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Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee report on the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024

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Contents

The Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024	1
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Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Transport and the Cabinet Secretary for Net Zero and Energy, with the exception of matters relating to just transition; and on matters relating to land reform, natural resources and peatland, Scottish Land Commission, Crown Estate Scotland and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands.



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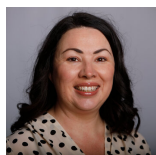
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The Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024

1. This report concerns the [Local Services Franchises \(Traffic Commissioner Notices and Panels\) \(Scotland\) Regulations 2024](#), laid before the Parliament by the Scottish Government on 12 September 2024. The instrument is subject to the negative procedure – which means that it can be annulled by resolution of the Parliament during a 40-day period (excluding recess periods) ending on 30 October 2024.
2. A motion recommending annulment was lodged by Douglas Lumsden MSP on 25 October 2024. It was for the Net Zero, Energy and Transport Committee, as lead committee, to decide whether or not to agree to that motion.

Background

3. Section 38 of the [Transport \(Scotland\) Act 2019](#) ("the 2019 Act"), which came into effect in December 2023, provides the legislative basis for Scottish local transport authorities to introduce local bus service franchising. This is a system allowing an authority to specify bus routes, timetables, and service standards within a designated area. Local service franchising can only come into effect once a local transport authority has developed an overarching franchising framework, which is subject to a statutory consultation and approval process, and then entered into franchise agreements with bus operators.

About the instrument

4. These regulations set out the processes and procedures to be used by the Traffic Commissioner in the appointment of the three-member panel that will consider and approve any proposed franchising framework. They also define eligibility criteria for membership of a panel, the operation of the panel, and the issues that panels must consider when assessing a proposed franchising framework. The regulations also give the Traffic Commissioner the power to issue guidance to a panel on the exercise of their statutory functions.

Consideration by the DPLR Committee

5. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the "reporting grounds" set out in Rule 10.3 of the Parliament's standing orders.
6. The DPLR Committee considered this instrument at its meeting on [17 September](#) and agreed that it did not need to be drawn to the Parliament's attention on any of the reporting grounds.

Consideration by the Net Zero, Energy and Transport Committee

7. The Committee considered the regulations at its meeting of [8 October 2024](#) where some members raised concerns about the principle of an appointed panel having

the final say on the approval of a bus franchising framework. The Committee agreed to seek written evidence from stakeholders and to write to and take oral evidence from the Scottish Government.

8. The Committee received responses from the following stakeholders:
 - [Jonathan Bray \(an adviser to the Welsh Government\)](#)
 - [Office of the Traffic Commissioner](#)
 - [Transport for Quality of Life](#)
 - [Get Glasgow Moving](#)
9. The [Minister for Agriculture and Connectivity](#) responded to the Committee on 22 October 2024.
10. At its meeting on 29 October 2024, the Committee took evidence on the instrument from the Minister for Agriculture and Connectivity and officials.
11. In his opening remarks, the Minister emphasised that the independent panel was created in the 2019 Act with the intention of depoliticising the final approval of any local service franchising proposal. He highlighted that this approach was agreed by the Parliament in the 2019 Act and these regulations were procedural, setting out how these panels will operate.
12. The Minister stated that annulling the regulations would mean falling further behind on franchising and that any significant change to the model in the 2019 Act would require primary legislation - which, in his view, would not be completed before the end of this Parliamentary session. He also raised concerns that if annulled local transport authorities may delay work on any franchising proposals due to legislative uncertainties.
13. The Committee discussed the following issues in relation to the regulations:

The merits of the process set out in the 2019 Act

14. The Minister considered that the model set out in the 2019 Act reduces the risk of legal challenge to franchising schemes. While they could still be challenged, the Minister considered this less likely as it can be demonstrated that everything was analysed by an independent body. The Minister described the panels as a safeguard to ensure everything had been done correctly and was scrutinised to the fullest extent. He also highlighted again that the process in the 2019 Act was established with a view to depoliticising decisions on franchising - having final decisions made independent of the Scottish Ministers.
15. However, some Members of the Committee questioned whether the Traffic Commissioner was the appropriate person to appoint panel members, and whether those appointees could be truly independent. Members referenced concerns raised by stakeholders in the written evidence the Committee received and, in particular, the problems that have been experienced in England under a now replaced franchise approval model. Committee members emphasised the importance of learning from practice elsewhere and noted the calls of Get Glasgow Moving for a process that was speedier and more streamlined.

