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Transport (Scotland) Act 2019: Local Services Franchises Guidance

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Glossary

Auditor	A person who is eligible to be appointed as a statutory auditor under section 1211 of the Companies Act 2006.
Audit Report	Defined in section 13F(2) of the 2001 Act, the audit report is an analysis of financial implications contained in the Franchising Assessment.
BSIPs	Bus Services Improvement Partnerships defined in Chapter 1 (sections 3A-3M) of the Transport (Scotland) Act 2001 involve local transport authorities formulating a plan (called a Partnership Plan in the Act) with the operators in their area and then deciding on how best to implement it through supporting schemes (Partnership Schemes).
CMA	Competition and Markets Authority
Concessions Contracts	A concession contract is a works or services contract which allows the contractor to exploit the works or services it provides in lieu of some or all payment from the contracting authority (i.e. a works concession contracts might be the construction of a road).
DRT	Demand Responsive Transport
LA	Local authorities: generally responsible for infrastructure, including bus stations and stops, bus lanes and other priority measures, as well as ensuring provision of passenger information.
Local Services	Defined by section 2 of the Transport Act 1985. Generally, refers to a service using one or more Public Service Vehicles for the carriage of passengers by road at separate fares.
LTA	Local Transport Authority as defined in section 82(1) of the Transport (Scotland) Act 2001, as amended by the Transport Partnerships (Transfer of Functions) (Scotland) Order 2024). In Scotland LTA means: a local authority, the Shetland Transport Partnership (ZetTrans), the South-West of Scotland Transport Partnership (SWestrans), Strathclyde Partnership for Transport, also known as the West of Scotland Transport Partnership (SPT) and the Strathclyde Passenger Transport Authority (SPTA). LTAs have a duty to secure the provision of public passenger transport services in their area.

NSG	Network Support Grant
NTS	National Transport Strategy
OBC	Outline Business Case
PSV	Defined by section 1 of the Public Passenger Vehicles Act 1981- means a motor vehicle which is either (i) a vehicle adapted to carry more than 8 passengers that is used for carrying passengers for hire or reward, or (ii) a vehicle that isn't adapted that is used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers.
RTPs	Regional Transport Partnerships are independent bodies defined under Part 1 of the Transport (Scotland) Act 2005, and regulation 3 of the Regional Transport Partnerships (Establishment, Constitution and Membership) (Scotland) Order 2005.
SMEs	Small and Medium-sized Enterprises
SPFM	Scottish Public Finance Manual
SPT	Strathclyde Partnership for Transport (also known as West of Scotland Transport Partnership) under section 10 of the Transfer of Functions Order 2024 has the ability to exercise certain functions related to bus services that were introduced under the 2001 Act by the 2019 Act.
Standards	The expectations set out by the local transport authority in the operation of local bus services within the franchising area.
TC	Traffic Commissioner means the Traffic Commissioner for Scotland established under section 4 of the Public Passenger Vehicles Act 1981 who has a variety of statutory enforcement functions.
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006
Utilities Contracts	Applies when a contracting authority or public undertaking is awarding a contract for the purpose of helping it to carry out an activity, such as the provision or operation of networks for transport by railway, automated systems, tramway, trolley bus, bus, or cable.
The 2001 Act	Transport (Scotland) Act 2001
The 2019 Act	Transport (Scotland) Act 2019
The Scotland Act Order	Transport (Scotland) Act 2019 (Consequential Provisions & Modifications) Order 2023

The Information Regulations	The Bus Service Improvement Partnerships and Local Services Franchises (Provision of Information) (Scotland) Regulations 2023
The 2024 Regulations	The Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024
The 2025 Regulations	The Public Service Vehicles (Registration of Local Services) (Local Services Franchises Transitional Provisions) (Scotland) Regulations 2025
VfM	Value for Money

Relevant Legislation

Name	Year
Transport Act	1968
Transport Act	1985
Transport (Scotland) Act	2001
Transport (Scotland) Act	2005
Transport (Scotland) Act	2019
The Transport (Scotland) Act 2019 (Consequential Provisions and Modifications) Order (SI No. 80)	2023
The Bus Services Improvement Partnerships and the Local Services Franchises (Provision of Information) (Scotland) Regulations (SSI No. 368)	2023
The Transport Partnerships (Transfer of Functions) (Scotland) Order (SSI No. 161)	2024
The Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations (SSI No. 229)	2024
The Public Service Vehicles (Registration of Local Services) (Local Services Franchises Transitional Process) (Scotland) Regulations (SSI No. 137)	2025

Other legislation to be aware of when exploring the bus provisions

Name	Year
Competition Act	1998
Public Finance and Accountancy (Scotland) Act	2000
The Public Service Vehicles (Registration of Local Services) (Scotland) Regulations (SSI No. 219)	2001
Pensions Act	2004
Companies Act	2006

Transfer of Undertakings (Protection of Employment) Regulations	2006
Procurement Reform (Scotland) Act	2014
The Public Service Vehicles (Registration of Local Services) (Scotland) (Amendment) Regulations (SSI No. 420)	2015
The Public Contracts (Scotland) Regulations	2015
The Procurement (Scotland) Regulations	2016
The Concession Contracts (Scotland) Regulations	2016
The Utilities Contracts (Scotland) Regulations	2016
Subsidy Control Act	2022
The Public Service Obligations in Transport Regulations	2023

Introduction

Local bus services are a vital component of Scotland's economic and social infrastructure, accounting for approximately 75% of all public transport journeys. Bus services are key to supporting our ambitions for reducing car use and as Scotland transitions toward a net zero future, the role of bus will become increasingly significant.

Set against this backdrop, the [Transport \(Scotland\) Act 2019](#) ("the 2019 Act") enhances the regulatory framework by equipping local transport authorities (LTAs) with a range of flexible tools which can help to reverse the long-term decline in patronage and improve service quality in ways that reflect local needs. The 2019 Act introduces new powers for LTAs to operate local authority-run bus services, complementing existing capabilities to subsidise services, establish Bus Services Improvement Partnerships (BSIPs), and implement Local Services Franchises.

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. Franchising via the statutory Quality Contract model had been available in Scotland under the [Transport \(Scotland\) Act 2001](#) ("the 2001 Act"), however, these powers were never used.

The 2019 Act replaced the Quality Contract model in the 2001 Act with a new franchising model. This new model is designed to enable an LTA to streamline services and develop better integration and control over fares. It also increases the range of situations in which an LTA can consider using the franchising option. The process is designed to ensure that appropriate checks and balances are in place to assess whether an LTA's franchise proposals are robust and deliverable. This structured approach is intended to ensure that decision making is more transparent via a process of rigorous assessment and evidence-based analysis.

The new bus franchising provisions inserted into the 2001 Act offers LTAs discretion in the scale and scope of their franchising schemes. While operating under different legislation, bus franchises are already in operation in other parts of the UK, most notably London and Manchester, with others in the process of being developed by the relevant authorities. It is important to note that the Scottish franchising model is intended to be adaptable. While LTAs may wish to consider the comprehensive, area wide franchising approaches adopted by Transport for Greater Manchester or Transport for London, a franchise in Scotland may also be designed to deliver targeted benefits at a smaller scale along a single corridor or route.

The terms 'must' and 'may' are used throughout this guidance to distinguish between legal obligations and best practice.

This document is intended to support LTAs who are seeking to develop their franchising proposals. The majority of this guidance has been issued by Scottish Ministers under section 79(c) of the 2001 Act. Specific guidance which Scottish Ministers must issue under other parts of the 2001 Act (Section 13E(5) and Section 13H(5)) are outlined separately and are also highlighted in blue. Throughout the document, key considerations for good practice for LTAs are also highlighted in blue.

In addition, Scottish Ministers must issue guidance under section 13F of the 2001 Act to help auditors in preparing reports on the analysis of the financial implications contained in an LTA's franchising assessment. LTAs should also be familiar with this guidance, which is outlined in the relevant sections of this document and are highlighted in pink.

The franchising process comprises of eight core stages:

- Reviewing the relevant general policies
- Preparing a franchising framework and assessment
 - This includes commissioning a report prepared by an independent auditor on the assessment
- Consultation on the proposed franchising framework
- Approval by an independent panel
- Making the franchising framework
- Entering into franchising agreements
- Transitional process from a de-regulated market to a franchise model, including staff transfers, and
- Implementation.

Throughout this document, we refer to timescales for different stages of the franchising process as set out in the 2001 Act and associated regulations. Scottish Ministers have powers to amend the majority of these timescales, to enable the periods to be adjusted in light of operational experience, subject to parliamentary approval.

We have no plans at present to make use of these powers; however, we will continue to engage with LTAs on their experience of using the franchising powers and will keep this position under review.

It is important to note that Scottish Ministers or Transport Scotland do not have the power to intervene in the development or approval of an LTA's franchising framework or assessment.

This guidance has been developed in consultation with local and regional transport authorities, and other key stakeholders, including the Competition and Markets

Authority, Audit Scotland, the Office of the Traffic Commissioner and the bus industry. We will monitor the use of this guidance and review it to ensure that it remains fit for purpose.

Ministerial Foreword



Bus services are an economic and social cornerstone for Scotland. The sector accounts for three quarters of all public transport journeys and makes significant contributions to the First Minister's priorities of eradicating child poverty, growing the economy, tackling the climate emergency, and improving Scotland's public services.

As we transition from private vehicles towards more sustainable public transport – the role of bus will be at the forefront in meeting our commitment to reaching net zero emissions by 2045.

We have delivered all the legislation required under the Transport (Scotland) Act 2001 to equip local transport authorities with the tools available to them, including franchising, partnership working, and running their own services, in addition to their existing ability to subsidise services – to improve service provision to reflect local needs.

