

BUS SERVICES BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Bus Services Bill [HL] as introduced in the House of Lords on 19 May 2016 (HL Bill 2).

- These Explanatory Notes have been prepared by the Department for Transport in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bus Services Bill provides Local Transport Authorities (LTAs) 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. The Government would not mandate which approach is to be taken, encouraging LTAs to pursue the most suitable solution for their area.
- 2 The devolution agreements that the Government has already signed with North East, Tees Valley, Liverpool City Region, Sheffield City Region, West Midlands, Greater Manchester, West of England CA, East Anglia CA and Greater Lincolnshire and Cornwall have included a commitment to introduce a simpler route to bus franchising than currently exists in the form of Quality Contract Schemes (QCS) under the Transport Act 2000. This Bill provides the powers for combined authorities with directly elected Mayors to implement bus franchising.
- 3 Alongside franchising, the Bus Services Bill delivers a variety of partnership options, via strengthening of the current Quality Partnership Schemes in England (which become known as Advanced Quality Partnership Schemes) and the introduction of new Enhanced Partnerships.
- 4 The Bill also makes it easier for passengers to access information about routes, fares and timetables, and ensure ticketing schemes meet passengers' needs.

Policy background

Bus franchising

- 5 Franchising allows authorities to replace the current deregulated model of local bus service provision in their area with a system whereby the authority specifies the services to be provided and bus operators bid to provide those services – akin to the system currently operated by Transport for London in London.

Partnerships

- 6 Currently, LTAs can enter into partnerships with local bus operators to improve local bus services. Existing legislation enables LTAs and local bus operators to enter into voluntary partnerships, which are not legally enforceable, and Quality Partnership Schemes (QP schemes), which are legally enforceable and require LTAs to provide new infrastructure as their contribution to the scheme.
- 7 The Advanced Quality Partnership Scheme (AQP scheme) provisions in the Bill build on the existing QP scheme arrangements. Under an AQP scheme an LTA can introduce bus-improvement measures when a scheme is introduced instead of being restricted to providing new infrastructure. It also broadens the categories of service standards which bus operators participating in a scheme must meet, including a requirement that multi-operator tickets are marketed and advertised in a clear and consistent manner by all operators in the scheme.
- 8 The Bill also introduces a new form of partnership, the Enhanced Partnership (EP), to facilitate better joint working between LTAs and bus operators. EPs would enable partnership working to go further than under a QP scheme or AQP scheme by:
 - expanding the types of standards that partnership schemes can cover;
 - specifically providing for more joined-up network planning; and

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- allowing local implementation and enforcement of the scheme's requirements.
- 9 It is intended that these powers will allow LTAs and operators to deliver some of the outcomes that would only otherwise be possible under a franchising model.

Ticketing improvements

- 10 The objective of this policy is to 'future proof' the LTAs' power to make multi-operator ticketing schemes, by ensuring that the advanced ticketing schemes can cover new technologies, such as smart cards or contactless payment. It also places a requirement on LTAs to have regard to any ticketing, partnership or franchising scheme any other relevant LTA has developed, or is developing, when preparing their own scheme. This is designed to benefit passengers travelling across the boundaries of different LTAs.

Bus registration and open data

- 11 The Bill includes the powers needed to achieve a step change in the information available to bus passengers, making it easier for them to access details of timetables, fares and routes, while streamlining the bus service registration process. The expectation is that this would encourage third parties to use the information to develop journey planning websites and applications, enabling passengers to have access to better information.
- 12 The Bill also addresses outstanding issues requiring amendments to primary legislation, including clarity on the registration requirements for rail replacement bus services and a Competition Commission (now the Competition and Markets Authority) remedy concerning data about deregistered and varied services.

Legal background

- 13 The legislation relating to the existing policy is set out in a combination of primary and subordinate legislation. The current provisions are the:
- Transport Act 1968;
 - Public Passenger Vehicles Act 1981;
 - Transport Act 1985;
 - Greater London Authority Act 1999;
 - Transport Act 2000;
 - Local Government Act 2003; and
 - Local Transport Act 2008.

