

EXPLANATORY MEMORANDUM TO
THE PUBLIC SERVICE VEHICLES (REGISTRATION OF LOCAL SERVICES)
(AMENDMENT) REGULATIONS 2018

2018 No. 439

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 These Regulations require that in most circumstances, bus operators are required to notify relevant local authorities 28 days in advance of any application to a Traffic Commissioner to introduce, vary or cancel a local bus service. Where applicable, this will enable local authorities to collect robust information about the performance of a service and disclose it to potential bidders for subsequent tenders, should the authority decide that they need to support an alternative bus service to replace the service that is being registered, varied or cancelled.

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 Section 6C to the Transport Act 1985 (“the 1985 Act”) was inserted by section 19 of the Bus Services Act 2017. This provides that Regulations may be made to require the operator of a local service to provide, on request, prescribed information to any local transport authority in England in whose area the service has a stopping place if that operator makes any application to register, vary or cancel a service.

- 4.2 In particular, Regulations under section 6C(3) of the 1985 Act may make provision for:

- the periods of time in respect of which the information can be requested;
- the time at which the information should be provided, and the manner or form of the information;
- the Traffic Commissioner’s role in rejecting applications to vary or cancel a service if the regulations have not been followed;
- the use and disclosure of the information; and
- any supplementary, incidental, consequential or transitional provision that is required.

5. Extent and Territorial Application

- 5.1 The extent of these Regulations is England and Wales.
- 5.2 The territorial application of these Regulations is England.
- 5.3 These Regulations apply to bus services operating in England and outside of London. The Regulations may impact on cross-border services between England and Wales and Scotland, but only with respect to that part of the journey that takes place in England.

6. European Convention on Human Rights

- 6.1 As these Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The Competition Commission (CC), now the Competition and Markets Authority, made recommendations following its investigation in 2011 into the market for local bus services in the UK (excluding Northern Ireland and London). It recommended that local authorities should have powers to request and make available, information from operators about the revenue and patronage of commercial services that are cancelled. The [Government published a response to the CC report](#) in March 2012 which committed to taking this remedy forward when a suitable legislative slot arose, as primary legislation would be needed to give effect to this recommendation. The Bus Services Act 2017 represented the first opportunity for doing this.
- 7.2 The aim of CC's recommendation was to ensure that where an operator is withdrawing or reducing a commercial service, local authorities are able to make informed decisions about any replacement services and to tender them in good time, and on the basis of reliable information, to avoid disruption to passengers. A supported service is one where a local transport authority has invited tenders for the operation of a service and a contract exists as a result of that tender. The intended outcome is more competitive tendering of replacement services which should lead to better value for money and improved services for passengers. It will also prevent incumbent operators of the deregistered services from having an unfair advantage when tendering for replacement services supported by a local authority. In cases where local authorities had access to this information it was found to increase the number and pricing of bids.
- 7.3 These Regulations aim to implement the CC's recommendations by ensuring that authorities are able to request information about the patronage and revenue received in relation to services that a bus operator intends to either register, cancel or vary so as to reduce or substantially amend a service. The Regulations then enable authorities to release the information to bidders for subsidised services to ensure bids are all made on the basis of accurate information, and enable authorities to disclose patronage information only to other local bus operators to encourage them to run commercial services to replace those which were registered, varied or cancelled.
- 7.4 The CC also proposed introducing a requirement for operators to give local authorities 14 days' notice of a local bus service registration before it is submitted to a Traffic Commissioner. A previous Government consulted on this '14 day pre-notification'

measure in 2014, the consultation response can be found at - <https://www.gov.uk/government/consultations/bus-registration-competition-commission-recommendations>.

- 7.5 These Regulations aim to implement this additional CC recommendation by requiring bus operators to provide authorities with advanced warning of any changes that operators intend to make to services operating in that authority's area, as well as any new services that the operator proposed to introduce. The introduction of a pre-notification period of 28 days (see paragraph 8.6) should help ensure that authorities are well-placed to respond to any proposed changes, including making alternative arrangements where necessary, and provide time for authorities to request revenue and patronage information, and for operators to provide such information.

Consolidation

- 7.6 The Bus Services Act 2017 inserted new provisions to the Transport Act 1985, and also amended Part 2 of the Transport Act 2000.
- 7.7 The requirements for bus registration are set out in the Public Service Vehicles (Registration of Local Services) Regulations 1986. These Regulations amend the 1986 Regulations but there is no intention to consolidate those Regulations at this time.