I want all local transport authorities to be considering and using these powers to improve all bus services within their areas. I'm pleased to see that some local and regional authorities have already begun exploring the various options available to them and developing their proposals, including franchising.

Franchising is an established model and a valuable tool for providing or improving local bus services. However, it also has a significant intervention in the local bus market with potential to have serious implications within the franchising area, as well as neighbouring authorities.

For local transport authorities seeking to use the franchising powers - this document sets out the legal obligations as well as best practice that authorities in Scotland should follow when setting up a franchise to deliver their ambitions for their local bus network.

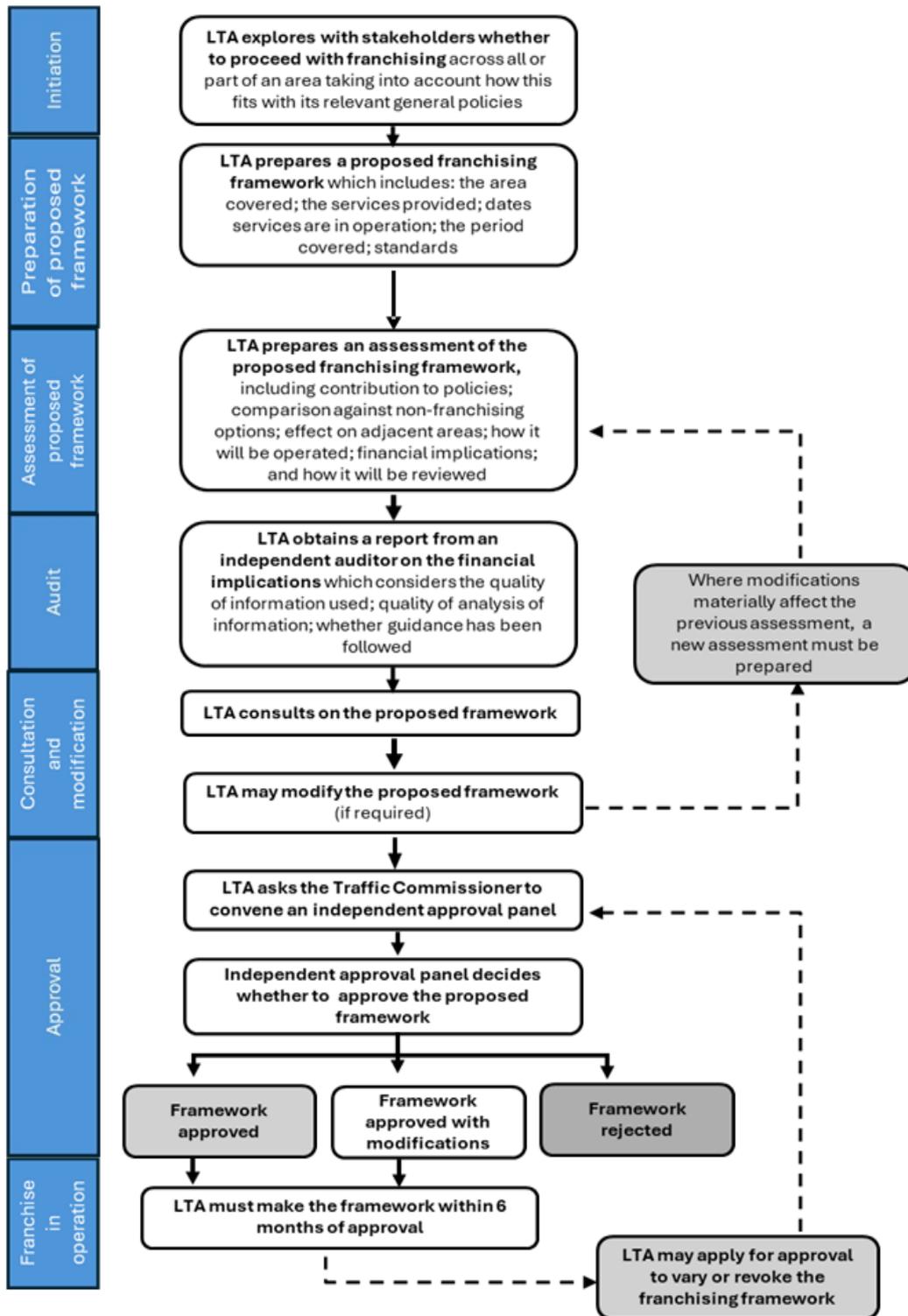
I am grateful to everyone who has collaborated with officials and contributed to this document. Supporting the resurgence of a vibrant bus network with fast, frequent,

and reliable local bus services will be a key component in growing our economy, and a key way to help achieve our climate change targets.

Jim Fairlie MSP, Minister for Agriculture and Connectivity

Overview of the franchising process

Visual summary



Written summary

Initiation

LTA explores with stakeholders whether to proceed with franchising across all or part of an area taking into account how this fits with its relevant general policies.

Preparation of proposed framework

LTA prepares a proposed franchising framework which includes:- the area covered; the services provided; dates services are in operation; the period covered; and standards.

Assessment of proposed framework

LTA prepares the assessment of the proposed franchising framework, including contribution to policies; comparison against non-franchising options; effect on adjacent areas; how it will be operated; financial implications; and how it will be reviewed.

Audit

LTA obtains report from an independent auditor on the financial implications which considers the quality of information used; quality of analysis of information; whether guidance has been followed.

Consultation and Modification

LTA consults on the proposed framework. The LTA may modify the proposed framework (if required). Where modifications materially affect the previous assessment, a new assessment must be prepared.

Approval

LTA asks the Traffic Commissioner to convene an independent approval panel. Independent approval panel decides whether to approve the proposed framework. The decision can be framework approved; framework approved with modifications or framework rejected

Franchise in Operation

LTA must make the framework within 6 months of approval. LTA may apply for approval to vary or revoke the franchising framework

Things to consider before you start

Relevant General Policies

Before an LTA decides to proceed with one of the bus options (e.g. a Local Services Franchise, Bus Services Improvement Partnership (BSIP), or running their own services) from the 2001 Act, it should:

- assess the current situation,
- consider what issues are affecting the transport network
- determine their ambitions for the future bus network, and
- identify the opportunities to deliver those improvements.

As part of this work, the LTA should consider what the options are and how these will contribute to the implementation of their relevant general policies, as well as determining how bus services will fit into their aims and objectives.

As noted in our [High level overview](#) of the powers available to LTAs, section 48 of the 2001 Act defines “relevant general policies” as the LTA’s local transport strategy (or regional transport strategy in the case of an RTP) alongside policies formulated by them from time to time under section 63(2)(b) of the 1985 Act (or section 9A(1) of the Transport Act 1968 in the case of SPT).

Policies under the 1985 and the 1968 Acts are for securing the provision of such public passenger transport services as the council considers appropriate to meet any public transport requirements within their area, as well as defining the descriptions of services they propose to secure under this provision.

Relevant general policies are further considered to be any policies formulated by the LTA in accordance with a local transport strategy (or regional strategy in the case of an RTP) including any provision set out for Bus Services Improvement Partnerships (BSIP) or Local Services Franchises.

Robust local transport strategies can better support LTAs’ in understanding how to grow their bus networks and consider how these can best be integrated with other modes of transport. The consideration of an LTA’s relevant general policies will also feed into the development of any plans and schemes for a BSIP or inform the development of a franchising framework and franchising assessment.

The LTA’s objectives could align with, but need not be limited to, the Scottish Government’s [National Transport Strategy](#) (NTS) vision and associated four priorities of reducing inequalities, taking climate action, inclusive economic growth, and

improving our health and wellbeing. They could also address the challenges, opportunities identified, and how changes to the provision of local bus services through a local or regional transport strategy that could help address these issues.

This early work should also define the objectives, the options and where possible, the costs, benefits, potential risks, and uncertainties associated with each of the options available to an LTA.

This work informs your business case if a decision is made to progress with bus franchising.

Early engagement with stakeholders

Prior to an LTA undertaking any formal actions required under the 2001 Act, it is expected that the LTA discusses its intentions with key stakeholders, including bus operators and neighbouring LTAs to obtain their views on the LTA's intentions.

While this engagement may be short of a formal consultation, it will feed into the work to inform the LTA's assessment and assess the viability of its proposals, including the potential impacts on bus operators and neighbouring authorities who may be considering, or have already implemented, alternative options, such as running their own services, progressing a partnership approach via a BSIP, or a separate franchise.

Definitions

What is a franchising framework?

A franchising framework is an overarching framework which establishes the structure of the franchise and how it will operate. Any changes to the franchising framework once it has been made will be subject to the variation process described elsewhere in this document. To limit the number of variations and ensure the franchising framework is reasonably future proofed, the LTA needs to consider any new developments, housing proposals, etc. which may impact the framework after it is made.

The LTA needs to carefully consider the level of detail that is required for the framework, whilst ensuring that it clearly sets out the requirements that must be met. The LTA should note that amendments to a framework, once in operation, will require a variation. Further information about varying a franchising framework can be found later in this document.

The proposed franchising framework must specify: -

- the area to which it relates,
- the local services (other than those exempted from the framework) that are to be provided under franchise agreements,
- local services included in the franchise agreements and when they come into operation,
- the standards of those services that must be provided under the franchise agreements,
- the period during which the franchise will remain in operation,
- if a franchising framework relates to an area to which a proposed Partnership Scheme also relates, the proposed framework must include provision revoking the Partnership Scheme, or provision varying the Partnership Scheme so that it ceases to relate to any part of the area to which the proposed franchising framework relates when the franchising framework will start,
- the framework may provide for the exemption of local services as may be specified, as well as specifying conditions (if any) as to when such exemptions are to apply.

What is an assessment of a franchising framework?