Territorial extent and application

- 14 The Bill extends to England and Wales, but not to Scotland or Northern Ireland.
- 15 It is intended that the Bill should apply to England. The aim of the Bill is to provide LTAs whose areas are in England, outside London, with a wider and more effective set of tools which can be used to improve local bus services.
- 16 There are no significant devolution issues.
- 17 At the moment, the registration of local bus services is reserved in relation to Wales, but the Wales Bill envisages the National Assembly for Wales being given legislative competence in this area.
- 18 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Advanced quality partnership schemes

Clause 1: Advanced quality partnership schemes [j200]

- 19 This clause inserts new sections 113C to 113O into Part 2 of the Transport Act 2000 to provide for Advanced Quality Partnership (AQP) schemes in England.
- 20 The Transport Act 2000 as amended by the Local Transport Act 2008 allows LTAs to establish a Quality Partnership Scheme (QP scheme) with their local bus operators. Under these existing QP scheme provisions, the LTA must commit to provide new infrastructure ('particular facilities') and the bus operators commit to providing services of a particular standard.
- 21 An AQP scheme differs from a QP scheme as it: allows an LTA to set up a scheme based on bus-improvement measures as well as, or instead of, infrastructure facilities; and adds new standards of service that may be included in a scheme. These new standards of service include requirements relating to:
 - the marketing and promotion of bus services, ticketing and fares;
 - how passenger information is provided; and
 - operators' participation in ticketing and smartcard schemes.
- 22 An AQP scheme may only be made by an LTA or LTAs in England¹. The existing QP scheme provisions will continue to apply in Wales and to QP schemes made by an English LTA in conjunction with a Welsh LTA (as provided for in Clause 2 and Schedule 1).

113C Advanced quality partnership schemes

- 23 This section sets out the fundamental requirements and principles of an AQP scheme. It largely replicates for an AQP scheme the provisions in section 114 of the Transport Act 2000, which allow LTAs to set up a QP scheme. However, it also includes the ability for an LTA to create an AQP scheme on the basis of taking particular measures, rather than or as well as, providing new facilities.

113D Advanced quality partnership schemes: registration restrictions

- 24 New section 113D allows an LTA to prevent or restrict the provision of local services; or variation/withdrawal of local services. Such restrictions can be applied where the LTA believes that the actions they prevent might be detrimental to the scheme. The restriction must be described in the scheme.
- 25 These provisions largely reflect the equivalent provisions relating to QP schemes in section 114 of the Transport Act 2000 (as amended by the Local Transport Act 2008).

113E Advanced quality partnership schemes: facilities, measures and standards

¹ A reference to "an LTA" in the notes for this sub-clause should be taken as referring to "an LTA or LTAs".

- 26 This section sets out requirements relating to the commitment by local authorities; and service standards that may be included in the scheme. It replicates for an AQP scheme the equivalent provisions in section 114 of the Transport Act 2000 concerning QP schemes but also provides for measures to be taken by an LTA as well as or instead of the provision of infrastructure facilities; and some new standards of services that may be specified in the scheme.
- 27 The new standards of services include requirements about ticketing structures and methods of payment, and how information to passengers should be provided. Certain standards of services can only be included in a scheme if there are no admissible objections to them from relevant operators. The standards of services subject to admissible objections are different in AQP schemes that include only facilities and AQP schemes that also include measures.

113F Advanced quality partnership schemes: traffic regulation orders

- 28 Facilities or measures contained in a Quality Partnership Scheme may require temporary or permanent restrictions on traffic on one or more roads. These are provided by traffic regulation orders made under the Road Traffic Regulation Act 1984. If the road with which such an order is concerned is the responsibility of another local authority or the Secretary of State then this new section requires that they are also a party to the AQP scheme.
- 29 Subsections (1) and (2) largely replicate sections 114(7) and (8) of the Transport Act 2000 which concern QP schemes, but apply also to measures specified in a scheme. Subsections (3) and (4) largely replicate subsections 114(9) and (10) of the Transport Act 2000.

113G Notice and consultation requirements

- 30 This new section specifies that when an LTA proposes to make a scheme, it must first give notice of the scheme and consult on it. It sets out how the notice is to be given and who the authority must consult.
- 31 113G largely replicates the equivalent provisions for QP schemes at section 115 of the Transport Act 2000.

