EXPLANATORY MEMORANDUM TO

THE PUBLIC SERVICE VEHICLES (REGISTRATION OF LOCAL SERVICES IN ENHANCED PARTNERSHIP AREAS) (ENGLAND) REGULATIONS 2019

2019 No. 1265

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 and the Transport Act 1985 that will enable certain local transport authorities (LTAs) to implement enhanced partnership (EP) plans and schemes with local bus operators. The Act also made provision for bus franchising in England and another form of statutory partnership called an Advanced Quality Partnership Scheme.

2.2 The regulations also set out the mechanism for calculating the fees that can be charged by the LTA when acting as the registration authority.

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 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 ("the 2017 Act") inserted new sections 138A to 138S into the Transport Act 2000 to make provision for LTAs to make enhanced partnership plans and schemes. The Bus Services Act 2017 also inserted new sections into the Transport Act 1985 ("the 1985 Act"). This is the first use of most of the powers under which the regulations are made.

6.2 Section 6E of the 1985 Act provides for the traffic commissioner to cancel a local bus service registration in an enhanced partnership area where an operator is not meeting a requirement imposed by the scheme and includes a power for the Secretary of State to make regulations.

6.3 Sections 6G, 6H and 6I of the 1985 Act:

(a) Allow the delegation of the registration function from the traffic commissioner to a LTA that has made an enhanced partnership scheme and a power for the Secretary of State to make regulations;

(b) Allow registration fees to be levied by a LTA that has taken on the registration function and a power for the Secretary of State to make regulations;

(c) Require an LTA that has taken on the registration function to keep certain registration records and share them with the traffic commissioner, and section 6I also contains a regulation-making power relating to the form and particulars of such records.

6.4 Section 6F of the 1985 Act allows regulations to be made about appeals to the Traffic Commissioner against decisions by LTAs when exercising the registration function in an EP scheme under delegation from the traffic commissioner. Another related set of regulations is being laid at the same time as these regulations, the Appeals to Traffic Commissioners (Procedure) (England) Regulations 2019. These are made under section 6F(4) of the 1985 Act and provide for the procedure for such appeals.

7. Policy background

What is being done and why?

7.1 The bus market outside London is deregulated and all local bus services must have their particulars (e.g. route and timetable) registered with the traffic commissioner – the body that regulates the bus industry in Great Britain. The 2017 Act amended the Transport Act 2000 to introduce a new type of partnership called an 'enhanced partnership' (EP) which provided a new regime for partnership working between LTAs and bus operators. An EP is a scheme under which an LTA (subject to notice and consultation requirements) can introduce certain requirements that apply to the bus services provided in a defined geographical area. For example, the EP scheme could place a limit on the number of services able to operate on particular routes or require all operators to participate in an electronic ticketing system within a geographical area. Once the EP is introduced, the requirements of the scheme are enforced through the registration system. The traffic commissioner must take into account the requirements of an EP scheme when determining whether to accept an application from an operator to register or vary a local service registration that is subject to EP scheme requirements. Under the 2017 Act, they are also able to refuse an application or cancel an existing registration that, in their opinion, does not comply with relevant EP requirements.

7.2 The 2017 Act makes provision for the local bus service registration function to be delegated from the traffic commissioner to the LTA (or a "lead" LTA if an EP scheme covers more than one LTA area) who 'made' the EP scheme under section 138G of the 2000 Act. If the LTA takes on this function, they have the power to accept and record new service registrations, as well as granting variations and cancellations to existing ones. They can also cancel registrations where the operator is not providing a

service that is in line with the relevant EP requirements. However, they can only take on this function for bus services that are operated wholly within the geographical area of the EP. Bus services that cross into the EP area always remain registered with the traffic commissioner.

7.3 Following on from the above, these regulations set out the mechanisms for:

(a) The LTA informing the traffic commissioner that they have made an EP and what requirements it applies to local bus services within the geographical area of the scheme;

(b) Delegating the registration function from the traffic commissioner to the LTA in an EP area. The LTA can either choose to take these functions itself, or if the EP has a 'route requirement' the legislation requires them to take them;

(c) What records about individual registrations the LTA must keep when acting as the registration authority under delegated powers;

(d) The requirements if the LTA (acting under delegated powers) introduces a fee for operators to register, vary or cancel individual registrations. The traffic commissioner can already impose a fee under Regulation 12 of the Public Service Vehicles (Registration of Local Services) Regulations 1986 (S.I. 1986/1671);

(e) The mechanisms for the traffic commissioner and the LTA (under delegated powers) to cancel individual registrations for non-compliance with the requirements of an EP scheme;

(f) Identifying the 'lead LTA' where an EP scheme is made by more than one LTA. Where the registration function is delegated, the lead LTA will take on the registration function for all the local authorities whose areas form part of the scheme.

