
STATUTORY INSTRUMENTS

2017 No. 1093

PUBLIC PASSENGER TRANSPORT, ENGLAND

The Franchising Schemes and Enhanced Partnership Schemes (Pension Protection) (England) Regulations 2017

Made - - - - *20th November 2017*
Laid before Parliament *27th November 2017*
Coming into force - - *19th December 2017*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 123X(6) and (7)(e) and 138S(6) and (7)(e) of the Transport Act 2000(1).

The making of these Regulations fulfils the obligations imposed on the Secretary of State by sections 123X(9) and 138S(9) of the Transport Act 2000(2):

Citation and commencement

1.—(1) These Regulations may be cited as the Franchising Schemes and Enhanced Partnership Schemes (Pension Protection) (England) Regulations 2017.

(2) These Regulations come into force on 19th December 2017.

(3) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations—

“the 2000 Act” means the Transport Act 2000;

“relevant employee” means a transferring original employee who, as an employee of the original operator, had rights to acquire pension benefits(3); and

(1) 2000 c.38. Sections 123X and 138S were inserted into the Transport Act 2000 by sections 4 and 9 respectively of the Bus Services Act 2017 (c.21).

(2) These provisions require the Secretary of State to make regulations to ensure that pension protection is secured for transferring original employees (as defined in section 123X(10) and 138S(10) of the Transport Act 2000), and that such employees have the right to acquire pension benefits from the new employer which are the same, broadly comparable to, or better than those which they had with the original employer.

(3) The terms “original operator” and “transferring original employee” are defined in section 123X(10) and 138S(10) of the Transport Act 2000.

“scheme” means a franchising scheme or an enhanced partnership scheme(4).

Duties to secure pension protection

3.—(1) The duties prescribed in paragraph (2) apply to a local transport authority, or two or more such authorities acting jointly, which have made a scheme and which—

- (a) enter into a local service contract(5) or, as the case may be, an awarded contract(6) with a person under the scheme; or
- (b) enter into, in the circumstances described in section 123X(2) or, as the case may be, 138S(2) of the 2000 Act, any other agreement with a person for the provision of local services in the area to which the scheme relates.

(2) The authority or authorities must ensure that any contract or agreement entered into with a person in a situation described in paragraph (1) is made, in the event of there being any transferring employees(7), on terms—

- (a) that require the person to secure pension protection(8) for every relevant employee;
- (b) that, where there are relevant employees, require the person—
 - (i) to procure a pensions statement which satisfies the requirements prescribed in regulation 6; and
 - (ii) to provide every relevant employee with a copy of any part of the statement which relates to that employee; and
- (c) that, so far as relating to—
 - (i) the requirement to secure pension protection described in sub-paragraph (a); and
 - (ii) the requirement to procure and provide the statement described in sub-paragraph (b),
 are enforceable against the person by every relevant employee.

Rights to acquire pension benefits

4. For the purposes of section 123X(8)(b) and 138S(8)(b) of the 2000 Act (rights to acquire pension benefits), the rights to acquire pension benefits which a relevant employee must have as an employee of the new operator(9) are rights which—

- (a) are the same as the rights the relevant employee had as an employee of the original operator; or
- (b) count, by virtue of regulation 5, as being broadly comparable to, or better than, those rights.

Broadly comparable

5.—(1) For the purposes of regulation 4(b), the rights to acquire pension benefits, which a relevant employee must have as an employee of the new operator, count as being broadly comparable to, or better than, the rights which the employee had as an employee of the original operator—

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- (4) By virtue of section 162(1) of the Transport Act 2000 as amended by the Bus Services Act 2017, Schedule 2, paragraph 23(2) and Schedule 4, paragraph 8, the terms “franchising scheme” and “enhanced partnership scheme” are to be construed in accordance with section 123A(3) and 138A of that Act as inserted by the Bus Services Act 2017, sections 4 and 9 respectively.
 - (5) By virtue of section 162(1) of the Transport Act 2000 as amended by the Bus Services Act 2017, Schedule 2, paragraph 23(2), the term “local service contract” has the meaning given in section 123A(5) of that Act as inserted by the Bus Services Act 2017, section 4.
 - (6) The term “awarded contract” is defined in section 138S(11) of the Transport Act 2000.
 - (7) The term “transferring employee” is defined in section 123X(8)(a) and 138S(8)(a) of the Transport Act 2000.
 - (8) The term “pension protection” is defined in section 123X(8)(b) and 138S(8)(b) of the Transport Act 2000.
 - (9) The term “new operator” takes the meaning given in section 123X(1)(b) or 138S(1)(b) or, as the case may be, section 123X(2)(b) or 138S(2)(b), of the Transport Act 2000.