An LTA which proposes to make a franchising framework covering all or part of an area must prepare an assessment of the proposed framework under section 13E of the 2001 Act. The assessment is a separate document to the franchising framework and is similar to a business case and details on what this must include can be found later in this document.

What is a franchising agreement?

A franchising agreement means an agreement under which: -

- an LTA grants to another person the exclusive right to operate local services to which the agreement relates, and that person undertakes to provide those services on the terms specified in the agreement (e.g. frequency, fares, and standard of services).
- Operators who enter into franchising agreements may be paid for providing the services or they may pay for the opportunity to provide them. This reflects the different prevailing market conditions, in which it may be necessary to pay operators, and in others the profitability is such that operators will pay for the exclusive right to provide them.

Depending on the design of the franchising framework it may comprise of one or more individual agreement(s).

Preparing a franchising framework

Once an LTA has decided it that franchising is their preferred option to improve their bus network, the LTA needs to progress with the statutory franchising process. As part of that process they will need to set out how the franchise will deliver their ambitions for improving local bus services as set out in their relevant general policies.

Geographic area

It is important for the LTA to think carefully about the area in which to implement a franchise as they will need to demonstrate in their assessment how the franchising framework can be put into practice effectively across the whole of the proposed geographic area. The LTA should make sure that the framework contains a map of the geographic area. This will provide stakeholders and members of the public with a visual of the franchising area.

The geographic area is not restricted to the area of the LTA, it could be smaller (i.e., covering an individual corridor or single urban area). Similarly, it could also be larger, cover all or part of multiple authorities (where those LTAs act jointly together). See later in this document for information on multi-authority franchising.

Authorities exploring the franchising option will need to consider:

- how the bus network currently operates in the area;
- interactions with bus networks in neighbouring areas
- current journey times, and
- travel patterns and any changes to these in recent years.

Period the franchise will remain in operation

It is for the LTA to determine how long they want their franchising framework to operate (i.e. it could be for 10 years or 100 years). As part of the assessment, the LTA must set out how they propose to review the effectiveness of the proposed framework once made. This could include the timescales for the periods of review or certain criteria that must be met to require a review.

Exemptions

The proposed franchising framework may also provide for the exemption of such local services or provide a description of such local services as the LTA may specify, as well as specifying conditions (if any) when such exemptions are to apply.

Exemptions could include services on a specific route, (i.e., a service running from the city centre to an airport) or certain types of services (such as hop-on hop-off tour buses, or services used primarily for school transport). Particular consideration should also be given to whether exemptions are required for services which start and or finish out with the franchise area.

The LTA can also specify conditions where such exemptions can apply, this can include a requirement to register the exempted services with the franchising authority or exempting all services operating a certain percentage of their mileage out with the franchise area.

Exemptions play an important role in ensuring that access is maintained for passengers both within and outside of the franchising area to key facilities such as hospitals, places of education and transport hubs. Careful consideration should be given in developing the franchising framework to ensuring that impacts on those travelling across the boundaries of the franchise area are fully taken into account.

Potential standards to include in the franchising framework

The proposed franchising framework must specify the standards to which services must be provided when operating in the franchising area. These could include standards that address frequency, reliability, vehicle types or emissions, customer service, or accessibility. The LTA may also wish to apply specific, more extensive standards to individual franchising agreements dependent on the local need.

LTAs should have the capacity to effectively monitor standards, and a mechanism to impose measures or penalties on operators that do not meet these standards. LTAs should also consider commercial incentive schemes to reward high-achieving operators. Having a franchise, in place of a deregulated market, means that LTAs will need to consider how to directly reward investment and innovation which benefits passengers (within the franchise and / or through the tendering criteria). Failure to do so may result in passengers facing lower standards for the duration of the franchise contract, and the effectiveness of competition for the market may be undermined.

Neighbouring LTAs exploring other bus powers

The LTA will need to consider the impact of bus franchising on services not only within the area concerned but also services that serve neighbouring areas. This is particularly relevant where neighbouring LTAs may also be exploring, or have already implemented, the bus powers available to them, such as running their own services in-house, or via an arm's-length company, or opting for a BSIP or a separate franchise.

If the area of the proposed franchising framework includes an area where a BSIP is already in place, then the franchising framework must provide for the revocation or variation of any existing partnership scheme. See later in this document for information on transitioning from BSIPs to a Franchise.

Gathering Information

An LTA will need to gather what it considers appropriate and robust information to inform the preparation of their franchising framework and assessment. LTAs are expected to give consideration to what information they consider necessary and the level of granularity they require.

Information to inform a framework or assessment will be required from a range of sources and could include bus passenger surveys, travel patterns, consultation feedback, etc. as well as data from research and evidence previously obtained by the LTA.

The volume of data required to develop a franchising assessment will be substantial and supplying it will be challenging for bus operators, so LTAs should consider whether data is actually required before they request it. The [Bus Services Improvement Partnerships and the Local Services Franchises \(Provision of Information\) \(Scotland\) Regulations 2023](#) (“the Information Regulations”) sets out the relevant information that an LTA may request from operators, including:

- total number of journeys undertaken by passengers
- how and when passengers use relevant local services
- structure of fares,
- types of tickets, and
- revenue received for local services.

Section 13R of the 2001 Act makes clear that an LTA can only use the information for the purposes of exercising the function for which it was obtained: -

- preparing and making a franchising framework,
- reviewing the effectiveness of the framework, or
- varying or revoking a franchising framework.

An operator may only be required to provide the information that is no more than 5 years old, and in any form that it is reasonable to expect operators to provide it in, bearing in mind the ways in which operators currently hold the information. The LTA can also specify that such information must be provided before the end of a specific period.

An authority should engage proactively with local operators before and throughout the information request process to understand the ways in which operators hold the relevant information and how long it may take them to collate and provide it.

Operators should be proactive in engaging with an LTA in the provision of data.

An LTA should also look to supplement the information gathered from operators with other information to ensure they have a strong evidence base upon which to take decisions regarding the most suitable model to deliver bus service improvements.

Where the Traffic Commissioner (TC) is satisfied that an operator of a local service has, without reasonable excuse, failed to provide that the relevant information (including a requirement to provide it within a specified time or in a specified form) under section 13R(2) of the 2001 Act, the TC may impose a penalty as specified in section 39 of the 2001 Act. It is the responsibility of the LTA to ensure that sufficient evidence is provided to the TC to support consideration of enforcement action.

A breakdown of the information that an LTA can and cannot request from operators can be found in Appendix A.

Finally, it is important for LTAs to remember that only when a franchising framework is made can they request further staff information as part of their engagement with bus operators if

staff transfers are required. Please see later in this document for information on staff transfers.

Assessment of a franchising framework

Franchising is a significant intervention in the local bus market, and as such, the LTA will be required to carry out a comprehensive assessment of the suitability and viability of adopting their proposed franchising framework.

Section 13E of the 2001 Act requires an LTA to undertake a detailed assessment of their proposed franchising framework. There are several mandatory elements to the assessment. These include:

- Set out how, and to what extent, the LTA considers the making of the proposed framework will contribute to the implementation of their relevant general policies;
 - Compare the making of the proposed franchising framework to one or more courses of action available to them (this could include comparison with alternative delivery models such as BSIPs or consideration of alternative franchise approaches or designs)
 - Describe the expected effect of the proposed framework on any areas which are adjacent to the area of the franchising framework;
 - Set out how they intend to operate the proposed franchising framework, and the extent to which they will be able to secure the local services to be operated under the franchising agreements. In addition to the franchising agreements themselves consideration should also be given to securing other measures to support the delivery of the framework, such as new fares structure(s), integrated ticketing schemes and infrastructure (e.g. acquisition of depots, new vehicles, etc.);
 - Set out their analysis of the financial implications for them of making the proposed framework, including how they intend to support the operation of rural or other services which may be less profitable to operate, and
 - Set out how they propose to review the effectiveness of the proposed framework once it is made.
- In preparing an assessment 13E(4) requires that the LTA must seek views about the proposed franchising framework from operators who, at the time of the assessment being prepared, are providing local services in the area to which the proposed framework relates.**

The assessment may also include such other matters as the LTA may see fit. In particular the LTA may also want to:

- Compare how the local bus services will integrate with other types of transport, such as light or heavy rail, Demand Responsive Transport (DRT), and services provided under Section 19 and 22 of the Transport Act 1985; and
- Determine how the LTA's proposed franchising framework will impact small and medium size enterprises (SMEs), particularly as these may provide other services, such as community transport under section 22 permits.

Competition and Subsidy Control

The [Competition Act 1998](#) is a key piece of legislation in the UK that establishes the framework for competition law and contains prohibitions on actions which could prevent, restrict or distort competition.

In 2024, the Competition and Markets Authority (CMA) published its [bus franchising advice paper](#) for LTAs. The paper aims to assist LTAs in meeting their policy objectives, by helping LTAs to think about how different interventions may affect markets, the role competition can play in supporting the objectives of LTAs, and franchising design considerations that may help promote competition and thereby help deliver long-term policy objectives.

It is important for LTAs to understand the role competition has to play in franchising. The introduction of franchising will effectively end competition *in* the market and replace it with competition *for* the market, removing competition on the roads and applying it instead through a competitive tendering process for franchising agreements (i.e. local service contracts).

Effective competition between operators to win franchises is therefore very important to franchising working well. If operators anticipate a competitive tendering process, this will influence their perspective on what is required of them to win a franchise and will lead them to submit more attractive bids, which can lead to lower prices, higher quality, and innovation and efficiency improvements.

The LTA should ensure that consideration is given to competition, throughout the lifetime of the franchise. Effective competition is needed when tendering for franchising agreements, not just when establishing the franchise, but also during future procurement rounds.