113H Making of scheme

- 32 113H sets out the arrangements for requirements for making, including specifying what must be included in, an AQP scheme. Mandatory requirements include:
- the facilities and/or measures to be provided by the LTA,
 - the standard of services specified for bus operators;
 - any registration restrictions imposed;
 - the scheme's period of operation; and
 - when different facilities, measures and standards of services come into force.
- 33 The scheme may also exclude certain services or class of services.
- 34 This new section largely replicates section 116 of the Transport Act 2000 regarding QP schemes, but includes specific reference to measures (as well as facilities) in subsections (2), (4), (5), (7) and (8).

113I Postponement of scheme or of provision of particular facilities, taking of particular measures or provision of particular standards of service

- 35 This new section sets out the arrangements for postponing key aspects of the scheme. Before making a postponement decision, the LTA must consult all operators that would be affected

and give notice. The scheme may not be postponed for more than 12 months.

- 36 113I largely replicates section 117 of the Transport Act 2000 which relates to QP schemes, but includes specific references to measures (as well as facilities) in subsection (3)(b).

113J Effect of the scheme

- 37 113J places obligations on authorities and operators arising from the scheme. It largely replicates the equivalent QP scheme provisions at section 118 of the Transport Act 2000, but includes specific references to measures in subsections (1), (2), (3) and (5).
- 38 As, unlike a QP scheme, an AQP scheme can include the provision of measures, subsection (5) requires operators to provide a written undertaking to provide services to the standards specified under the scheme if they wish to ensure that authorities take the measures under the scheme.

113K Regulations about schemes involving existing facilities or measures which are already in effect

- 39 The new section 113K gives the Secretary of State power to make regulations about schemes involving existing (as opposed to new) facilities or measures. This power is designed to avoid an LTA requiring operators to provide services to a certain standard without keeping its “side of the partnership bargain” by providing new facilities or taking new measures.
- 40 113K largely replicates section 119 of the Transport Act 2000 which concerns QP schemes, but includes specific reference to measures.

113L Variation and revocation of schemes

- 41 This section specifies how a scheme can be varied or revoked. In order to revoke the scheme, the authority needs to seek consent from operators who are currently providing services to the standards specified in the scheme. In order to vary the scheme, the authority will either need to follow the process of making a scheme (if the variation requires making of a traffic regulation order) or the process outlined in the regulation made under section 113N (if it does not).
- 42 113L largely replicates section 120 of the Transport Act 2000 regarding QP schemes. Subsection (2) also clarifies that consent is only required from operators that are currently providing services under the scheme.

113M Variation: supplementary

- 43 113M determines whether a traffic regulation authority is an Enhanced Partnership authority when a scheme is varied.
- 44 This new section largely replicates the equivalent QP scheme provisions at section 121 of the Transport Act 2000 but also includes specific references to ‘measures’ in subsections (3), (4), (5) and (8).

113N Regulations about schemes

- 45 This section is self-explanatory. It largely replicates section 122 of the Transport Act 2000 which concerns QP schemes.

113O Guidance about schemes

- 46 This provision is self-explanatory. It largely replicates section 123 of the Transport Act 2000 which relates to QP schemes.

Clause 2: Further amendments [j290]

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47 Schedule 1 contains further amendments in relation to AQP schemes.

Clause 3: Transitional provisions [j280]

48 This clause makes provision for an existing QP scheme made under section 114 of the Transport Act 2000 to be treated as if it were an AQP scheme made under the new section 113C inserted into that Act by this Bill if it relates only to LTAs in England at, or after, the date on which the new AQP scheme provisions are commenced.

Franchising schemes

Clause 4: Franchising schemes [j101]

49 Clause 4 inserts new sections 123A to 123X into Part 2 of the Transport Act 2000. These contain provisions relating to bus franchising schemes in England.

50 A franchising scheme is one in which the LTA (or LTAs) identifies which local bus services should be provided in an area and what additional facilities should be provided, rather than bus operators determining the vast majority of services on a commercial basis. The LTA then enters into 'local service contracts' with bus operators to provide the bus services it has specified.

51 These new sections of the Transport Act set out which LTAs can make a bus franchising scheme, the process they must follow before establishing a scheme and how bus services are provided once a system of franchising is established.

