EXPLANATORY MEMORANDUM TO

THE BUS FRANCHISING ASSESSMENT (APPROVED PERSONS) (ENGLAND) REGULATIONS 2026

2026 No. 1145

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Simon Lightwood MP, Parliamentary Under-Secretary of State, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Nicola Cullen, Deputy Director for Bus Legislation and Franchising, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jennifer Schofield at the Department for Transport can be contacted by email at the following address with any queries regarding the instrument: jenny.schofield@dft.gov.uk. Alternatively, 07812 685 919 by telephone.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument defines who can produce an independent report on bus franchising assessments and scheme variations carried out by local authorities that are considering, or have implemented, bus franchising.

4.2 Before introducing or amending an existing franchising scheme for bus services, a franchising authority must develop an assessment of the scheme and obtain an independent report on the assessment's quality from an approved person. A franchising authority is a collective, or individual group, of councils or mayoral combined authorities that are exploring, or have implemented, bus franchising.

4.3 Previously, the independent report could only be prepared by an auditor. The Bus Services Act 2025 changed this requirement so that it can be produced by an "approved person". This instrument defines who qualifies as an approved person, widening the range of individuals and organisations that can produce the report. The aim is to increase capacity and help reduce delays in the bus franchising process.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, as the franchising powers within the Transport Act 2000 are only applicable to England. Wales is not included within the territorial application of this instrument, as it is covered by legislation introduced by the Welsh Parliament.

5. Policy Context

What is being done and why?

5.1 Bus franchising is when a local authority decides how bus services should run, including routes, timetables, and fares. Private companies then run the buses under contract, rather than deciding services themselves. This gives local authorities greater control of the bus services in their area.

5.2 A local authority wishing to explore the viability of bus franchising in their area must first prepare a bus franchising assessment. This assessment is very similar to a business case and evaluates whether franchising would be preferable to the existing arrangement for operating local bus services. Before proceeding with a proposed franchising scheme, an authority must obtain and publish an independent report on its franchising scheme assessment. Similarly, the same requirement applies for a planned variation to an existing franchising scheme, where the variation would expand the franchising scheme's area.

5.3 The overall aim of the independent report is to confirm that the authority's assessment is robust, giving confidence to franchising authority decision makers, and reducing the risk of its decision being challenged.

5.4 Prior to changes made by the Bus Services Act 2025, the independent report could only be prepared by an auditor. Feedback from authorities who have conducted franchising assessments was that the report was overly focused on financial assurance to the detriment of other aspects of the assessment, such as interpretation of evidence and guidance. Authorities also reported a very limited number of auditors who were able to carry out the assessment. This created delays for authorities wishing to franchise their bus services.

5.5 Following further stakeholder engagement, the Department identified additional groups of individuals or organisations that have the required skills to prepare the independent report and prevent delays. By broadening the types of professionals, this instrument allows a larger group of individuals and organisations to prepare the independent report, thereby bringing potential cost and time savings for franchising authorities.

5.6 This instrument forms part of the Government wider commitment to reforming bus services and making franchising quicker and easier for authorities to undertake.

What was the previous policy, how is this different?

5.7 Previously, only auditors could prepare the independent report on a franchising assessment. This suggested a narrow focus on financial viability and did not reflect the broader skillset needed for reviewing franchising assessments.

5.8 This requirement has created a bottleneck and a shortage of available persons who preferably need to understand the bus market and do not have any conflicts of interest. This leaves only a small number of suitable options for authorities.

5.9 The BSA 2025 amends the Transport Act 2000 ("TA 2000") to enable an approved person to carry out the independent report instead of an "auditor". The amendments provide that an "approved person" means a person specified, or of a description specified, in regulations made by the Secretary of State.

5.10 The scope of who can prepare the independent report has been expanded from solely auditors to include auditors, accountants and senior transport professionals. The instrument widens the pool of eligible persons to accurately reflect the individuals and

organisations that have the required skills to conduct the review and prepare the report. The instrument also provides definitions of the professionals to assist franchising authorities in appointing a suitable reviewer. This does not change the required quality or purpose of the independent report; all approved persons must still provide an objective and robust assessment, ensuring that reports continue to be of a consistent and high standard.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 123D of the TA 2000 requires franchising authorities to obtain an independent report on their assessment of a proposed bus franchising scheme before they can proceed with the scheme. Prior to amendments made by the BSA 2025, section 123D of the TA 2000 required the independent report to be prepared by an auditor, with the definition of auditor set out in section 123D(8).

6.2 Section 9 of the BSA 2025 was introduced to amend section 123D of the TA 2000 to remove the reference to "auditor" and instead require the independent report to be prepared by an "approved person". The amendments made by section 9 provide that an "approved person" means a person specified, or of a description specified, in regulations made by the Secretary of State. This section of the BSA 2025 will be commenced along with the implementation of this Instrument.

6.3 These changes are being introduced to define this "approved person" to ensure Local Authorities have sufficient flexibility in selecting appropriately qualified individuals to undertake the independent review.

6.4 A similar process applies for varying a franchising scheme, where the variation adds to the scheme area. Prior to amendments made by the BSA 2025, the requirements for varying a franchising scheme were set out in section 123M of the TA 2000. This provided that the independent report requirements of section 123D applied to variations of a franchising scheme, where the variation would add to the scheme area. Section 11 of the BSA 2025 amends section 123M and inserts new sections, 123MA and Schedule 9A, into the TA 2000, to make new provision about the variation of franchising schemes. Paragraph 4 of Schedule 9A requires authorities to obtain a report from an approved person of a variation to a franchising scheme, where the variation would add to the scheme area. The amendments made to section 11 of the BSA 2025 provide that an "approved person" means a person specified, or of a description specified, in regulations made by the Secretary of State.

6.5 This instrument defines the term "approved person" for the purpose of section 123D and Schedule 9A.

Why was this approach taken to change the law?

6.6 This is the first instrument defining the term "approved person" under section 123D of, and Schedule 9A to, the TA 2000, as amended by the BSA 2025. The instrument is therefore required in order to implement the changes made by the BSA 2025, described in the paragraphs above.

7. Consultation

Summary of consultation outcome and methodology

7.1 Collective agreement on the Bill's contents was secured through a government write round, and there continues to be individual engagement with a range of authorities to

ensure the policy is informed by relevant expertise and practical experience. Engagement with the assurance industry has also taken place.

8. Applicable Guidance

8.1 The "Setting up a bus franchising scheme guidance"[1] will be refreshed simultaneously with the commencement of this instrument to reflect the changes and provide additional information for franchising authorities on appointing approved persons.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because is out of scope of the Better Regulation Framework as it fails to meet the definition of a regulatory provision. The overall impact is expected to be beneficial for franchising authorities, broadening flexibility or improving assurance arrangements, with the primary impact falling on franchising authorities, with any resulting effects on businesses being indirect.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this measure impacts authorities progressing a franchising scheme assessment.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact is placed on the public sector, specifically authorities wishing to conduct a bus franchising scheme assessment. However, the intention of this instrument is to make the overall process more streamlined and thereby potentially reduce costs.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will involve ongoing engagement with authorities and industry to understand the instrument's initial and longer-term impacts.

10.2 The instrument does not include a statutory review clause as it does not come within scope of the Small Business, Enterprise and Employment Act 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation no statement is required.

[1] https://www.gov.uk/government/publications/setting-up-a-bus-franchising-scheme/setting-up-a-bus-franchising-scheme--2

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").