LTAs also should be aware of the requirements of the [Subsidy Control Act 2022](#) (“the 2022 Act”) which establishes a new domestic subsidy control regime that replaces the previous EU state aid rules. The 2022 Act requires public authorities, including LTAs to adhere to the specific principles of the Act to prevent market distortion and unfair competition, this is relevant when they are developing their proposals and preparing their franchising agreements.

Detailed Assessment

The detailed assessment should be developed on a similar basis to an Outline Business Case (OBC), in which it revisits the rationale for franchising through the work it has done to date (i.e. consideration and development of a local/regional transport strategy, or a bus strategy that determines how bus will contribute to the implementation of the LTAs relevant general policies, and what consideration it has made of alternative approaches). The assessment must also demonstrate its affordability; as well as detailing its procurement strategy, together with management arrangements for the successful rollout of the franchise.

The [Guidance on the development of Business Cases](#) provides further information on the business case process, which is based on [HM Treasury Guidance](#) and follows the Five Case Model (strategic, economic, commercial, financial and management).

The different components of the Five Case Model are closely related and should be satisfied. The purpose of the business case is to ensure that the LTA’s proposals meet their intended objectives and deliver their intended benefits by making sure they:

- make a robust case for change – the ‘strategic case’
- optimise Value for Money (VfM) in terms of economic, social, and environmental benefit – the ‘socio-economic case,’
- commercially viable – the ‘commercial case’
- financially viable – the ‘financial case’, and
- achievable – the ‘management case.’

Start of guidance under section 13E(5)

The LTA needs to set out how franchising will deliver their longer term plans for bus service improvements for the area as a whole.

The LTA should also provide an explanation on what consideration it has given to alternative approaches such as the other bus powers within the 2001 Act, and the various franchise models that could be used and, how they would help achieve their ambitions for bus service improvements. The OBC should include:

- the overall approach to service planning, including the extent to which services will be integrated with other modes, timetables, and ticketing co-ordinated where appropriate
- what bus reliability / time-saving measures are already in place or will be implemented (with implementation dates) and how they are expected to impact journey times
- the approach to, and level of fares
- whether multi-modal fares will be available. If so, by when, and how widely
- what technologies are expected to be used to sell tickets (e.g., smart card, contactless, mobile etc) and whether cash will be accepted on-bus
- whether any DRT or other community transport services will be provided
- the nature, quality and consistency of network identity and branding
- the nature, quality, and consistency of information (such as network diagrams) to be provided at bus stops and on bus and real time data
- customer service standards - including redress arrangements
- the accessibility of local services, including supporting infrastructure

- the strategy for operating and upgrading the bus fleet
- a well-designed asset strategy to determine what infrastructure is required to support the delivery of the framework (particular consideration will need to be given to the provision, location and securing the use of depots as they are essential to any bus network and must be a key consideration for LTAs when developing their franchising proposals)
- a clear demonstration of how the LTA have considered the diverse needs of communities in their business case
- details of how often the LTA will assess their franchising framework, and
- demonstrate the longevity of the franchising framework, particularly the steps taken to maximise the ability to secure competition for future procurement rounds.

End of guidance for LTAs

Throughout the development of their detailed assessment, the LTA must proactively and meaningfully be engaging with neighbouring LTAs and bus operators who are providing services within the proposed area of the framework to understand their views and potential impacts of the LTAs proposals.

Independent Audit

Once an LTA has prepared its assessment of the proposed franchising framework, if it wishes to proceed further, it must obtain an independent audit report on its franchising assessment. The auditor's report must consider the analysis of the financial implications contained in the assessment.

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

- the information relied on by the LTA in conducting the analysis is of sufficient quality
- the analysis of that information is of sufficient quality, and
- the LTA has had due regard to this guidance under section 13E(5) of the 2001 Act, in preparing the analysis.

Although the 2001 Act requires the report to be prepared by an 'auditor', it is not intended to be a formal audit report in accordance with the Financial Reporting Council guidelines. The independent audit is an analysis of the financial implications contained in the franchising assessment prepared by the LTA. It must state whether the information used to inform the assessment is of sufficient quality, that the document has been produced in good faith and does not contain obvious material or arithmetic errors which could cast doubt on its overall conclusions.

The aim of the report is to provide assurance in:

- the accuracy of the financial data used,
- that the affordability and VfM analysis have been developed with appropriate care by suitably qualified experts, and
- that the process followed is robust.

Together, the franchising assessment and the audit report should allow the LTA to decide on whether or not to proceed with the franchising process with confidence and reduce the risks of the LTA's decision being challenged in the courts on the grounds of reasonableness.

The audit report is not a test to be passed or failed. It is intended to allow any significant weaknesses in the LTA's analysis of the financial implications to be identified and addressed before a final decision is made on whether to proceed with the franchise proposals.

Matters to be taken into account by the LTA when selecting an auditor

The Act also specifies under section 13F(5) of the 2001 Act that the 'auditor' is a person eligible to be appointed as a statutory auditor under section 1211 of the Companies Act 2006.

This means that the auditor needs to be a qualified accountant and a member of a UK Recognised Supervisory Body, such as the Institute of Chartered Accountants of Scotland, with no conflicts of interest that would lead to difficulties in acting as the auditor on behalf of the LTA.

The certification process is not included within the scope of the audit as set out in the Code of Audit Practice and Audit Scotland's guidance on planning the audit. The appointed external auditor of the LTA will not be responsible for the certification of the required returns.

The LTA should ensure that the auditor has, or has access to, appropriate transport experience to inform their report. This experience could be provided by another individual or body who offers advice on the Assessment and/contributes to the auditor's report, provided that the final report represents the auditor's own opinion on the information relied on by the LTA, and their analysis of that information to inform their Franchising Assessment.

Matters to be taken into account by the auditor when preparing their report

Appointed auditors must have regard to this guidance under section 13F(4) of the 2001 Act, when preparing a report. This guidance issued by Scottish Ministers under section 13E(5) of the 2001 Act sets out the requirements in relation to the preparation of an LTA's franchising assessment, as well as the methods to be used when assessing a proposed framework.

The LTA is encouraged to invite the auditor to review a small number of drafts of the franchising assessment before a formal report is provided.

Whilst the auditor must remain independent, the aim of reviewing the draft franchising assessment is to improve the documentation, so that an informed and robust decision can be reached as quickly as possible. Any reviews of the draft franchising assessment should be documented by the LTA, including the views and recommendations of the auditor, and any actions taken as a result.

Start of guidance for auditors when preparing a report under Section 13F

When forming their opinion as to whether the information relied upon to understand the financial implications of making the proposed framework, and the analysis of that information by the LTA is of sufficient quality, the auditor should look at the franchising assessment in the round.

The auditor does not need to review in detail every data source or assumption but should consider whether there are significant areas of weakness, omission or error which individually or collectively could have a material impact on the franchising assessment's conclusions on the costs, benefits, risks, or value for money of any of the options.

The auditor should consider:

- **whether there are any significant and material gaps in the information used**

- **whether the information used generally comes from recognised sources**
- **whether the information used appears to have been selected objectively, rather than to support the arguments in favour, or against, any particular option**
- **whether the franchising assessment takes into account any effects or potential effects from external factors (such as the COVID-19 pandemic)**
- **whether the assumptions used in the assessment are recorded and, where reasonably possible, are supported by recognised sources**
- **where information and evidence are less well defined but would otherwise lead to an absence of data from the assessment, the LTA's approach is not unreasonable and potential risks associated with the assumptions made are identified**
- **whether appropriate ranges have been used for forecasts and associated uncertainties identified in the assessment**
- **the mathematical and modelling accuracy of the analytical methods used to calculate the impacts of the options, and**
- **whether the LTA's assumptions on the costs and benefits of the best alternative options reflects the evidence available of what could realistically be delivered at the point at which the assessment was developed.**

End of guidance for auditors

Where information and evidence is less well defined but would otherwise lead to an absence of data, the LTA should flag where an auditor has questioned the basis of the assumption and include the potential consequence to the business case of the assumption being removed. This allows the potential risk identified by the auditor to be clearly included within the business case and addressed.

Start of guidance for auditors when preparing a report under Section 13F

The auditor should not report or pass judgement on the decisions taken by the LTA or the outcomes of the franchising assessment – their role must state in their opinion, whether the analysis of the information relied upon for the financial implications is of sufficient quality and whether the LTA has had due regard of the guidance, and that the mechanics of the process have been carried out correctly.

The auditor should not expect the LTA to update the assessment if information becomes available or is updated at a later stage unless they consider it would have a material impact on the conclusions of the assessment and the choice between the options.

Should the auditor consider that there are material issues with the quality of the information or its analysis they should advise the LTA accordingly and identify, where relevant, what different approach or data source they would recommend.

As highlighted earlier in this section of the guidance, the auditor is not expected to produce a formal audit opinion within the scope of the Financial Report Council guidelines.

End of guidance for auditors

As highlighted previously, the audit report is not a test to be passed or failed. If the auditor proposes modifications to the assessment, the LTA will need to consider these, and if necessary, make the changes or justify why they are not modifying the assessment.

Consulting on the proposed franchising framework

If, after obtaining the auditor's report, the LTA wishes to proceed with their proposed franchising framework, it is required under section 13G of the 2001 Act to consult widely on its proposals.

Notice

The 2001 Act requires the LTA to publish a notice of their intention to consult, details on what must be included in the notice can be found in section 13G(3) of the 2001 Act. The LTA can determine where this notice can be published (i.e. on the LTA's website, and or in a local newspaper).

As part of the consultation process there are specific documents that the LTA will need to publish along with the notice, these include:

- the proposed franchising framework
- a report on the franchising assessment, along with a description of how the LTA considers the proposed framework will contribute to the implementation of their relevant general policies,
- the report provided by the auditor, and
- such other documents (if any) the LTA considers appropriate to assist the consultees in considering their proposed framework.

