EXPLANATORY MEMORANDUM TO

THE FRANCHISING SCHEMES AND ENHANCED PARTNERSHIP PLANS AND SCHEMES (PROVISION OF INFORMATION) REGULATIONS 2017

2017 No. 1091

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 inserted new provisions into the Transport Act 2000 that will enable certain local authorities to introduce local bus franchising and enhanced partnership schemes. In order to develop their proposals for such schemes, the 2017 Act makes provision for local authorities to require a range of information from bus operators. These Regulations set out further details about relevant information that may be requested from operators.

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 ("the 2017 Act") amended the Transport Act 2000 to make provision for local authorities to make franchising schemes and enhanced partnership schemes in connection with the provision of local bus services.

4.2 New section 143A provides that franchising authorities may, in connection with their franchising functions, request relevant information from operators about the local services that they operate.

4.3 New section 143B enables local transport authorities, or two or more such authorities acting jointly, to require an operator of a local bus service in their area, or combined area, to supply relevant information either when the plan or scheme is prepared or after a plan is in place or when it is varied.

4.4 These Regulations provide further details about the relevant information that may be requested by authorities under the powers in section 143A and 143B.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of these Regulations 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 inserted new provisions into the Transport Act 2000 to provide certain local authorities with the powers to introduce bus franchising and enhanced partnership schemes. In order to develop effective and evidence-based plans for improving local bus services, either through the introduction of a franchising or enhanced partnership scheme, authorities will need access to data currently held by local bus operators.

7.2 The aim of these Regulations is to set out categories of information that can be requested by an authority in connection with their franchising functions and enhanced partnership functions respectively.

7.3 New section 143A includes a relatively long list of information that can be requested in connection with a franchising authority's functions, including information about journey numbers, fares, revenue and staff and a few further categories need to be defined in Regulations. These include:

- information about fixed and variable costs of operating services; and
- information about the vehicles used to provide services.

7.4 Access to such information should help authorities considering franchising to accurately assess their scheme and make informed decisions on the basis of robust evidence and analysis.

7.5 New provisions inserted by the 2017 Act also placed the responsibility on local transport authorities to develop enhanced partnership plans and schemes, working in partnership with bus operators. We recognise that authorities are likely to require information from local bus operators both in connection with the preparation of enhanced partnership proposals, and also to determine how an existing plan or scheme should be varied or whether they should be revoked. The Regulations will enable authorities to request relevant information in these circumstances and clarify what information can be requested based on whether it is needed in connection with the preparation of an enhanced partnership scheme proposal or, if it is needed with respect to an the enhanced partnership plan or scheme already in place.

7.6 Under these Regulations operators will not be asked to provide cost or revenue data in relation to an enhanced partnership scheme. This is because, unlike for franchising, an enhanced partnership operates within a deregulated bus market and it is not necessary or proportionate for the authority to have access to such commercially sensitive information.

7.7 The enhanced partnership scheme information provision at new section 143B includes little detail about the relevant information that may be requested and provision is made for the details to be set out in Regulations. The Schedule to these Regulations sets out a comprehensive list of the categories of information that can be requested in relation to enhanced partnership plans and schemes including details about use of the service, types of tickets used travelling times and the distance travelled.

Consolidation

7.8 The Bus Services Act 2017 amends the Transport Act 2000.

7.9 These Regulations do not amend any existing Regulations.

8. Consultation outcome

8.1 A six-week consultation exercise on these Regulations was held between 8 February and 21 March 2017 to seek the views of a wide range of bodies, including the bus industry, local authorities and passenger representatives. This was supplemented by three half-day workshops where key stakeholders could question relevant Departmental policy officials directly on the proposals.

8.2 In relation to franchising, over 70% of those who responded to the consultation agreed that authorities should be able to request information on fixed and variable costs and information about the vehicles used to provide services. However, over 50% of the operators that responded to the consultation disagreed with the proposals. Of those that objected, a number had concerns about the commercial confidentiality of information about the costs of operating services, and the need for more clarity about the sorts of cost information that operators would be required to provide.

8.3 The Department recognises the reservations expressed by many operators and operator representatives, but considers that information about the costs of operating services in the area is something that authorities need to understand if they are to make informed judgements about the value for money and affordability of franchising. The Department has therefore retained provisions that permit local authorities to request information on fixed and variable costs and information on the vehicles used to provide services.

