EXPLANATORY MEMORANDUM TO

THE FRANCHISING SCHEMES (FRANCHISING AUTHORITIES) (ENGLAND) REGULATIONS 2024

2024 No. 1224

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, Minister for Local Transport at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Stephen Fidler, Director for Bus and Inclusion, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jenny Schofield at the Department for Transport Telephone: 07812 685919 or email: jenny.schofield@dft.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument gives all local transport authorities[1] (LTAs) in England outside of London access to powers to franchise their bus services, subject to the Secretary of State for Transport consenting to an individual authority preparing a franchising scheme assessment.

4.2 Currently, Mayoral Combined Authorities (MCAs) and Mayoral Combined County Authorities (MCCAs) have automatic access to the powers to prepare a franchising assessment, but other categories of local authorities do not. Once enacted, this instrument will enable other categories of LTAs in England who have obtained the Secretary of State's consent to prepare a franchising scheme assessment (i.e. a business case), and, if they conclude that franchising is the best option, franchise their bus services.

Where does the legislation extend to, and apply?

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

[1] A LTA could be a Mayoral Combined Authority, a Mayoral Combined County Authority, a county council in England for an area for which there are district councils, a county council in England for an area for which there is no district council, a non-metropolitan district council for an area for which there is no county council, an Integrated Transport Authority for an integrated transport area in England, a combined authority which is not a mayoral combined authority, or a combined county authority which is not a mayoral CCA.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Bus franchising powers for LTAs in England, outside of London, were created in the Bus Services Act 2017, which amended the Transport Act 2000. Powers were automatically given to MCAs (and subsequently MCCAs when they were created), to prepare a franchising scheme assessment (essentially a business case) if they chose to do so, without requiring consent from the Secretary of State for Transport.

5.2 For other LTAs wishing to prepare a franchising scheme assessment a two-stage process is required. First, regulations must be made which 'turn on' access to the franchising powers in the Transport Act 2000 for a particular category or categories of LTA (such as combined authorities without an elected mayor, county councils or the different types of unitary authority). Secondly, the Secretary of State must give their consent to any individual authority from within that category using the powers to prepare an assessment of their proposed franchising scheme.

5.3 This instrument removes the first stage of this process for all types of LTAs so that they simply require the second stage – the Secretary of State's consent to prepare a franchising scheme assessment. As well as making this instrument, the Department is revising the current published advice on obtaining that consent in the franchising schemes guidance[2].

5.4 The Government considers that this uncertainty over the current two-stage process for obtaining consent acted as a barrier to local authorities seeking these powers and that removing the first stage of this process will make it easier for local authorities to take back control of their buses via franchising. At present, no local authorities other than MCAs are preparing franchising scheme assessments.

5.5 This instrument is a part of the Government's delivery of its manifesto commitment to give 'new powers for local leaders to franchise local bus services'. Existing deregulated bus services are often fragmented and expensive, with limited ability for local authorities to intervene. Bus franchising will give communities a greater say in the services which they can use, connecting them to opportunities and benefiting those on lower incomes who disproportionately use buses.

What was the previous policy, how is this different?

5.6 The previous policy was that the Secretary of State would make the bus franchising powers available to specific types of LTAs if an LTA of that type sought them and the Secretary of State was satisfied that they could meet the published criteria for consent.

6. Legislative and Legal Context

How has the law changed?

6.1 Powers to franchise buses are created by ss123A-123X of the Transport Act 2000. S123A provides the power for franchising authorities to establish a franchising scheme once the requirements in ss123B to 123G are satisfied.

6.2 S123A(4)(a) to (g) lists all types of authorities which come within the meaning of "franchising authority" but of those sub-paragraphs, (b) to (g) only have effect if

[2] https://www.gov.uk/government/publications/bus-services-act-2017-bus-franchising-creation

provided by the Secretary of State in regulations. This instrument brings into effect sub-paragraphs (b) to (g) of s.123A(4), such that the types of authorities listed in those sub-paragraphs come within the meaning of "franchising authority". The types of authorities listed in (b) to (g) are only found in England, outside London. This instrument thereby ensures that all types of LTA in England are a franchising authority.

6.3 Once this instrument is made, the Secretary of State's consent to prepare a franchising assessment will still be required for local authorities of a type listed under s123A(4)(b) to (g), under the rules in s123C. No consent is required if the proposed franchising scheme only relates to an MCA area, MCCA area or the areas of two or more such authorities (s123C(2)). Consent is required if a proposed scheme relates to a MCA and/or MCCA area and the area of another type of authority.

Why was this approach taken to change the law?

6.4 This approach provides a simple way of removing a barrier to franchising by LTAs that are not MCAs/MCCAs. An alternative approach would have been to use primary legislation to amend s123A, but this would have taken much longer.

7. Consultation

Summary of consultation outcome and methodology

7.1 No formal consultation was undertaken. This change is being made to deliver the Government's manifesto commitment to 'bring forward 'new powers for local leaders to franchise local bus services'. This change applies in England outside London only and just removes one barrier to franchising. It does not require any local authority or its local bus operators to do anything differently, but simply makes the process of accessing the bus franchising powers easier for the local authority, should they decide to do so.

8. Applicable Guidance

8.1 We intend to revise the accompanying guidance[3] alongside the SI coming into force.

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 the SI is removing a restriction applying to LTAs, it does not affect 'business activity' which is the requirement for an Impact Assessment under the Better Regulation Framework.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument is only removing a restriction applying to LTAs and not amending how the restriction operates or imposing new restrictions/requirements on business, charities and voluntary bodies.

9.3 The legislation does not directly impact small or micro businesses as this instrument is only removing a restriction applying to LTAs and not amending how the restriction operates or imposing new restrictions/requirements on small or micro business.

[3] https://www.gov.uk/government/publications/bus-services-act-2017-bus-franchising-creation

9.4 The impact on the public sector is uncertain. This instrument is only removing a restriction and not amending how the restriction operates or imposing new restrictions/requirements on LTAs. However, if LTAs decide to use this instrument to explore the option to franchise, there will be administration costs to the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will be considered as part of a wider monitoring and evaluation plan for bus franchising.

10.2 A statutory review clause is not included in the instrument because providing LTAs access to franchising powers does not give rise to a need for a review clause under the terms of the Small Business, Enterprise & Employment Act 2015, as it does not make or amend regulatory provisions that relate to business activity (including voluntary and community bodies), and it is not otherwise considered appropriate or proportionate to include a review clause.

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 The Parliamentary Under Secretary of State, Simon Lightwood MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Franchising Schemes (Franchising Authorities) (England) Regulations 2024 are compatible with the Convention rights."

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").