Consultation

Section 13G(4) of the 2001 Act sets out the stakeholders that they must consult, including:

- all operators of local services in the area of the proposed franchise framework
- any other person holding a PSV operator's licence or community bus permit (such as, section 19 and 22 permits), who in the opinion of the authority is likely to be affected by the proposed framework
- organisations appearing to the authority to be representative of employees of such operators,
- organisations appearing to the authority to be representative of users of local services,

- each local authority and Transport Partnership whose area is, in the opinion of the authority, likely to be affected by the proposed framework,
- the TC,
- the Chief Constable of the Police Service of Scotland,
- the CMA, and
- other such persons the LTA sees fit before it decides to seek approval from the independent approval panel for their proposed framework.

In addition to the above, LTAs are encouraged to take steps to ensure that members of the public, in particular, local residents and bus users, as well as businesses are provided opportunities to engage with the consultation on the proposed framework.

The LTA should aim to make their consultation materials as accessible as possible for all interested parties.

Timescales

Although the consultation period is a matter for the LTA, as a general approach we would expect them to use the standard 12 weeks, unless an alternative is justified. When consulting the LTA is expected to provide opportunities for people to engage in the process, this could include providing copies of the documents for interested people to view them and setting up discussions or workshop events.

If following any initial consultation, consideration of the responses or subsequent events lead an LTA to decide that some further consultation is required as a matter of fairness or would otherwise be desirable then this should be undertaken before any decision is taken.

Modification of the framework

After the consultation, the LTA must produce a summary of the responses received. They also need to determine whether it is appropriate to modify the proposed franchising framework, in light of the responses received.

Where the LTA considers that the modifications materially affect any part of the existing franchising assessment prepared under 13E of the Act then they must prepare a new assessment of the framework, as modified. This also means that the LTA will need to obtain another audit report on the new assessment and undertake further consultation on their modified proposals.

Start of guidance under section 13H(5)

It is for the LTA to determine whether modifications materially affect any part of an existing franchising assessment. These modifications could include, but are not limited to, significant changes to:

- The geographic extent of the proposed framework
- The local services which are to be provided under the framework
- The period during which the framework is to remain in operation
- The standards to which services are to be provided under the framework, or,
- The criteria for exemptions from the framework.
- The expected effect on areas which are adjacent to the area of the framework,
- Their intentions for operating the proposed framework, and the extent to which they will be able to secure the local services to be operated under the franchising agreements.
- The financial implications of the framework, or
- Their proposals for reviewing the effectiveness of the proposed framework once it is made.

End of guidance for LTAs

Approval process for franchising proposals

The LTA needs to be content that all the implications of their franchising proposal has been thoroughly considered prior to their decision to proceed with making the framework.

The franchising framework and franchising assessment are subject to a high level of scrutiny. The role of the independent panel is to provide an additional safeguard to ensure that the local transport authority has complied with the relevant procedural requirements, had regard to the contents of statutory guidance issued by Scottish Ministers, given appropriate weight to matters prescribed in the 2024 Regulations when developing their franchising proposals, and have reached a reasonable conclusion in deciding to make the proposed franchising framework, based on evidence. These safeguards are also designed to protect passengers and the wider bus network from potential damage of a poorly developed franchise.

Notification to the Traffic Commissioner

Following the consultation and decision to proceed with the framework, the LTA must, under section 13I(2)(a), request the Traffic Commissioner (TC) to convene a panel under section 13J(2) for the purpose of considering whether to approve the making of the proposed franchising framework.

The request should be in the form of a formal letter from a senior official, such as the Chief Executive of the LTA to the TC requesting the formation of a panel to approve the proposed making of a franchising framework. The letter should include a statement that the LTA considers that the proposed framework will contribute to the implementation of their relevant general policies, and a copy of the following documents:

- the proposed franchising framework,
- a report of the franchising assessment (or most recent assessment) prepared under section 13E,
- the report obtained from the auditor under section 13F,

- those other documents (if any) that the LTA made available to consultees as part of the consultation process under section 13G,
- a summary of the responses received to the consultation carried out under section 13G and any action that was taken to address the responses, and
- a description and explanation of any modifications made to the proposed franchising framework.

Where a decision has been made not to prepare a new assessment following modifications, the LTA should include a statement of their reasoning. The LTA should also provide the TC with a list of consultees, and their contact details, to forward a copy of the notice to.

Notice issued by the Traffic Commissioner

The TC must give notice of the LTA's intention to seek approval for its proposed franchising framework. The design of the notice will be in such a manner as the Commissioner considers appropriate for bringing to the attention of persons in the area of the authority. However, there is specific information that must be stated in the notice: -

- the name of the LTA
- a description of the proposed franchising framework that the LTA is seeking approval to make
- a link to the documents listed in section 13I(3) of the 2001 Act (in electronic format), and
- a statement explaining that a request to present oral evidence must: -
 - i) be made in writing within the period of 28 days beginning with the day after the day on which the notice is issued by the TC; and
 - ii) includes a summary of the oral evidence which the person wishes to present.
- a panel will be formed to consider the proposal, and persons may request an opportunity to present oral evidence to the panel.

The requirements on the TC to issue notices in respect of any new franchising proposals which are set out in 2024 Regulations. The purpose of the notices is to make people aware of an LTA's proposals to make, vary or revoke a franchising

framework, and to allow them an opportunity to make representations in relation to those proposals.

Individuals have 28 days beginning the day after the notice is issued by the TC to make representations in relation to an LTA's franchising proposals.

Traffic Commissioner appointing a Panel

Under section 13J(2)(b) of the 2001 Act, the TC has to convene a panel of three members to decide whether or not to approve the making of the proposed framework.

The 2024 Regulations sets out the appointment process for panel members, including the eligibility criteria to become a panel member. This is to ensure that panel members have the appropriate knowledge and experience, and any real or perceived conflicts of interest are avoided. Decisions around the timing of the appointment process for panel members will be a matter for the TC to determine.

The 2024 Regulations also allows the TC to provide guidance to the panel as to the exercise of their functions under the 2001 Act and the Regulations.

Operation of the Panel

Once a panel has been appointed, the TC will provide the panel members copies of the documentation provided by the LTA. The TC must also provide the panel any representations made to them, and any requests to present oral evidence to the panel, received in response to the notice regarding the franchising proposal.

The panel will review all the information provided by the TC and make a decision as to whether to hold evidence sessions. This may be a result of a request made in representations to the TC or where more than one request to give oral evidence has been submitted to the panel.

Evidence sessions

If the panel receives a request to present oral evidence by an operator of a local service within the area in which the franchise proposals apply, or the LTA making the proposal, or from a person described under section 13G of the 2001 Act who, in the Panel's opinion, ought to have been consulted about the proposals, then the panel must hold an oral evidence session. Where a request to present oral evidence is submitted by any other persons, the panel may decide to hold an oral evidence session.

Where more than one request has been received, the panel may decide to hold one or more evidence sessions.

The panel may determine the procedure to be followed in an oral evidence sessions, which must be held in public to ensure transparency, unless the panel determines that any person is to be excluded from a session or part of a session where the information likely to be disclosed is of a confidential or commercially sensitive nature.

Where a panel requires written evidence to be given by any person other than the LTA seeking approval of the proposed framework then the panel must send a copy of that evidence to the LTA.

In a situation where an oral evidence session is required the panel will issue a notice under regulation 11(1) of the 2024 Regulations. Information to be included in a notice can be found in Appendix B.

Decision of the panel

In making its decision under section 13J(4) or 13O(4) of the 2001 Act, the panel must consider whether the LTA has:

- complied with the process set out in section 13C(1),
- had regard to the guidance issued by Scottish Ministers under section 13E(5),
- given appropriate weight to any matter prescribed for the purposes of this section, and
- otherwise, reached a reasonable conclusion in deciding to make the proposed franchising framework.

This means that the LTA's franchising assessment will need to have considered the deliverability, financial sustainability, and affordability of its franchising framework. The authority also needs to have considered the likely effect of making a proposed franchise framework on its existing bus network, neighbouring LTAs' networks, and on the local economy and community, including possible benefits to the local community in terms of improving access to employment, healthcare, and educational opportunities.

The panel has up to six months beginning on the date on which the panel is convened to make a decision, although this can be extended to 12 months should the panel issue a notice to the TC. The panel will decide whether to:

- approve the making of the proposed franchising framework
- approve the making of the framework, subject to modifications, or

- reject the framework.

Next Steps

If the panel approves the LTA's franchising proposals without any modifications, then the LTA has up to six months to make their franchising framework.

Where the panel has given conditional approval to the LTA's proposals subject to modifications, the LTA will need to apply the necessary modifications before they can proceed to make their franchise. This must be done in the six-month period as mentioned above.

There is no appeal against decisions made by the panel. If the panel rejects a franchising framework, the LTA will need to carefully consider the panel's decision and determine if they wish to continue with their intention to franchise. If they do wish to continue, they will need to review and amend their franchising framework and assessment before undertaking the franchising process again for the new proposals, before reapplying to the panel. It is for the LTA to decide what is best to address any transport challenges in their local areas.

The LTA cannot resubmit the same franchising framework if it has already been rejected by the panel.

Making the franchising framework

Once the panel has approved an LTA's franchising proposals, the authority must make the franchising framework within 6 months after the date of approval.

It is for each LTA to determine how to obtain the appropriate internal approval to make the franchising framework (e.g. whether it requires a plenary decision by the full authority, a decision made via report to Committee, or via the department leading on the franchise development).

Notice

Under section 13K(3) of the 2001 Act, the LTA has within 14 days to give notice that they have 'made' their franchising framework. They must: -

- (a) give notice of their having made the framework in such a manner as they consider appropriate for bringing the notice to the attention of persons in their area, and
- (b) send a copy of the framework to the TC.

