending on the nature of the changes proposed and to consider an appropriate response. Operators proposing service changes will have assembled all the necessary information to make an informed commercial judgement and as such this information should be made available when the operator provides the LTA with the notice to vary or cancel a service.*

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

*As above, operators proposing service changes will have assembled all the necessary information to make an informed commercial judgement and as such this information should be made available when the operator provides the LTA with the notice to vary or cancel a service.*

### **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).

**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.**

*In relation to information provision on deregistration/service reduction, all information about ridership, fares and operating costs should be provided to the LTA.*

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

*Confidentiality conditions should be introduced to protect commercially sensitive information but it should still be made available when requested by a LTA.*

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

*As a general rule no information should be prescribed. Commercially sensitive information can be covered by confidentiality agreements but must be available to LTAs.*

#### **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.

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

*Comprehensive patronage (and revenue) data should be available to LTAs subject to non-disclosure. It should also be available to prospective tenderers. In an aggregated form patronage information should be available publicly given the extent of public subsidy and funding made available to operators.*

#### **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 processes. This also includes the ability to provide for exceptions where the core duty to provide information may not apply.

**Question 32: Under what circumstances might the application of new section 6ZA of the 1985 Act require to be excluded or modified?**

*Only in exceptional circumstances e.g. where legal proceedings would be a factor.*

**Please explain your answer.**

*To avoid negative legal impacts.*

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.**

*See our response to Q17A.*

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.**

*In a form as requested by the LTA which is reasonable, practical, affordable and efficient but on the basis that no information should unreasonably be withheld. There should be an onus on bus operators not to act obstructively or outwith the spirit of legislation.*

## **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.

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

*No. Impact assessments will require to be undertaken when the provisions in the Act are being taken forward and should be considered at that stage*

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?**

*None other than the comment above at Q.35.*