

EXPLANATORY MEMORANDUM TO
THE APPEALS TO TRAFFIC COMMISSIONERS (PROCEDURE) (ENGLAND)
REGULATIONS 2019

2019 No. 1264

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 Amendments made to the Transport Act 1985 by the Bus Services Act 2017 enable certain local transport authorities (authorities) to implement franchising or enhanced partnership (partnership) schemes for the provision of local bus services. Where such schemes are in place, franchising authorities deal with applications for local service permits for their area and partnership authorities may take on the bus service registration function that is usually performed by a traffic commissioner.
- 2.2 These Regulations set out the appeals procedures to be followed where operators wish to appeal against a decision made by an authority in connection with a service permit or registration.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Bus Services Act 2017 inserted new provisions into the Transport Act 1985 and the Transport Act 2000 to enable authorities to set up franchising or partnership schemes with bus operators for the provision of local services.

- 6.2 Section 123A of the Transport Act 2000 provides for franchising authorities, as defined in section 123A(4), to make franchising schemes relating to bus services in their area. Under such schemes, a franchising authority may grant service permits to bus operators, subject to certain conditions that may need to be met, for the provision of services that are not franchised in the area covered by the scheme. Section 123T of the Transport Act 2000 allows for appeals to be made to a traffic commissioner against any decision of a franchising authority to refuse, revoke or suspend a service permit and in relation to any condition.
- 6.3 Section 6D of the Transport Act 1985 provides for local transport authorities, as defined in section 108(4) of the Transport Act 2000, to introduce partnership schemes, under which participating authorities may impose certain requirements on providers of local bus services in areas covered by such a scheme.
- 6.4 Local bus services are generally required to be registered with a traffic commissioner. Section 6G of the Transport Act 1985 provides that the traffic commissioner's registration function can be delegated to the authority in areas where a partnership scheme is in operation. Section 6F of the Transport Act 1985 allows for appeals to a traffic commissioner against refusals or cancellations of registrations and in relation to any requirements.
- 6.5 These Regulations set out the procedures to be followed for any appeal made under section 6F of the Transport Act 1985 or section 123T of the Transport Act 2000.

7. Policy background

What is being done and why?

- 7.1 The Bus Services Act 2017 provides authorities with a wider set of tools to use to address inefficiencies in their local bus markets and to work with commercial bus operators to provide better local bus services for passengers, including franchising or partnership schemes.
- 7.2 Under bus franchising, the authority will determine bus services that may be operated by bus companies under a contract. Other bus services, for example, services that cross the boundary of the franchising scheme area, are allowed to operate in the franchising area if the operators make a successful application for a 'service permit' to be issued by the franchising authority.
- 7.3 In a partnership scheme, subject to notice and consultation requirements, an authority may specify an area and introduce certain requirements as to the bus services to be provided in that area. For example, they could agree with operators a partnership scheme which places a limit on the number of services able to operate on a particular route. The authority may also at this time take over the traffic commissioners' functions for accepting and recording new service registrations, variations and cancellations as well as revoking registrations.
- 7.4 These Regulations set out the procedures that will apply to any appeals arising from the decisions of local authorities in these circumstances. In particular, any appeal is to be made to the traffic commissioner who will determine the procedure to be followed and issue any directions that an appellant or respondent will have to follow. The Regulations also detail the process for other related matters such as: information to be provided and time limits to be followed when making appeals; appointment of representatives; process when two or more appeals have been made to the

commissioners on common or related issues; service of notices and how the matter is to be heard; and, further rights of appeal from a decision of a commissioner to an Upper Tribunal.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 These Regulations do not amend any existing regulations.

10. Consultation outcome

10.1 From 17 May to 28 June 2018, the Department ran a consultation on these Regulations and the accompanying guidance. This was part of a wider consultation which also covered the regulations and guidance setting out the process for authorities to be delegated registration powers from the traffic commissioner under a partnership scheme.

10.2 The consultation document was published on the Department's website and a copy was sent to the Office of the Traffic Commissioner, local authorities, bus operators and representative organisations. It can be found, together with the Government's response, at <https://www.gov.uk/government/consultations/registration-of-local-services-in-enhanced-partnership-areas>

10.3 9 responses were received to the consultation. Alongside a response from the Office of the Traffic Commissioner, 5 were received from local authorities and representative organisations and 3 were from bus operators and representative organisations. The issues raised concerned the timescales and deadlines for submitting appeals and associated documents, what would happen in the event of an appeal to the Upper Tribunal and whether traffic commissioners were able to make a cost order.

10.4 The response to these Regulations was positive and no significant changes were required as a consequence, although some minor changes were made to the guidance for clarification.

11. Guidance

11.1 The Secretary of State has issued guidance to support these Regulations which sets out how the appeals process will work. This is available at <https://www.gov.uk/government/publications/bus-services-act-2017-enhanced-partnership-creation>. It is also available from the Buses and Taxis Division, Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR. It accompanies the guidance concerning the exercise of the partnership powers by authorities. The relevant text has also been included in the guidance issued by the Secretary of State concerning the exercise by franchising authorities of their functions under the relevant legislation in relation to franchising schemes. This is available at <https://www.gov.uk/government/publications/bus-services-act-2017-bus-franchising-creation>. Authorities must have regard to such guidance when implementing partnership or franchising schemes.

11.2 The Senior Traffic Commissioner has also issued directions and guidance which set out how the traffic commissioners will carry out their duties. This is available at

<https://www.gov.uk/government/collections/senior-traffic-commissioners-statutory-guidance-and-statutory-directions>.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies. The impact from these Regulations will only occur if a bus operator has applied to run a service in an area where -
- (a) the local authority has taken on the registration function and the application has been declined; or
 - (b) a franchising scheme is in place and the franchising authority has declined to issue a service permit.
- 12.2 Any impact on the public sector will fall on the franchising or partnership authority and the traffic commissioners. The Regulations will incur additional administrative costs for the traffic commissioners when hearing appeals. There will also be some minor administrative costs for partnership and franchising authorities in responding to an appeal.
- 12.3 These regulations only provide detailed procedures on the exercising of powers or requirements that are already set out in the Bus Services Act 2017. Therefore, we have not produced a separate impact assessment for these Regulations. The impact assessment prepared to accompany the Bus Services Act 2017 can be found at <https://www.gov.uk/government/publications/bus-services-bill-impact-assessments>.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses (small bus companies).
- 13.2 No specific action is proposed to minimise the impact on small businesses. This is because the appeal mechanism set out in the Regulations is necessary to enable appeals to be made against decisions taken by partnership and franchising authorities. For practical and competition reasons, these requirements must apply equally to all operators who wish to make an appeal to the traffic commissioner concerning a decision.

14. Monitoring & review

- 14.1 Baroness Vere of Norbiton, 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.
- 14.2 “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 Appeals to the Traffic Commissioners (Procedure) (England) Regulations 2019. 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”.
- 14.3 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. A provision for review has not been included in the Regulations. These Regulations will only apply to appeals made where a local

authority has implemented a partnership scheme and taken on the registration function, or where a franchising scheme is in place. As such, 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 the traffic commissioners or an authority that has implemented a scheme.

15. Contact

- 15.1 Nathan Cole at the Department for Transport, telephone 07795 857698, or email Nathan.Cole@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Catriona Henderson, Deputy Director, Buses and Taxis Division at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere of Norbiton, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.