

**EXPLANATORY MEMORANDUM TO  
THE FRANCHISING SCHEMES (SERVICE PERMITS) (ENGLAND)  
REGULATIONS 2018**

**2018 No. 423**

**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 Part 2 of the Transport Act 2000 (the “2000 Act”), as amended by the Bus Services Act 2017, allows certain local authorities in England to franchise their local bus services. Under bus franchising, the authority will determine which services operate and their frequency, and bus operators will run services under contract to the authority. The 2000 Act also allows other services that will benefit passengers to be run under permits, e.g. services that cross the boundary of the franchising scheme area and which complement the franchised network. These Regulations set out some of the detail of how the service permit system will work.

**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 Bus Services Act 2017 adds new sections to Part 2 of the 2000 Act. This is the first use of the powers inserted by the Bus Services Act 2017.
- 4.2 These Regulations are required to provide some of the detail underpinning the service permit provisions in the 2000 Act in relation to franchising schemes.
- 4.3 These Regulations form part of a package of regulations that provide the detail underpinning the primary legislation relating to franchising schemes, for example S.I.s 2017/1091, 2017/1092 and 2017/1093, and that enable franchising authorities to make full use of bus franchising powers. At the moment the only type of authority that can use these powers is a mayoral combined authority.

**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 2000 Act, as amended by the Bus Services Act 2017, enables franchising authorities (currently mayoral combined authorities) to make bus franchising schemes. The effect of such a scheme is to suspend the current deregulated bus market and allow the local authority to determine which bus services are provided and the quality standards of those services. Bus operators then provide the services under contract to the authority. The majority of services will be provided under local service contracts issued under the scheme, but the 2000 Act also enables particular services to be provided under service permits. Such services are not part of the franchising scheme. Examples of such services include cross-boundary services, where some of the service is operated in the de-regulated market outside the franchised area. The parties the Department has engaged with, including bus operators and local authorities, support the service permits provisions as a means of providing, in particular, cross-boundary services.
- 7.2 It is for individual franchising authorities to decide how applications for permits should be made, and the information to be supplied. However, Departmental policy is to ensure that franchising authorities openly and transparently set out the details of their service permit scheme in a service permit policy statement, including the application procedure, associated time periods for dealing with applications and information that will be required for an application for a service permit. The Regulations therefore set out the procedures that authorities must follow before they can accept any applications for a service permit, including requiring authorities to consult on the details of their service permit scheme, publish a response to that consultation and set out the final details of the scheme. As part of both the consultation document and the final service permit policy statement, the authority must, for example, set out the information that a person must submit with their application, the fee, if any, that must accompany the application and the period of time within which the authority will decide whether or not to grant the permit. The Department believes the policy aim can best be achieved through legislation rather than, for example, a voluntary code of practice.
- 7.3 The 2000 Act allows the authority to attach conditions to permits. However, the only conditions which may be attached are those of a type specified by the Secretary of State in regulations. Also authorities can only publish a notice setting out the conditions that they may attach if they have first consulted local bus operators and other affected persons.
- 7.4 These Regulations therefore list categories of conditions that may be attached to a service permit by an authority. It will be down to individual authorities to decide which, if any, of the conditions are relevant to their circumstances and whether they want to attach different conditions to different grants of service permits.
- 7.5 The Regulations provide that the level of fee for a service permit application must not exceed the reasonable cost incurred by the authority in processing the application. The

Regulations do not set out minimum or maximum fee amounts, which will be set locally to reflect the costs of providing the service in those local circumstances.

- 7.6 The 2000 Act enables authorities to revoke or suspend service permits in certain circumstances and states that the periods of notice that must be provided to operators in these circumstances may be prescribed in regulations. It also states that regulations may enable authorities to revoke a permit with immediate effect if the service in question poses a danger to the public.
- 7.7 These Regulations also prescribe that a written notice of a decision to revoke or suspend must be given and set out what the notice of revocation or suspension must include. They also enable a permit to be revoked or suspended with immediate effect where there is a danger to the public. The Regulations also ensure that the operator is aware of the situation and is able to take action where needed and require the authority to provide at least 56 days' notice of revocation or suspension, apart from in circumstances where there is a danger to the public.
- 7.8 In addition, the Regulations also require the franchising authority to set out in the service permit policy statement the period or periods of time that must expire between an operator providing notice of their intention to vary or cancel a service operated under a service permit, and that variation of cancellation having effect. The period should not exceed 56 days.

#### *Consolidation*

- 7.9 These Regulations do not amend any existing regulations.