123A Franchising schemes

52 Section 123A establishes the core principles of a franchising scheme.

53 Where a franchising scheme is established, local bus services should only be provided in accordance with the terms of the local service contracts awarded by the LTA (the "franchising authority") or where:

- the operator has been granted a 'service permit' by the authority to run an additional bus service (section 123P);
- the operator is providing an interim service in the situation where another operator has failed to provide or ceased to operate a bus service before the end of the contracted period (123O); or
- the operator is running a local bus service of a type that has been excluded from the franchising scheme (123H(4)).

54 In addition, community transport services operated under a permit granted under section 22 of the Transport Act 2000 are not prohibited from operating in a franchising scheme area.

55 This new section also provides the power for Mayoral Combined Authorities to establish a franchising scheme, either singly or jointly². A franchising scheme can be made over the whole area or combined area of the franchising authority or authorities, or can be made so

² In the notes on this clause, references to an "authority" should also be taken as referring to "an authority or authorities".

that it applies to any part of that area.

- 56 The section then states that an authority may only make a scheme once they have complied with certain requirements that are set out in the new sections 123B to 123G which this Bill inserts into the Transport Act 2000. These sections include requirements to prepare and consult on an assessment of the proposed franchising scheme.
- 57 Sub-sections 4(b) to 4(f) enable the Secretary of State to extend the franchising powers to other local transport authorities in the future, by way of making one or more affirmative regulations, and, thereafter, if consent is obtained from the Secretary of State.

123B Assessment of proposed scheme

- 58 This new section requires a franchising authority to prepare an assessment of the franchising scheme that they propose to operate in their area. The assessment must describe the likely effects of the scheme and compare it to a range of alternative options.
- 59 123B also sets out the range of issues that the authority or authorities must consider when conducting their assessment, including whether:
- the proposed scheme would contribute to the implementation of the authority's transport policies and wider policies;
 - the proposed scheme would contribute to the implementation of the policies of neighbouring authorities;
 - the authority has the capability and resources to operate the scheme;
 - the authority can afford to operate the scheme;
 - the scheme would represent value for money; and
 - the proposed scheme can be procured successfully.
- 60 The list of issues that the authority should consider when preparing their assessment is not exhaustive, and does not prevent the authority from considering any other matters which they think are pertinent.
- 61 Sub-section (5) requires the Secretary of State to issue guidance about the preparation of an assessment of a franchising scheme. The guidance may include more detail about the methods to be used when assessing a scheme.

123C Consent of the Secretary of State and notice

- 62 Section 123C sets out the circumstances in which the Secretary of State must give his or her consent before an authority can prepare an assessment of its proposed franchising scheme under section 123B. The Secretary of State's consent will only be needed if effect is given to one or more of section 123A(4)(b) to (f) by way of affirmative regulations, meaning that another category of local transport authority, in addition to Mayoral Combined Authorities, have been granted access to franchising. Mayoral Combined Authorities, or a combination of Mayoral Combined Authorities acting jointly, do not require consent.
- 63 The Secretary of State is required to publish a notice of consent, and authorities must also publish their intention to prepare an assessment under this new section.

123D Audit

- 64 Section 123D requires the authority to obtain a report from an auditor relating to its

assessment of its proposed franchising scheme. This aims to ensure that the assessment and subsequent consultation is based on appropriate material which has been analysed effectively. The report also has to state whether the auditor considers that the franchising authority has had due regard to any guidance issued by the Secretary of State.

- 65 The requirements as to who may be an auditor for these purposes reflect the position for the local auditor of the accounts of a local authority.

123E Consultation

- 66 Section 123E sets out the consultation exercise that an authority must conduct before it can introduce its proposed franchising scheme. The authority should only consult on its proposed franchising scheme once it has obtained a report from its auditor.
- 67 This new section lists the documents that must be published by the authority as part of its consultation on a proposed franchising scheme. They must also give notice to the public of the proposed scheme. The notice should describe the proposed franchising scheme and state where copies of the documents published as part of the consultation can be inspected.
- 68 123E(4) sets out who the franchising authority must consult. This includes local bus operators in the proposed scheme area, relevant LTAs and passenger representatives.
- 69 The authority or authorities may modify the proposed scheme following the consultation, to take account of any proposed changes.

123F Consultation document

- 70 Section 123F explains what the authority must include in its consultation document for a proposed franchising scheme.
- 71 Amongst other things, the authority must include descriptions of the scheme area, the scope of the bus services to be provided, any proposed exclusions from the scheme and a summary of the assessment of the scheme prepared under section 123B.