Information on what should be included in the notice can be found in Appendix B.

Scottish Procurement Policy Handbook

If not already started, after an LTA has made their franchising framework, the LTA should commence work on their franchise agreements. Public sector procurement in Scotland takes place within a framework of rules and policies that apply to the procurement activities of public bodies in Scotland. The Scottish Procurement Policy Handbook should be read in conjunction with these rules, which include the following: -

- the Procurement Reform (Scotland) Act 2014
- the Public Contracts (Scotland) Regulations 2015
- the Procurement (Scotland) Regulations 2016

And if an LTA is conducting a Concessions or Utilities procurement then they should also consider the following: -

- the Concession Contracts (Scotland) Regulations 2016
- the Utilities Contracts (Scotland) Regulations 2016

The Handbook also highlights some key legal obligations and considerations that are designed to ensure that procurement activity is:

- focused on the delivery of VfM for public funds
- conducted to the highest professional standards and to the relevant legal requirements
- conducted by appropriately trained and authorised staff to minimise the risk of legal challenge to public bodies
- accountable, with strong governance practices in place, and
- open and transparent.

This will help to ensure the greatest benefits are gained and that sustainability is embedded, and proportionately applied to, all procurement decisions and activities. Having the correct procurement arrangements in place can, among other things, help a public body to achieve VfM as well as focus on good governance and effective management of resources while achieving the best possible outcomes.

It is expected that all franchising agreements are awarded in line with the requirements set out in the Handbook, and the LTA's own procurement policy manual.

The Handbook should also be read in conjunction with [Scottish Procurement Policy Notes](#), legislation set out in the Handbook, guidance and other supporting documents, such as the [Scottish Public Finance Manual](#) (SPFM).

Entering into franchising agreements

Once the framework is made, the LTA has one year to enter into franchise agreements in respect of each local service included in the framework (note that agreement does not have to have been commenced, only entered into).

Failure to enter into franchise agreements for all services within the time period (unless a variation has been sought) will result in the framework ceasing to have effect.

Notice

Under section 13L(4) of the 2001 Act, the LTA must give notice within 14 days after the date on which the LTA enters into a franchising agreement. They must: -

- (a) give notice of their having made the agreement to all operators of local services who are, in their opinion, likely to be affected by the agreement, and the TC, and
- (b) publish the notice in such a manner as they consider appropriate for bringing the notice to the attention of persons in the area of the franchising framework.

Information on what should be included in the notice can be found in Appendix B.

Postponing commencement of franchising frameworks or variations

In some circumstances, it may be necessary to postpone when a franchising framework is to come into operation as it relates to a particular local service. For example, this may be relevant where unexpected events have delayed the preparations for launching a service or services.

Where a framework specifies the date in which it is to come into operation, as set out in section 13K(5)(a), the LTA must seek approval to vary the framework under section 13N of the 2001 Act should they wish to postpone that date.

Where no date is specified in the framework, as set out in section 13K(5)(b), and instead the commencement date is specified under the franchise agreement in respect of a service, then section 13M provides that the LTA may, if they consider it appropriate, decide to postpone the date on which a framework or variation to a framework comes into operation. The postponement, so far as relating to a local service, can be for one or more periods but in total these cannot exceed 12 months.

Before postponing the date on which the framework or variation comes into operation the LTA must consult all operators who are likely to be affected by the decision.

Notice

Under section 13M(4) of the 2001 Act, the LTA must give notice within 14 days after the date on which the LTA postpone the date on which a framework or variation comes into operation. They must: -

- (a) give notice of the postponement to all operators of local services who are, in their opinion, likely to be affected by the postponement, and the TC, and
- (b) publish the notice in such a manner as they consider appropriate for bringing the notice to the attention of persons in the area of the franchising framework.

Information on what should be included in the notice can be found in Appendix B.

Non-implementation of a franchising framework

If an LTA makes the franchising framework but fails to enter into franchise agreements in respect of each local service included in the framework, and does not vary it, then the framework will cease to have effect on the date on which the 12-month period ends.

The only exception is in cases where an LTA has made the franchising framework but has then provided the TC with an application for approval to vary that framework, and a panel will be convened under section 13O to consider that application.

Should the panel refuse to approve the proposed variation, or the panel approves the variation, but the LTA has not varied the framework within the period specified in section 13K(2) of the 2001 Act, then the franchising framework ceases to have effect

- (a) on the date that the panel refuse to approve the variation, or
- (b) on the date which falls at the end of the period of 6 months after the date of approval.

Transitional Process

Where an LTA has decided to implement its franchising framework following approval from the approval panel, the local bus market will need to transition to the new system.

The 2001 Act and the Public Service Vehicles (Registration of Local Services) (Local Services Franchises Transitional Period) (Scotland) Regulations 2025 (“the 2025 Regulations”) sets out the measures to help smooth the transition and ensure that passengers are provided with reliable services during the transition period.

Applications to vary or cancel registrations for services to be covered by the franchising framework

To minimise the potential disruption during the transitional period and ensure that passengers have a continuity of service, bus operators must observe the notice period for applications to vary or cancel local services that are expected to be covered by a proposed framework.

The notice period will change from the current maximum of 70 days, to a maximum of 140 days. This consists of up to 28 days for LTA pre-registration consideration and 112 days following the date the TC accepts the application as specified in the 2025 Regulations.

This extended notice period only applies to bus services that are covered by the franchising framework. The maximum 70 day notice period will continue to apply to bus services that are excluded from an LTA’s framework.

Transitioning from BSIPs to a Franchise

There may be cases where the LTA makes the decision to proceed with a franchise in areas where a BSIP is already in place.

Where a franchising framework overlaps with an existing partnership scheme (made under a partnership plan), section [13D \(4\) of the 2001 Act](#) requires that the framework must provide for the revocation or variation of any existing partnership scheme.

This reflects that a partnership scheme under the 2001 Act cannot operate in respect of the same local services at the same time as a franchising framework (due to the exclusivity elements of the franchising model).

It is possible, however, for a partnership plan and a franchising framework to co-exist in so far as the plan may cover a broad geographical area, within which franchising may operate in some areas. Section 13D(4)(b) of the 2001 Act enables the variation of the partnership plan in these specific circumstances to ensure appropriate dovetailing of the two models.

The making of a framework will have the effect of varying or revoking the existing partnership scheme or schemes without any requirement to follow the processes which would otherwise apply under the 2001 Act (such as the operator objection mechanism). However, the processes for preparing, assessing, and making a franchising framework involves extensive consultation and approval which provides procedural safeguards.

Staff transfers

As highlighted earlier in this document, if an LTA is exercising the function of preparing and making a franchising framework, an operator may be required to provide them with types of information as set out in regulation 3(1)(i) of the Information Regulations, including information about persons employed by the operator in the provision of relevant local services.

However, we recognise that where a franchise is introduced, staff may need to transfer to new operators who enter into a franchising agreement. Provisions in the [Transport \(Scotland\) Act 2019 \(Consequential Provisions & Modifications\) Order 2023](#) (“the Scotland Act Order”) provides the circumstances in which the [Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#) (TUPE) would apply.

This should protect existing staff working on the affected bus services, help reduce the burden of redundancy payments for operators who have ceased trading or downsized because of franchising while ensuring that there is a workforce ready to provide the new services under the franchising framework.

The LTA should in the first instance look to reach agreement with the existing local operators who are affected by the franchising framework, and local employee representatives about the criteria to be applied when determining which staff are ‘principally connected’ with the affected local services and therefore in scope for TUPE and potential transfer to a new operator.

If there is no agreement:

A person's employment is treated as 'principally connected' with the provision of affected local services if that person spends, on average, at least half of their working time –

- assigned to the provision of affected local services, or
- assigned to activities connected wholly or mainly to the provision of affected local services.

Consultation notice

After an LTA makes a franchising framework, the Scotland Act Order requires the LTA to publish a consultation notice setting out:

- the criteria by which they propose to determine whether a member of staff is 'principally connected' with affected local services and should therefore transfer under TUPE
- the consultation process and agreement sought
- the periods over which the consultation process will take place
- the parties to be issued with a consultation notice, and
- what constitutes agreement between the parties.

The LTA should then consult with the relevant local employers and employee representatives, with the aim of reaching agreement and publishing a final notice setting out the agreed criteria by which to determine if staff members are in scope for TUPE and should transfer.

Engagement with affected local operators and employee representatives

The LTA should engage with affected local operators and employee representatives as early as possible in the process and ensure that sufficient time is given to the consultation, bearing in mind the complexity of the proposed franchising framework and potential for staff to be transferred.

In practice, it may be difficult to reach agreement locally. The Scotland Act Order provides that where there is no agreement, the determination as to whether

employees are 'principally connected' is to be based on whether such employees spend at least half their working time assigned to:

- (a) the provision of affected local services, or
- (b) assigned to activities connected wholly or mainly to the provision of affected local services.

This provision should only be used if the authority is content that agreement cannot be reached between the relevant operators and representatives of the employees.

Once the LTA, operators and employee representatives are in agreement about the staff who should transfer, a process should be undertaken to determine where they should transfer to (i.e. which employees should transfer to each individual franchising agreement).

LTAs are required to consult affected operators and employee representatives about the proposed 'allocation arrangements' – the plan which sets out which grouping or class of employees within the groupings should transfer to which franchising agreement.

Broadly comparable pension schemes

All affected employees who transfer when a franchising framework is made and franchising agreements have been entered into should be provided with access to a broadly comparable to, or better than, pension scheme. There is a requirement placed on the new employer of transferred employees to:

- procure a pensions statement which satisfies the requirements specified in article 35 of the Scotland Act Order, and
- provide every transferring employee with a copy of any part of the statement which relates to that employee.

