

EXPLANATORY MEMORANDUM TO
THE PUBLIC SERVICE VEHICLES (REGISTRATION OF LOCAL SERVICES)
(FRANCHISING SCHEMES TRANSITIONAL PROVISIONS AND AMENDMENTS)
(ENGLAND) REGULATIONS 2018

2018 No. 406

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Bus Services Act 2017 (“the 2017 Act”) inserted new provisions into the Transport Act 2000 (“the 2000 Act”) that enable local transport authorities to make franchising schemes. An authority that makes a franchising scheme is able to determine which local services operate in the area to which their franchising scheme relates and will enter into contracts for the provision of local services in their area.

2.2 A franchising scheme does not affect the provision of local services using vehicles under a permit granted under section 22 of the Transport Act 1985 (“the 1985 Act”) or services that are excepted from the franchising scheme. Where an authority makes a franchising scheme, the local bus market in their area will need to transition from the status quo, where operators determine which routes they wish to operate, to a system whereby the franchising authority is able to specify local services to be delivered and where bus operators bid to provide those services. Operators will no longer be required to register such services with a traffic commissioner, nor will they have to register services pursuant to service permits issued by the authority or interim services. The purpose of the Regulations is to provide for a smooth transition from the current system to a franchising system. The Regulations are necessary to help minimise potential disruption to services and to ensure that passengers are well served.

2.3 In addition, any authority that has implemented a franchising scheme may revoke it or, for example, vary it so that it applies to a smaller geographical area. In this case, the market will need to transition from a system under which operators run local services under contract to the franchising authority, to a system whereby bus operators will be able to determine which local services they want to run, and register services with a traffic commissioner. Again, the Regulations provide for the transition out of franchising to help minimise disruption to passengers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 2017 Act inserts new provisions into Part II of the 2000 Act. These Regulations are required to ensure that provision is made for the transition to, and from, a franchising scheme made under the 2000 Act.
- 4.2 These Regulations form part of a package of Regulations that provide the detail underpinning the primary legislation relating to franchising schemes. S.Is 2017/1091, 2017/1092 and 2017/1093 all make provision relating to franchising schemes and will, together with these Regulations, facilitate the use of bus franchising powers. At the moment, the only type of authority that can use bus franchising powers are mayoral combined authorities.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The 2017 Act enables certain local transport authorities to introduce a franchising scheme under which the authority is able to determine which local services are provided under contract and the quality standards of those services. Where a franchising scheme is introduced, the market will need to transition from deregulation, where bus operators determine which services to operate and register services with a traffic commissioner, to a system which provides for bus operators running local services under contract to a franchising authority.
- 7.2 The Regulations make provision in relation to the period that has to expire before a the variation or cancellation of a registered service has effect when the application to vary or cancel is accepted once a franchising scheme has been made, but before sections 6 to 9 (registration of local services) of the Transport Act 1985 (“the 1985 Act”) cease to have effect as a result of the franchising scheme coming into operation. Local bus services which use vehicles under a permit granted under section 22 of the Transport Act 1985; services that are excepted from the franchising scheme; and applications in relation to services to which registration restrictions imposed under section 113D or section 114(3A) of the 2000 Act have effect are not affected by the introduction of a franchising scheme and the current registration provisions continue to apply. A franchising authority may publish a notice which specifies the period that must expire before a variation or cancellation is effective (“transitional notice”) and that period must not exceed 112 days.
- 7.3 The Regulations assist the transition from the current model of bus provision to franchising. Franchising authorities are able to extend the notice period which must elapse before a bus operator can cancel or vary the registration of a service with a stopping place in an area to which a franchising scheme relates. This will provide an authority with more time to make alternative arrangements to ensure services are

retained for passengers in the event of operators withdrawing their services a result of the introduction of franchising.