The role of guidance

16. The Committee discussed the important role of guidance and the need to consult with stakeholders on this to help address some of their concerns through this route. The Minister committed to providing evidence on the guidance and memorandum of understanding once available to allay concerns about the role of the Traffic Commissioner and how the panels would operate.

What the implications of annulment would be

17. The Minister stated that without this instrument, panels to approve franchising would still be required, as these are set out in the 2019 Act. What would be different is that there would be no input from Scottish Ministers into how those panels operate: it would be at the discretion of the Traffic Commissioner. The Minister indicated that if the SSI was annulled the Government would have to consider whether it was happy for this discretion to be left to the Traffic Commissioner or whether it would look to change the system. To change the system to remove the panels entirely would require primary legislation.

The impact of changing the legislation underpinning the panel process with a new procedure of the delivery of local service franchising

18. The Minister stated that since primary legislation would be required to change the model in the 2019 Act, this would take time to develop and this would not be done before 2026, causing a potential delay in establishing local service franchises.
19. The Committee questioned whether any transport authority was likely to have developed a franchise scheme that it was ready to submit to a panel before 2026. The Minister estimated that this would probably happen in 2026 or 2027. He and officials outlined the steps still to be taken to establish fully operational panels and stated that all the legislation was expected to be in place in the new year and the guidance published around the same time. Work is also ongoing to establish a memorandum of understanding with the Traffic Commissioner. The Minister argued that annulling this SSI would impact that timetable.
20. The Minister and officials advised that Strathclyde Partnership Transport ("SPT") was the first authority in Scotland to come out with any timeline on franchising and they were not aware of any other transport authority wanting to move sooner. If the SSI was not annulled and SPT proceeded as expected, it was estimated that it would take a couple of years for SPT to follow the procedure set out in the 2019 Act to be in a position to approach a panel. The panel would then have 6 months to consider whether to approve the franchise proposal. The Committee highlighted the use of expedited legislation in other contexts which could allow a new procedure to be in place before any franchise scheme reached the approval stage under the existing 2019 Act process. The Minister stated that realistically there would be no primary legislation until later in 2026.
21. The Committee explored whether continuing with the existing process (and not annulling this SSI) would be better as an interim arrangement if the Government agreed to consider looking at this further. The Minister responded that he would need to consider that but could not give any guarantees as this would need to be discussed with the Cabinet Secretary but was acutely aware of concerns.

How the Scottish Government would respond if the SSI was annulled

22. The Minister indicated that if the SSI was annulled he would discuss with the Cabinet Secretary for Transport the best route forward. The Committee asked whether the Cabinet Secretary's views, or the views of stakeholder such as SPT, had been sought in advance on the session. The Minister responded that there were regular discussions with SPT and he would expect that if they had a problem with the SSI they would reach out. He also confirmed that he had not yet had discussions with the Cabinet Secretary about the route forward if the SSI was to be annulled. He emphasised that he hoped the SSI would not be annulled as he wanted to get this done, continue the process to implementing the 2019 Act provisions, and get franchising working.
23. Following the oral evidence, Douglas Lumsden MSP moved motion [S6M-15035](#):
That the Net Zero, Energy and Transport Committee recommends that the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024 (SSI 2024/229) be annulled.
24. The Committee raised the following points in the debate:
- All members support franchising and want to get it right. Members highlighted the importance of having a fair and robust decision-making process on franchising.
 - A majority of members considered that the 2019 Act model was flawed and the process for franchising needs to be looked at again.
 - Those members recognised that the issues being raised now had not been identified as an issue of concern at the time of the 2019 Act but believed that the Government should reflect further on the franchising model in the 2019 Act now that concerns about it have come to light. The experience of other parts of the UK, and the advice of experts and campaigners now suggested to them that the model in the 2019 Act is unsuitable.
 - Members were concerned about a delay to franchising if the SSI was annulled but a majority felt that, as the process was already moving slowly, there was time to pause to make sure the process is right.
 - A minority of members considered that the Government should continue with the process set out in the 2019 Act as that was the process agreed by the Parliament at that time and annulling the instrument would not change aspects of the 2019 Act that a majority had concerns with. Guidance was suggested as key to addressing the issues raised by campaigners.
25. The motion was agreed to by division (For 4, Against 3, Abstentions 0).

Recommendation

26. Accordingly, the Committee recommends to the Parliament that the Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024 be annulled.