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 and passenger representatives. 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 57% of those that responded agreed local authorities should only be able to request information in relation to registered, varied or cancelled services in connection with their functions in securing socially necessary services. Some respondents disagreed with the premise of having to request the information and argued that bus operators should make the information available as a matter of course. The Department does not agree that bus operators should be required to automatically provide this information to local authorities as we do not consider that every authority will necessarily have a need for it, and as such did not make any changes to the Regulations in light of these comments.
- 8.3 The Department also consulted on the services that are to be excluded from the new requirements. Over 70% of respondents agreed with each exclusion proposed in the Regulations. Some respondents suggested inclusion of further exclusions to ensure that operators are not required to provide information in relation to service changes which could be made at 'short notice'. In light of these responses, the Department has added further exclusions that will apply to a short notice variation or cancellation application.
- 8.4 The consultation also set out the disclosure provisions which govern the circumstances in which the authority is able to release the information to others. Over 70% of those that responded to the consultation agreed with the disclosure provisions, however, a number of respondents raised concerns about the commercial confidentiality of the information. 55% of those that responded did not foresee any

additional circumstances in which authorities should be able to disclose revenue and patronage information. However, a number of respondents thought that authorities should be free to publically disclose patronage data in other circumstances, as this information is less commercially sensitive.

- 8.5 The Department acknowledges that revenue information had the potential to be particularly commercially sensitive, providing insight into the performance of an operator's remaining commercial services. However, we do not agree that patronage information is as commercially sensitive. The Department is therefore of the view that authorities should be able to disclose patronage information to other transport providers for the purposes of discussing the provision of commercial replacement services with alternative providers.
- 8.6 88% of those that responded agreed that a pre-notification period should be introduced. 60% of respondents felt the pre-notification period should be 28 days (followed by a 42 day registration period), whereas 40% agreed with a 14 day notice period (followed by the existing 56 day registration period).
- 8.7 The Department agrees that 28 days is a reasonable amount of time for authorities and operators to discuss service changes and provide relevant information if necessary. However, the Department must balance this against placing additional burdens upon operators. The Regulations were therefore amended to reflect a 28 day pre-notification period, and the registration period was consequentially reduced from 56 to 42 days, making the overall notice period 70 days in total.
- 8.8 50% of respondents thought 7 days a reasonable amount of time for the local authority to decide whether to request information on patronage and revenue data, and over 60% of respondents considered that 7 days was a reasonable amount of time for operators to supply that information to the authority. However, a number of respondents thought that the length of time required by both parties would be dependent on the size and complexity of the bus network. There were also concerns that 7 days may not be enough time for some operators to prepare the information.
- 8.9 The Department agreed that the length of time required would be dependent on the size of and complexity of the bus network and 7 days for the operator to supply the requested information may not be enough time. The Department has therefore amended the Regulations to allow authorities 14 days to request information and operators 14 days to provide the relevant information.
- 8.10 Full details of the Department's consultation, the responses received and the changes made as a result are available from - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/641917/bus-services-act-2017-regulations-consultation-response.pdf.

9. Guidance

- 9.1 The existing guidance (available from - <https://www.gov.uk/run-local-bus-service/how-to-register>) relating to registering, varying or cancelling services issued by the Office of the Traffic Commissioner will be updated to reflect the new changes in advance of them coming into force. The Department expects the revised guidance to be available later in 2018.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies will be dependent on whether or not they operate local bus services. The main impact on businesses will be the requirements placed on operators to familiarise themselves with the regulatory changes, providing revenue and patronage information when requested by the authority and any cost associated with running services that they propose to cancel or vary for an additional 28 days. However, where operators choose to bid for a contract issued by a local authority, they should be provided with revenue and patronage information to help them prepare an accurate bid.
- 10.2 The impact on the public sector will be in the form of the administrative costs to the authority of requesting and interpreting the information about patronage and the revenue performance of a service. The main benefits to the public sector will be the potential reduction in tender prices for authorities if they decide to provide a supported service after an operator cancels or varies a service. The information that authorities provide to potential bidders will aid in a more effective tendering process, potentially encouraging bids from operators that currently do not operate in the local area.
- 10.3 An Impact Assessment has not been prepared for these Regulations. A regulatory triage assessment for these Regulations can be found at - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589801/bus-services-rta-for-information-on-varied-or-cancelled-services.pdf

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise the impact on small businesses. This is because it is important that local authorities receive the necessary information from all bus operators when considering whether to provide a subsidised service.

12. Monitoring & review

- 12.1 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. A provision for review has also been included in these Regulations. The drafting of this reflects the cross-government template used for these purposes. The usual review period of five years has been chosen.

13. Contact

- 13.1 Thomas Williams at the Department for Transport, Telephone: 07773 233619 or email: Thomas.Williams@dft.gsi.gov.uk can answer queries regarding the instrument.