- 7.4 The Regulations also include provisions that enable certain services to be registered at short notice in the period running up to the franchising scheme coming into operation. The services which will be able to register at short notice are those provided pursuant to an agreement between the franchising authority and an operator. Again, the aim of these provisions is to help authorities smooth the transition and take remedial action with a view to making provision for passengers in the event that operators stop providing services.
- 7.5 The Regulations also provide for the registration of services, and the variation or cancellation of such services, during the period when a franchising scheme is in operation by giving effect to relevant sections of the 1985 Act, certain provisions in the Public Service Vehicles (Registration of Local Services) Regulations 1986 (“the 1986 Regulations”) and the Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009 (“the 2009 Regulations”) which would not otherwise have effect. Services may be registered pursuant to those provisions but are not able to operate whilst a service has a stopping place in a franchising scheme area due to the prohibition set out in section 123J of the 2000 Act (“the prohibition”). Local services using vehicles under a permit granted under section 22 of the 1985 Act and services that are excepted from the franchising scheme are not affected. Registrations, variations or cancellations become effective on the date the last franchising scheme area in which a service has a stopping place ceases to have effect. These provisions should ensure that there is continuity of service for passengers.
- 7.6 These Regulations amend the 1986 Regulations so that the relevant provisions in those Regulations do not apply when these Regulations apply; and require a traffic commissioner to cancel the registration of a service when the prohibition has effect in relation to that service. They also amend the 2009 Regulations to ensure that when an application is made in relation to a service to which registration restrictions apply, and the application is made when a franchising scheme is in operation, a traffic commissioner may not determine a date or period that is, or expires, earlier than the latest date on which a franchising scheme in which the service has a stopping place ceases to have effect.

Consolidation

- 7.7 These Regulations amend the 1986 Regulations and the 2009 Regulations. The Department does not intend to consolidate the relevant legislation.

8. Consultation outcome

- 8.1 A six-week consultation exercise was held between 8th February and 21st March 2017. The consultation sought views from a wide range of bodies, including the bus industry, local authorities, trade unions and passenger representatives. This was supplemented by three half-day workshops to enable key stakeholders to ask questions about draft Regulations before responding to the consultation.
- 8.2 Over 70% of those that responded agreed with the processes set out in the Regulations that authorities must follow before they can extend the variation and cancellation of notice periods. Over 80% of those that responded agreed with the provisions which explain how services can be registered in advance of a franchising scheme being revoked or varied so as to apply to a smaller area.

- 8.3 Of those that responded, over 90% agreed that the provisions to enable services to be registered at short notice during the period leading up to a franchising scheme having effect are useful. A number of respondents thought that the Regulations could be broadened, so that services could be registered at short notice where they replaced one that had been varied, rather than just replacing a service that had been cancelled. The Department has responded to this by amending the Regulations to allow short notice registrations to be accepted where the authority enters into an agreement with an operator to provide any service during the period referred to above.
- 8.4 There were few other comments made on these Regulations.
- 8.5 A detailed Government response on the outcome from the consultation is available at <https://www.gov.uk/government/consultations/bus-services-bill-draft-regulations-and-guidance>.

9. Guidance

- 9.1 The Secretary of State issued guidance concerning franchising schemes, namely “The Bus Services Act 2017: new powers and opportunities” and “The Bus Services Act: bus franchising guidance” on 27th November 2017. The guidance is available from the Department for Transport’s website at <https://www.gov.uk/government/publications/bus-services-act-2017-new-powers-and-opportunities> and <https://www.gov.uk/government/publications/bus-services-act-2017-bus-franchising-creation> respectively. The latter guidance has been updated to include paragraphs relating to these Regulations. Hard copies of guidance are available at Great Minster House, 33 Horseferry Road, London, SW1P 4DR.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies will be dependent on whether or not they operate services which are affected by the introduction of a franchising scheme. In addition, the precise impacts of the Regulations will depend on what actions franchising authorities take pursuant to the Regulations. It may be that one franchising authority decides to increase the variation and cancellation notice period to 112 days, whereas another chooses not to make any changes to the current period. Where an operator is affected by these Regulations, and is subject to a longer notice period, they will be required to continue operating services for a longer period than they would otherwise be required to.
- 10.2 The impact on the public sector will be in the form of the administrative costs to the franchising authority of issuing a notice setting out the revised notice periods, if it chooses to do so. Authorities are not required to introduce bus franchising and, as such, can consider these potential administrative burdens as part of their consideration of the costs and impacts of introducing such a scheme.
- 10.3 These Regulations will provide authorities with additional tools to reduce or eliminate the disruption cost to passengers, when an authority moves from a deregulated market to a franchised one, or vice versa.
- 10.4 The Regulations are part of a package of Regulations which enable authorities to introduce franchising schemes in relation to their local bus market (see paragraph 4.2). The overall impact on bus operators of franchising will be dependent on the level of take-up of franchising powers, and the specific models of franchising pursued in local areas. Indicative analysis shows that the costs to the public sector of franchising

will be related to implementing and managing franchising schemes. These include staff costs and marketing costs, and are estimated to be £2m-£4m per year for large urban areas. The benefits to the public sector will be increased revenues to franchising authorities as a result of their taking over control of bus fare revenue from bus operators, and is estimated to be in the region of £0.3-£20m per authority per year.