- (a) if the rights satisfy the condition prescribed in paragraph (2); or
 - (b) if, in the situation described in paragraph (3), the rights satisfy all of the alternative conditions prescribed in paragraph (4).
- (2) The condition is satisfied if the rights to acquire pension benefits that the relevant 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.
- (3) The situation is that there are exceptional circumstances which mean that it would not be reasonably practicable for the new operator to grant rights to the relevant employee which satisfy the condition prescribed in paragraph (2).
- (4) The alternative conditions are satisfied if—
- (a) the rights to acquire pension benefits granted to the relevant employee include arrangements to pay compensation to the relevant employee; and
 - (b) the arrangements to pay compensation described in sub-paragraph (a) are such that the compensation is sufficient to offset the material detriment which would otherwise be suffered by the relevant employee.

Pensions statement

6.—(1) The pensions statement procured by a person entering into an agreement or contract, under a requirement specified in accordance with regulation 3(2)(b)(i), must be obtained in writing from a Fellow of the Institute and Faculty of Actuaries.

- (2) The statement must certify—
- (a) that, to the extent that the principles can be applied, the person making the statement has formed the opinion contained in the statement having had regard to the guidance for assessing broad comparability between two sets of pension scheme benefits set out in Annex A to HM Treasury's note 'Fair Deal for staff pensions: staff transfer from central government' dated October 2013⁽¹⁰⁾; and
 - (b) that, in the opinion of the person making the statement, the new operator's pension scheme offers relevant employees the rights to acquire the pension benefits prescribed in regulation 4 on the date the statement was made.

Signed by authority of the Secretary of State

20th November 2017

Jesse Norman
Parliamentary Under Secretary of State
Department for Transport

⁽¹⁰⁾ The note is available from the www.gov.uk website.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the pension protection to be provided to certain employees of bus operators who transfer to a new employer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) following the making of a franchising scheme or an enhanced partnership scheme.

A franchising scheme is a scheme made under the Transport Act 2000 (“the 2000 Act”) under which a local authority identifies the local services that it considers appropriate to be provided in an area under a local service contract. A local service contract is an agreement where the franchising authority grants an exclusive right to operate the local services to another person in exchange for an undertaking to provide the local services on such terms as may be specified in the agreement.

An enhanced partnership scheme is a scheme made under the 2000 Act under which a local authority specifies the area to which the scheme relates, and imposes requirements in relation to local services by specifying them in the scheme.

The effect of making a franchising scheme or an enhanced partnership scheme may be that certain operators of local services would have to cease providing services. Sections 123X and 138S of the 2000 Act provide for TUPE to apply so that employees transfer to a new employer where their former employer has ceased providing local services in those circumstances. These Regulations fulfil the obligations imposed on the Secretary of State by sections 123X(9) and 138S(9) of the 2000 Act to ensure that pension protection is secured for transferring original employees (as defined in sections 123X(10) and 138S(10) of the 2000 Act) who, as an employee of the original operator, had rights to acquire pension benefits. Such employees are defined in these Regulations as ‘relevant employees’.

Regulation 3 places duties on an authority, or two or more authorities acting jointly, which have made a scheme. Local service contracts, awarded contracts, or other agreements to operate local services related to the making of the scheme, must be made on terms which secure pension protection for all relevant employees. They must also require the new operator to obtain a pension statement prepared in accordance with regulation 6, and to ensure that all relevant employees receive a copy of the appropriate part of the statement. The contract or agreement must be made on terms which enable relevant employees to take enforcement action against the new operator if the requirements on pension protection and the procurement of the statement are not satisfied.

Regulation 4 provides that the pension benefits which relevant employees have the right to acquire from the new operator must either be the same as, or count as being broadly comparable to, or better than, those enjoyed by the employee whilst employed by the original operator.

Regulation 5 defines the term ‘broadly comparable’ for the purposes of these Regulations. Rights count as being broadly comparable if the employee suffers no material detriment in terms of the pension benefits received. If, in exceptional circumstances, it would not be reasonably practicable to provide such rights, the new employer must instead make arrangements to pay adequate compensation to affected relevant employees to redress any such material detriment.

Regulation 6 prescribes that the pensions statement to be procured by virtue of regulation 3 must be obtained in writing from a Fellow of the Institute and Faculty of Actuaries and that after having regard to certain HM Treasury guidance, in the opinion of that person, the pension rights to be provided by the new operator meet the requirements prescribed in regulation 4. The contact address for the Institute and Faculty of Actuaries is the 7th Floor, Holborn Gate, 326-330 High Holborn, London, WC1V 7PP.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

A full impact assessment has not been published for these Regulations. However an assessment has been made of the impact of the Bus Services Act 2017. Copies of that impact assessment may be obtained from the Buses and Taxis Division, Department for Transport, 2/12 Great Minster House, 33 Horseferry Road, London SW1P 4DR or from the Bus Services Act page on gov.uk: <https://www.gov.uk/government/publications/bus-services-bill-impact-assessments>.

An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.