The statement is to be provided in writing from a Fellow of the Institute and Faculty of Actuaries who can certify:

- that, to the person making the statement has formed the opinion contained in the statement as having had regard to the guidance for assessing broad comparability between two sets of pension benefits set out in Annex A to the HM Treasury's note '[Fair Deal for staff pensions: staff transfer from central government](#)', and

- that, in the opinion of the person making the statement, the new operator's pension scheme offers relevant employees' rights to acquire pension benefits which meet the requirements of Article 33 of the Scotland Act Order on the date the statement was made.

It is the responsibility of the LTA to ensure this is achieved.

The LTA must ensure for any franchise agreement that is made that bidders commit to providing broadly comparable to, or better than, pension schemes.

The test is for the LTA to be satisfied that if the rights to acquire pension benefits that the transferring employee would have as an employee of the new operator mean that the employee would suffer no material detriment overall in terms of the employee's future accrual of pension benefits.

Relevant employee related information

To assist with staff transfers, the Scotland Act Order enables the LTA to request information from operators about employees at any point after they have made their Franchising framework. Article 26 of the Scotland Act Order provides details about what 'relevant information' that can be requested.

When requesting employee information, the LTA must:

- specify the date by which the relevant operator is to respond to the request, which must be not less than 21 days from the date on which the request is issued
- contain sufficient information about the franchising framework to enable a relevant operator to determine which of their employees would be relevant employees for the purposes of that request
- only request such relevant information as the local transport authority consider necessary in order to carry out their functions in relation to the application of TUPE in connection with the franchising framework, and

- **not include a request for personal data, except to the extent that such a request is for information about the identity of appropriate representatives.**

Should a relevant operator, on receipt of such request, be of the opinion that the LTA has not included sufficient information about the franchising framework to enable them to respond effectively, they should inform the LTA within 14 days of receiving the request and provide a description of the information they require.

On receipt of such a request for clarification from a relevant operator, the LTA should consider the information that the operator considers necessary, and provide that information to the operator, together with specifying a revised time period within which the relevant operator should provide their response, which must not be less than a 21-day period.

The legislation provides further detail regarding the obligations on relevant operators when they receive such a request for information from an LTA, including the process to be followed should an operator consider that they are unable to provide any of the information requested. Relevant operations should ensure that the information they provide is complete and accurate, and should provide revised information at later stages, should it change.

Role of the Traffic Commissioner

Traffic Commissioners are responsible for the licensing of bus operators and the registration of local bus services under the 1985 Act. The registration of services is devolved and subject to the Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001. The regulatory regime is designed to ensure that bus service operators are of good repute, and that services are introduced, varied, or cancelled in an orderly fashion, and operate safe and reliable services. If the TC considers that an operator is failing to run a service in line with their registration, they have powers to take action against the operator.

As noted earlier in this document, the 2001 Act places new duties on the TC in setting up and operating approval panels to approve or reject an LTA's proposed franchising framework. The introduction of a franchising framework will also change the role that the TC will play to an extent. The paragraphs below explain more about those changes.

Once a franchising framework is in operation, sections 6 and 9 of the 1985 Act (which deal specifically with the registration of local bus services) will cease to have effect. This means the role of the TC in monitoring local services is removed, and enforcement becomes a matter of contract management for the LTA in accordance with the terms of the franchising agreements.

However, the LTA can exempt local services from its franchising framework under section 13D(2) of the 2001 Act, which means that sections 6 and 9 of the 1985 Act will continue to apply and any conditions made under section 13D(2)(b) will be treated as if they are prescribed particulars under section 6 of the 1985 Act. The TC may still take action for breaches of any conditions under which the exempted service(s) is required to operate. This action could include issuing a financial penalty, imposing conditions on the PSV licence, or rejecting a future service application from the same operator.

LTAs need to build in the necessary contractual mechanisms in their franchising agreements to ensure that the outcomes are being delivered and to deal with poor performance where applicable.

Process when LTA wants to vary their franchising framework

At any point after a franchising framework has been made, the LTA that made the framework can vary it. The LTA will need to follow the formal process of varying their framework when they are seeking to amend what has been specified in the framework, such as the geographic area it relates to, or the description of the local services intended to be provided under the franchising agreement.

Where an LTA considers that a proposed variation would materially affect any part of the most recent assessment of the framework, they must prepare a new assessment, which will need to be audited. A consultation will also need to be undertaken in line with section 13G of the 2001 Act.

As part of that document, the LTA should clearly highlight the changes that they propose to make to what is specified in the existing framework, including setting out the potential benefits and impacts of such changes, and how they will deliver their envisaged outcomes.

Where variations are proposed, the LTA should seek to engage closely with local communities and operators to ensure that the impacts of the proposed changes are thoroughly explored.

If the LTA wants to proceed with the proposed variation, they must then provide the TC an application, which includes: -

- The new assessment,
- The report of the auditor on the new assessment,
- A summary of the responses received to the consultation carried out under section 13G in respect of the new assessment, and any action (other than a modification under section 13H) that was taken to address the responses, and

- A description and explanation of any modifications made to the framework as it is proposed to be varied under section 13H of the 2001 Act.

As before, the Chief Executive of the LTA should formally write to the TC asking them to convene a panel to consider the authority's proposals to vary or revoke its franchising framework. The letter will need to include a copy of the LTA's application for approval to vary or revoke their framework.

If the proposed variation or revocation does, in the LTA's view, not require a new assessment, then the application must:

- Set out the LTA's reasons for wishing to vary or revoke the framework.
- Explain how, and to what extent, the LTA considers the variation, or revocation will contribute to the implementation of their relevant general policies.
- In the case of a proposal to vary the framework –

- set out how it is proposed to vary the framework,
- describe the expected effect that varying the framework will have on the matters set out in the assessment (or, if more than one, the most recent assessment) of the framework prepared under section 13E, and
- explain the reasons the LTA do not consider it necessary to prepare a new assessment, as it is proposed to be varied, and

- include any information that the LTA thinks will assist the panel in its deliberations to approve the proposed variation or revocation.

The approval panel, when considering the evidence in relation to the LTA's proposal, must consider whether the authority has reached a reasonable conclusion in deciding to vary its framework under section 13O(4) of the 2001 Act.

Process when LTA wants to revoke their franchising framework

An LTA may wish to revoke a franchising framework under section 13N of the 2001 Act. We recognise that there may be good reasons for an LTA to consider revoking a franchising framework. These may include: -

- the longer-term outcomes for the LTA's relevant general policies in the area to which the framework relates are likely to be delivered better via other options (e.g. BSIP or running their own services) if the scheme did not apply,
- the continued operation of the framework is likely to cause financial difficulties for the LTA, or
- the burdens on the LTA of continuing with the franchising framework are likely to outweigh the benefits of doing so.

The revocation of a franchising framework is subject to the same procedure as varying a framework (see previous page). As before, the approval panel, when considering the evidence in relation to the LTA's proposal, must consider whether the authority has reached a reasonable conclusion in deciding to revoke its framework under sections 13O(5) of the 2001 Act.

To assist with the transition out of a franchising framework, the 2025 Regulations makes provision that allows for bus operators to register services with the TC when the franchise is in operation, but those services cannot operate until an area ceases to be part of a franchising framework.

Multi-authority Franchising

There may be instances where it is appropriate for more than one LTA to make a franchise framework within their areas. Under section 13S of the 2001 Act it is possible for multiple LTAs to jointly make a franchising framework and franchising agreements to improve bus provision in their areas.

As set out in section 13S, LTAs that decide to create a multi-authority franchise must act jointly to make a franchising framework and enter into franchise agreements, and must continue to do so throughout the course of the franchise.

This is set out by the general duty in section 47 of the 2001 Act which requires LTAs to co-operate with one another when carrying out their functions, in relation to partnership schemes and franchising frameworks. Where two or more LTAs work together to make a framework, it is for them to decide how best to manage that administratively.

If an authority becomes part of a wider franchise but runs their own services, they and the other LTAs will need to consider what impacts this will have on the bus market in the area, as well as the operation of the franchise should these services form part of a franchising framework.

Reviewing the effectiveness of a franchising framework

Every year that the franchising framework is in operation the LTA must prepare and publish a report on the effectiveness of the framework under section 13P(1) of the 2001 Act.

To ensure the accuracy of the reports, LTAs will need to obtain some information from operators, which may include information on ticket sales or total distance covered by vehicles operating under the franchise, as well as the views of relevant stakeholders on the effectiveness or otherwise of the franchise.

In preparing this review, an LTA may wish to make use of the information gathering powers set out in the Information Regulations described previously, which sets out the types of data that LTA can use for monitoring and reporting on the effectiveness of their franchise as part of the requirements of their franchising agreements. However, consideration should also be given to including requirements to provide information as part of each franchising agreement.

Appendix A: Overview of types of information

Below is an overview of information that LTAs can or cannot request from operators, it is not an exhaustive list.

LTAs can request information only if it is information that the operator possesses or controls and relates to the periods that fall not more than five years before the date on which the LTA requires the operator to provide it.

Journeys

Information on journeys that the operator has forecast will be undertaken by passengers on relevant local services and revenue that the operator has forecast that will be received from those local services.

Passengers

When seeking information about passenger journeys – this relates to the total number of journeys undertaken by passengers on relevant local services operated by the operator in the area. Total journeys can be broken down into individual routes or services, periods (monthly, weekly, or daily, as well as by peak and off-peak periods), etc.

The information will not include passenger survey data on all individual journeys undertaken at a transactional level.

Information can also be sought on operator patronage and revenue forecasts on relevant local services.

Fares

Information about the structure of fares for journeys on relevant local services – this is a description of all period tickets (valid for one day or longer), including prices, validity rules, and geographical areas and / or service list within which specific ticketing products area valid (e.g. zones or corridors).

It will not include, for example, all Host Operator or Processing System (HOPS) data on all individual journeys undertaken to a transactional level.