- 10.5 The impact assessment prepared to accompany the 2017 Act was updated to take account of any additional impacts of the package of franchising regulations, and can be found at <https://www.gov.uk/government/publications/bus-services-bill-impact-assessments>. A hard copy of the impact assessment may be obtained from the Buses and Taxis Division, Department for Transport, 2/14 Great Minster House, 33 4DR Horseferry Road, London SW1P 4DR.

11. Regulating small business

- 11.1 These Regulations apply to activities that are undertaken by small businesses in particular smaller bus operating companies. The impact on small business will be dependent on whether, or how, bus franchising is implemented in the area in which they are operating. There is potential for smaller operators to be subject to an extended notice period before they can cancel or vary a service they are operating, meaning that those operators will be required to continue operating services for a longer period than they would otherwise have done. However, we consider these impacts to be minimal and in the interests of passengers.
- 11.2 A small and micro business assessment was conducted for the bus franchising policy as a whole and forms part of the impact assessment prepared to accompany the 2017 Act. It sets out the potential impacts of the franchising policy more broadly, and the actions taken to attempt to mitigate the impacts on small business. However, no specific action is proposed to minimise regulatory burdens imposed on small businesses by these Regulations. This is because these Regulations do not directly impose burdens on business, as it will be depend on whether, and how, franchising is implemented by a local authority.
- 11.3 As part of the consultation exercise we met with a number of small bus companies and organisations representing bus companies to gather their views.

12. Monitoring & review

- 12.1 Nusrat Ghani, Parliamentary Under Secretary of State for Transport, has made the following statement under section 28(2)(b) of the Small Business, Enterprise and Employment Act 2015.
- 12.2 “Having had regard to the Statutory Review Guidance for Departments published under section 31(3) of the Small Business, Enterprise and Employment Act 2015, in my view, it is not appropriate to make provision for review in the Public Service Vehicles (Registration of Local Services) (Franchising Schemes Transitional Provisions and Amendments) (England) Regulations 2018. A review of these Regulations would be disproportionate, taking into account the economic impact of the Regulations on the activities of bus operators, and would be undesirable for the particular policy reasons set out below”.
- 12.3 Franchising schemes are tools available to a local transport authority (“LTA”) to use to improve bus services in its area if it chooses to do so although, at the moment, only mayoral combined authorities are able to use franchising powers. Therefore the

Department does not know how many such schemes will be created under the new provisions in the 2000 Act inserted by the 2017 Act. No Quality Contract Schemes have been introduced under the 2000 Act. Also, before a franchising scheme can be made an LTA must, under section 123E of the 2000 Act, consult operators providing local services in the area relating to the scheme, amongst others. In addition, the LTA must set out full details of its plans for consulting on how well a franchising scheme is working once it is up and running. Such schemes are not time limited and may exist for many years or even decades. A provision for regular five yearly review of the Regulations underpinning such schemes would be resource intensive and time consuming for the Department, LTAs and operators as information and data would have to be gathered regularly from many different bodies and then assessed by Departmental policy experts and analysts, with reports setting out the conclusions of the review having to be produced.

- 12.4 Furthermore, regularly reviewing these Regulations would adversely affect the achievement of the policy objective of securing LTAs' and operators' long term commitment to franchising schemes that are appropriate to their areas. For example LTAs may hesitate to enter into a long term financial commitment regarding infrastructure in a franchising scheme if they felt that every five years there was a high degree of uncertainty over the future of the scheme selected. For the same reason, operators might be reluctant to enter into financial commitments in relation to, for example, new or improved vehicles. This might result in a franchising scheme not being adopted at all or being adopted with a much less ambitious scope and consequently a smaller benefit being realised for local bus services.
- 12.5 The outcome of the implementation of the relevant provisions of the 2017 Act, and associated secondary legislation, will be assessed as part of the post-legislative scrutiny of that Act. A provision for review has not been included in these Regulations. As these Regulations will only apply where a local authority has implemented a franchising scheme, a review of the effectiveness of the Regulations will be conducted once a number of such schemes have been introduced, or concerns are raised about the effectiveness of the Regulations by an authority that has implemented a scheme

13. Contact

- 13.1 Paul Rhodes at the Department for Transport (Telephone 07773 233713 or email: paul.rhodes@dft.gsi.gov.uk) can answer any queries regarding the instrument.