### **8. Consultation outcome**

- 8.1 A six-week consultation exercise was held between 8 February and 21 March 2017. The consultation sought views from a wide range of bodies, including the bus industry, local authorities, trade unions and passenger groups. This was supplemented by three half-day workshops to enable key stakeholders to ask questions about the Regulations before responding to the consultation.
- 8.2 Over 80% of those that responded agreed with the procedure that authorities must follow before they can start to accept applications for service permits, although some raised concerns that local authorities needed more flexibility than was offered in the draft Regulations to amend and update their service permit schemes, for example to grant service permits at short notice. There was general agreement with the categories of conditions that can be attached to service permits, although over 70% of those that responded thought that other categories should be added.
- 8.3 The Department had responded to this by ensuring the Regulations are flexible enough to allow authorities to grant short notice service permits, making it clear that authorities have the flexibility to award permits at short notice should they choose to. The Department considers that the categories of conditions proposed in the draft Regulations should be retained due to the broad support expressed through the consultation. There were a number of additional conditions suggested, such as accessibility standards, branding and adherence to a code of conduct. However, the Department believes that these aspects could be specified under one, or a combination of, the conditions set out in the Regulations without further changes being made.
- 8.4 Over 60% of those that responded agreed with the procedure for revoking and suspending service permits. Of the objections, many felt the minimum time before a

service permit revocation or suspension could take effect was either too long or too short to respond and resolve issues. A number of respondents also felt that authorities should be able to suspend or revoke service permits with immediate effect where the operator of the service was not meeting the conditions attached to their permit.

- 8.5 The Department did not think there was a strong enough case made through the consultation responses to deviate from the minimum 56 day notice period. However, the Department agreed it would be beneficial to passengers if local authorities had the ability to require operators of services under service permits to provide them with notice of their intention to withdraw or vary a service. The Regulations have been amended to provide for this.
- 8.6 In addition, a number of respondents were concerned that neighbouring authorities did not have sufficient say in the process. The Department would expect any franchising authorities to consult with neighbouring authorities on its service permit scheme, but has amended the Regulations to make clear that neighbouring authorities must be consulted on the details of the service permit scheme.
- 8.7 The Department's consultation on the draft Regulations and guidance, the responses received and the changes made as a result are available from:  
<https://www.gov.uk/government/consultations/bus-services-bill-draft-regulations-and-guidance>

## **9. Guidance**

- 9.1 The Secretary of State has issued guidance under section 123W of the 2000 Act concerning the exercise by franchising authorities of their functions in relation to franchising schemes to which these Regulations relate. Franchising authorities must have regard to any such guidance. The guidance can be inspected at the Department's offices in Great Minster House, 33 Horseferry Road, London SW1P 4DR and is also available from the Department for Transport's website at:  
<https://www.gov.uk/government/collections/bus-services-bill-overview>

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies will be dependent on whether or not they choose to apply to the franchising authority for a service permit. Should an operator decide to apply for a service permit, they may incur a fee and will have to meet any costs associated with complying with the required conditions. The impacts of complying with conditions attached to a service permit will again be dependent on the particular conditions imposed by the relevant authority. However, the legislation requires franchising authorities to consult local operators and others they consider appropriate about the conditions they intend to attach, and about the fees they intend to charge, and as such an operator that intends to apply for a permit will be able to express concerns to the franchising authority.
- 10.2 The impact on the public sector will be in the form of the administrative costs to the franchising authority of managing the service permit system. However, 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. In addition, the Regulations enable the authority to charge a fee for processing a service permit application, of an amount that represents the reasonable cost of processing the application.

- 10.3 An impact assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website. This impact assessment was prepared to accompany the Bus Services Bill and was updated to take account of any additional impacts of the package of franchising regulations. It can be found at:

<https://www.gov.uk/government/publications/bus-services-bill-impact-assessments> .

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses – 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, and whether the small business decides to apply for a service permit. There is potential for smaller operators to choose to apply for service permits, and therefore to pay a fee for such a permit, and be subject to any conditions required by the franchising authority. However, the Department considers these impacts to be minimal.
- 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 Bus Services Bill. 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 on small businesses of these Regulations. This is because these Regulations do not directly impose burdens on business, as it will be down individual bus operators to determine whether or not to apply for a service permit.
- 11.3 As part of the consultation exercise policy officials from the Department met with a number of small bus companies and organisations representing bus companies to gather their views.

## **12. Monitoring & review**

- 12.1 Jesse Norman, 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 Franchising Schemes (Service Permits) (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 The outcome of the implementation of the relevant provisions of the Bus Services Act 2017, and associated secondary legislation, will be assessed as part of the post-legislative scrutiny of that Act. Therefore 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.