7.4 Under EU Regulation 1370/2007[1] any arrangements for providing a local bus service that confer an 'exclusive right' on a bus operator or group of bus operators, require that service or services to be subject to competitive tender by the LTA. In the context of an EP scheme this can happen where a scheme specifies a limitation on the frequency of buses that can operate on a particular route – e.g. it could specify that no more than six buses can run along a 'high street' in either direction between 9am and 6pm on weekdays. If existing operators are currently running service levels that are at this limit and another operator (or an existing one) wishes also to operate an additional service but cannot because of the EP limitation, this, under the EU Regulation, confers an 'exclusive right' on those operating the existing bus services and triggers the competitive tender process. Where this is likely to happen, the regulations set out the mechanism for:

(a) providing the affected operators an opportunity to voluntarily determine, between themselves, a revised pattern of services that would, taken together, remain within the EP limitation – this is important as we would not wish existing services to be cancelled unnecessarily;

(b) in the absence of (a) above, cancelling the registrations of all the existing services that operate on the affected route and replacing them with a service(s) operated under tender to the LTA (called 'slot allocation contracts' in the regulations).

[1] On public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.

7.5 It is also important that where the registration function for some but not all services in an EP area is delegated to the LTA that there is full co-operation between them and the traffic commissioner. The regulations mandate such co-operation and set out requirements for an exchange of information to facilitate it.

7.6 There is no other way in which the policy aim could be achieved except through regulation. Guidance or a voluntary code of practice would not achieve the desired aim. The policy behind the regulations is not controversial and there has been little public interest in it.

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 There are no plans to consolidate the Public Service Vehicles (Registration of Local Services) Regulations 1986 at this time.

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 Appeals to Traffic Commissioners (Procedure) (England) Regulations 2019.and guidance setting out the process for local bus operators to appeal decisions made by the LTA when acting as the registration authority in an EP scheme under delegated powers from the traffic commissioner.

10.2 The consultation document was published on the Department's website and a copy was sent to the Office of the Traffic Commissioners, 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 Commissioners, 5 were received from local authorities and representative organisations and 3 were from bus operators and representative organisations. The issues raised concerned the detailed mechanisms, such as the operation of slot allocation contracts, and detailed comments on the procedures when LTAs are acting as the registration authority.

10.4 The response to these regulations was positive and no significant changes were required as a consequence – for example, one minor change was to allow slot allocation contracts to comprise more than one contract. A number of changes were also 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 delegation of registration functions from the traffic commissioner to a LTA 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 also deals with the Appeals to Traffic Commissioners

(Procedure) (England) Regulations 2019. Separately there is guidance concerning the exercise of the powers under an EP. The Secretary of State has also issued guidance concerning the exercise by franchising authorities of their functions under the relevant legislation in relation to franchising schemes, and guidance on Advanced Quality Partnership Schemes.

11.2 Authorities must have regard to such guidance when implementing partnership or franchising schemes.

11.3 The Senior Traffic Commissioner has also issued directions and guidance which set out how the traffic commissioners carry out their duties. This can be found here: https://www.gov.uk/government/collections/senior-traffic-commissioners-statutory-guidance-and-statutory-directions

12. Impact

12.1 The impact on business, charities or voluntary bodies from these regulations will only occur if they are:

(a) a bus operator that has registered local bus services in an area where an EP scheme is introduced or in force; and

(b) The LTA is required or has voluntarily decided to take on the registration function from the traffic commissioner; and/ or

(c) an exclusive right has the potential to be created in an EP scheme area.

These impacts are limited to:

(a) where the registration function is delegated to a LTA, paying any fee for registering, varying or cancelling a local bus service registration levied by the LTA;

(b) voluntarily composing and providing the registration authority with details of plans to bring into compliance services that the registration authority has notified them are not currently compliant with the requirements of an EP scheme;

(c) complying with the requirements of this regulation where an exclusive right has the potential to be created and, if that happens, the service(s) in question would be replaced by one tendered to the LTA.

Under the 2017 Act, local bus services run by voluntary bodies using permits issued under Section 22 of the Transport Act 1985 are specifically excluded from the need to meet EP requirements.

12.2 The impact on the public sector will fall on the LTA and the traffic commissioners. The regulations will result in additional administrative costs for the traffic commissioners when:

(a) implementing and enforcing EP requirements for the registrations they hold; and

(b) transferring registrations between the traffic commissioner and an LTA when an LTA takes on or relinquishes the registration function (e.g. when the EP scheme expires).

This of course could be reflected in any future fee increases which would be implemented through changes to the Public Service Vehicles (Registration of Local

Services) Regulations 1986. The LTA will also bear administrative costs when acting as a registration authority - although the regulations allow this to be offset by charging a fee to operators for this activity.

12.3 These Regulations only provide detailed procedures on the exercising of powers or carrying out of requirements that are already set out in the 2017 Act or procedures to implement requirements that are in existing EU legislation. 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 regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is because the mechanisms set out in the regulations are necessary to enforce the requirements on bus operators set out in the EP scheme. For practical and competition reasons, these requirements must apply equally to all operators running local services in the EP area.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is as follows. The outcome of the implementation of the relevant provisions of the 2017 Act, and associated secondary legislation including these Regulations, will be assessed as part of the post-legislative scrutiny of that Act.

14.2 Also a statutory review clause is included in the Regulations.

15. Contact

15.1 Steve Blackmore at the Department for Transport, telephone 07826918935, or email steve.blackmore@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 Nusrat Ghani MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.