There are also rules governing the eligibility of groups of passengers to purchase and use ticket types other than the standard adult fare. Information can also be sought on point to point fares by ticket type (such as adult and child ticket) single and return tickets, based on fare stages (but not individual bus stops) which are usually presented in a fare table.

If return fares are calculated by a set formula (e.g. 190% of single fare rounded to nearest 5 pence), a statement of the formula and parameters used must be provided, and the dates the formula and parameters were applicable. Reference information should be provided linking fare stages in fare tables to the geographical location of specific bus stops.

Revenue

Information about revenue received from those relevant local services, including information about the revenue attributable to particular types of fares, derived from journeys undertaken on particular parts of those local services, or from advertising.

Revenue collected by the operator for the sale of period tickets (i.e. tickets which are valid for one day or longer) through any channel, including (but not limited to) on-bus, off-bus, travel shops, online or through mobile ticket apps.

The number of 'standard fares' or 'penalty fares' issued by the operator to passengers detected travelling with no ticket or an incorrect or invalid ticket. The amount of fare revenue believed to be lost to the operator due to fare evasion is normally estimated by operators. This could be a financial amount or set as a percentage of fare revenue.

Aggregated revenue is derived from services including fares (i.e. on-bus and off-bus sales), advertising and other sources by category. Some of the suggested categories are:

- On-bus fares
- Off-bus fares
- Concessionary support
- Tender subsidy
- Network Support Grant (NSG) or similar
- Advertising, and
- Distribution of free newspapers.

Costs

Information about the fixed and variable costs incurred by the operator. This also includes Peak Vehicle Requirements (PVR) to operate each service/route or service/route group, disregarding engineering spares. For some services/routes – this may be zero (e.g. where a service/route is interworked with another).

Totals of scheduled hours and actual hours operated by vehicles on local services (which relate to variable costs), this may include (in service and positioning trips, start and end of shift, etc.). Operated hours may be lower than scheduled hours (if trips are lost due to mechanical failure) or may be higher than scheduled hours (due to traffic congestion).

Information about the cost of maintaining, overhauling, and replacing operators' fleets through their normal life cycle. This may include for each vehicle the average maintenance cost per vehicle per year by vehicle type.

Other cost information includes costs of employees' salaries, and participating in pension schemes, including fixed and variable costs associated with participating in a pension scheme, in so far as that is related to staff employed by the operator.

Vehicle fleet information

Information about the vehicles used by the operator in operating those local services, including information about the age of those vehicles, emissions and types of fuel or power, which may include infrastructure for refuelling.

LTAs will also be able to ask for information about the frequency of maintaining, overhauling, and replacing operators' fleets through their normal life cycle, and the ratio of engineering spare vehicles to in-service vehicles by depot.

Vehicle distance

The LTA can request information about the total distance covered by vehicles used by the operator in operating relevant local services. This includes information about scheduled and operated mileage for each service (both in service and positioning trips, at the start and end of shifts). This may also include a breakdown of information about mileage by depot and by vehicle type. However, the LTA cannot request information for individual vehicles.

The LTA may include data from operators running cross-boundary services, but only if they already hold mileage records that split the mileage within and out with the franchise area.

Staff

Information about persons employed by the operator includes the headcount and full-time equivalent (FTE) count of staff employed or contracted to deliver the operator's bus services within the franchised area. This also includes staff directly and indirectly delivering and supporting the delivery of those services (i.e. front line, back office, management, and head office staff).

Appendix B: Information for different notices

Notice issued by LTA on their intention to make a franchising framework

A. The notice issued by the LTA when consulting about their proposed franchising framework must contain the following information:

- A description of the proposed franchising framework, which includes a map of the area to which the framework relates
- A statement from the LTA that considers the framework will contribute to the implementation of their relevant general policies, and
- Stating where copies of the consultation documents listed in Section 13G (5) of the 2001 Act may be viewed.

Notice issued by the TC to convene a panel

B. The notice issued by the TC must include:

- The name of the LTA seeking approval for their proposal
- Description of their proposal
- Where the proposal is to make a franchising framework, including an electronic link to the documents that are specified in section 13I(3) of the 2001 Act
- A statement explaining that a panel will be formed to consider whether to approve the proposal and that persons may ask to present oral evidence to the panel, and
- A statement explaining that a request to present oral evidence must –
 - be made in writing within the period of 28 days beginning with the day after the date the notice is issued by the TC, and
 - Includes a summary of the oral evidence which the person wishes to present.

The notice should also include the postal address of the TC.

Notice issued by the approval panel for Evidence Sessions

C. The notice issued by the panel must include the following information:

- The date, time, and location of the oral evidence session, and
- The notice should be in at least one newspaper circulating in the area to which the proposal relates.

The notice needs to be given to: -

- The LTA seeking approval of the proposal
- Any person from whom the panel has invited evidence in accordance with regulation 10 of the 2024 Regulations, and
- Any person who has submitted a request to give oral evidence in accordance with regulation 9(1) of the 2024 Regulations.

Notice issued by LTA to make a franchising framework

D. The notice issued by the LTA must state:

- That the LTA has made the franchising framework, and
- It must state where a copy of the framework may be viewed.

Notice issued by the LTA when Entering into franchise agreements

E. The notice issued by the LTA must state:

- The local services to be provided under the franchise agreement(s)
- The date or dates on which the franchising framework is, in so far as it relates to the local services to be provided under the franchising agreement to come into operation, and
- The duration of the franchising agreement.

All notices sent to operators should be sent to the postal address contained in the PSV operator's licence (as opposed to the head office).

Notice issued by LTA to postpone commencement of a franchising framework

F. The notice issued by the LTA must state:

- That the LTA has postponed the franchising framework in so far as it relates to the coming into operation of a local service under 13K(5)(b), and
- The new date on which the franchising framework is to come into effect in respect of that service .

Notice issued by TC to vary or revoke a proposed franchising framework

G. The notice issued by the TC must state:

- The name of the LTA seeking approval for their proposal
- Description of their proposal to vary or revoke the framework
- Where an electronic link to the application provided by the LTA under section 13N(2)(b) of the 2001 Act, including the following documents as applicable:
 - The new assessment
 - The report of the auditor on the new assessment
 - A summary of the responses received to the consultation carried out under section 13G of the 2001 Act in respect of the new assessment and any action (other than modifications under section 13H) that was taken to address the responses, and
 - A description and explanation of any modifications made to the framework as it is proposed to be varied under section 13H of the Act
- That representation may be made to the TC in relation to the proposed variation or revocation,
- The period within which such representations may be made
- A statement explaining that a panel will be formed to consider whether to approve the proposal and that persons may ask to present oral evidence to the panel,
- A statement explaining that a request to present oral evidence must –

- be made in writing within the period of 28 days beginning with the day after the date the notice is issued by the TC, and
- Includes a summary of the oral evidence which the person wishes to present.

Appendix C: Links to documents the LTA may wish be aware of when developing their franchising framework

[High level overview of the powers available to local transport authorities - Bus powers - Transport \(Scotland\) Act 2019 | Transport Scotland](#)

[national-transport-strategy.pdf](#)

[Guidance on the development of Business Cases - March 2016](#)

[The Green Book and accompanying guidance - GOV.UK](#)

[Scottish Transport Appraisal Guidance](#)

[Bus franchising - CMA advice for Local Transport Authorities](#)

[Bus franchising manual: Advice to local transport authorities on the bus franchising process](#)

[Statutory Guidance for the United Kingdom Subsidy Control Regime: Subsidy Control Act 2022](#)

[Scottish procurement policy handbook - gov.scot](#)

[The Sourcing Playbook – June 2023](#)

[audit-regulations-and-guidance-effective-1-june-2023.ashx](#)

[Business transfers, takeovers and TUPE: Overview - GOV.UK](#)

[A guide to the 2006 TUPE Regulations \(as amended by the Collective Redundancies and Transfer of Undertakings \(Protection of Employment\) \(Amendment\) Regulations 2014\) for employees, employers and representatives](#)

[Setting up a bus franchising scheme: December 2024 - GOV.UK](#)

[psv-353a-local-service-registrations-scotland.pdf](#)

Appendix D: Key Stakeholders and Contacts

<ul style="list-style-type: none"> All operators of local services in the area of the proposed franchising framework
<ul style="list-style-type: none"> Any other person holding a PSV operator’s licence or community bus permit who, in the opinion of the authority, is likely to be affected by the proposed framework.
<ul style="list-style-type: none"> Such organisations appearing to be representatives of all operators of local services in the area of the proposed franchising framework (e.g., Confederation of Passenger Transport (CPT)) <p>admin@cpt-uk.org</p>
<ul style="list-style-type: none"> Such organisations appearing to the LTA to be representatives of employees of such operators
<ul style="list-style-type: none"> Such organisations appearing to the LTA to be representatives of users of local services as they think fit (e.g., Bus Users Scotland) <p>enquiries@bususers.org</p>
<ul style="list-style-type: none"> Each LTA and Transport Partnership whose area is, in the opinion of the franchising authority, likely to be affected by the proposed framework
<ul style="list-style-type: none"> The Traffic Commissioner (in this case the TC should be the Traffic Commissioner for Scotland) <p>tcco@otc.gov.uk.</p>
<ul style="list-style-type: none"> The Chief Constable of Police Scotland <p>roadpolicing@scotland.police.uk</p>
<ul style="list-style-type: none"> The Competition and Markets Authority <p>advocacy@cma.gov.uk</p>
<ul style="list-style-type: none"> Such other persons as the LTA thinks fit, this could include local community councils within the proposed framework area, or disabilities groups, etc.

Scottish Local Community Councils

scottishccs@improvementservice.org.uk

Mobility and Access Committee for Scotland (MACS)

macs@gov.scot



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