8.4 Over 70% of those that responded thought other categories of information should be added in relation to franchising. A number of respondents queried why authorities were restricted to requesting information from a pre-defined list as set out in the Act and in the supplementary Regulations, rather than being able to determine for themselves the information required for the preparation of their assessment. Additionally, a number of additional categories were suggested, although no individual suggestion received significant support.

8.5 The Department does not consider that there are sufficiently strong arguments to add further categories of information to be provided in the Regulations, and considers that the Act and the supplementary Regulations as they stand provide authorities with the ability to request a broad spectrum of information from local operators. The Department needs to ensure that authorities are provided with the tools they need to take well-informed decisions about the suitability of franchising for their local area, whilst not placing unnecessary burdens on local bus operators.

8.6 The Department also consulted on the types of information authorities should be able to request in connection with enhanced partnerships. Over 80% of those that responded agreed with each category proposed. The Department also asked if other categories of information should be added. Over 50% of those that responded agreed that some other categories should be added. There was some consensus that off-bus ticket sales should also be included however, this category of information is already covered under in the Schedule to these Regulations and further amendment is unnecessary.

8.7 As regards the question of whether revenue information was necessary to developing enhanced partnership proposals, 65% of respondents gave a positive response. The majority of those that objected to this proposal were operators, who felt it was not necessary to disclose such commercially sensitive information. The Department listened carefully to the arguments on both sides for allowing revenue and cost information to be requested, however it was not convinced that the consultation responses provided a strong case to change the position. The Department therefore decided not to include revenue information as a category of information that is necessary when developing enhanced partnership proposals.

8.8 A detailed Government response on the outcome from the consultation is available from the Department for Transport's website at – https://www.gov.uk/government/publications/bus-services-bill-impact-assessments.

9. Guidance

9.1 The Secretary of State will issue guidance concerning franchising schemes and enhanced partnership schemes during the week commencing 27th November 2017. Both guidance documents will refer to requests for information and require authorities to be proactive in terms of engaging with operators before and during the process of requesting information and to supplement information required pursuant to such a request by information from other sources. The enhanced partnership guidance will contain additional guidance. The guidance will be 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 operate local bus services in an area where a franchising or enhanced partnership scheme is being considered. Where this is the case, bus operators will be required to supply data in relation to the local bus services they operate. However, operators will only be required to supply data that they hold, and as such we consider the impacts to be minimal, and likely to simply involve the consolidation of existing information.

10.2 The impact on the public sector will be in the form of the administrative costs to the authority of requesting the information. However, it will be down to local authorities to determine whether to implement franchising or an enhanced partnership scheme, and as such they can consider these potential administrative burdens as part of their consideration of the costs and impacts of introducing such a scheme

10.3 The impact assessment prepared to accompany the 2017 Act has been updated to take account of any additional impacts of these Regulations, and can be found at - https://www.gov.uk/government/publications/bus-services-bill-impact-assessments.

11. Regulating small business

11.1 These Regulations apply to activities that are undertaken by small businesses and as part of the consultation exercise Departmental officials met with a number of small bus companies and organisations representing bus companies to gather their views.

11.2 The impact on small operators will be dependent on whether, bus franchising or an enhanced partnership is implemented in the area in which they are operating, and

whether any of those operators decide to apply for a service permit. However, as operators will only be required to supply information that they hold, we consider these impacts to be minimal.

11.3 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 and enhanced partnership policies 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.

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 and Enhanced Partnership Schemes (Pension Protection) (England) Regulations 2017. 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 and Enhanced Partnership 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. Therefore the Department does not know how many such schemes will be created under the new provisions inserted by the Bus Services Act 2017; the adoption of Quality Partnership Schemes introduced under the 2000 Act was relatively small in number. Also, before a franchising scheme or an enhanced partnership scheme can be made an LTA must, under section 123E and 138F of the Transport Act 2000 respectively, consult operators providing local services in the area relating to the scheme. 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 and, in the case of enhanced partnerships, it must decide whether and on what basis the partnership arrangements are to be reviewed. 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 scheme 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 throughout England 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, or enhanced partnership schemes as the case may be, that are appropriate to their areas. For example LTAs may hesitate to enter into a long term financial commitment around infrastructure in a franchising scheme or an enhanced partnership 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 around for example, new or improved vehicles. This might result in a franchising scheme or an enhanced

partnership scheme not being adopted at all or either type of scheme 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.