123G Response to consultation

- 72 Section 123G requires the franchising authority to publish a report containing a response to the consultation and a decision as to whether or not to operate the proposed franchising scheme.
- 73 If the authority or authorities decide to operate a franchising scheme in their area, the report must set out how, when conducting the procurement process for the provision of local bus services, the authority, or authorities will enable small and medium-sized bus operators to be involved in the process. This aims to ensure that there is clear local accountability for, and transparency about, how smaller operators will be able to compete effectively to run bus services under a franchising scheme.
- 74 The section also requires that, in the case of a Mayoral Combined Authority, the decision as to whether or not to implement the franchising scheme rests with the Mayor, and is exercisable only by the Mayor.

123H Making and publication of the scheme

- 75 Section 123H sets out what a franchising scheme should contain and how it should be made and published.
- 76 The authority must publish their franchising scheme at the same time as they publish their response to the consultation. The scheme sets out how the franchising of bus services will be operated in the local area.

77 The scheme must specify:

- the area(s) it covers;
- the local services that will be provided under contracts;
- when the authority will first enter into contracts with operators to provide franchised bus services; and
- the transition time that is planned before the first franchised services under those contracts are provided.

78 The franchising scheme can also specify certain local bus services, or classes of services that are excluded from the franchising scheme. Such services will not be impacted by the franchising scheme and will be able to continue to operate as normal.

79 Existing partnership arrangements may be in place in an area in which franchising is proposed. The subsection allows for a franchising scheme to make provision varying or revoking any existing Advanced Quality Partnership and Enhanced Partnerships Schemes (“partnership schemes”) relating only to the area, or areas, of the franchising scheme. This will ensure that partnership schemes and franchising scheme are not run in the same area concurrently. If an existing partnership scheme also relates to areas that are outside of the franchising scheme then the franchising scheme can only vary the partnership scheme as it relates to the franchised area.

80 If an existing partnership scheme is varied, so that it no longer relates to the area or areas of the proposed franchising scheme, then a local transport authority who made the partnership scheme (but is not the franchising authority concerned) may vary the partnership scheme. They may also revoke it if all bus operators providing a service to a standard specified under the partnership scheme consent to it being revoked.

123I Postponement of local service contracts

81 Section 123I allows the franchising authority to postpone the date on which local services contracts for the franchising scheme area or sub-area may be entered into. Before making the postponement, the authority should consult, if possible, people who are likely to be affected by the decision. They must also publish their decision to postpone all or part of the scheme, explaining the reasons why they decided to do so.

123J Effect of local service contracts: registration requirements and provision of services

82 Section 123J contains new provisions to explain how franchising schemes impact on the registration requirements for local bus services (as set out in section 6 to 9 of the Transport Act 1985).

83 Bus services operating wholly within the area of a franchising scheme will not need to be registered with a Traffic Commissioner unless the local service or class of service is excluded (see paragraph 84 below). This is because sections 6 to 9 of the Transport Act 1985 will not have effect in relation to the area to which the franchising scheme relates once the effective time (which is provided for in the new section 123K) has expired.

84 Bus services with a stopping point in the franchising area may only be provided under a local service contract with the authority; if they have a service permit issued by the authority (provided for under the new section 123P); or if they are an interim service (as set out in the new section 123O).

85 Where a local service, or class of service, is excluded from the franchising scheme, then the

operator of that service must register it with the Traffic Commissioners in accordance with section 6 to 9 of the Transport Act 1985. Community transport services operating under a permit granted under section 22 of the Transport Act 1985 are excluded from all franchising schemes by subsection (5)(b).³

- 86 The new section also requires an authority to inform a Traffic Commissioner if an operator is running services in contravention of the prohibition at subsection (3) and has failed to take all reasonable precautions and to exercise all due diligence to avoid doing so. The Traffic Commissioner is given powers to then take action against the operator concerned by adding to Traffic Commissioners' existing powers by way of amending the Transport Act 1985 and the Transport Act 2000 (see Schedule 2).

123K Local service contracts

- 87 Section 123K contains new provisions setting out what local service contracts are and the process that must be followed when entering into them.
- 88 A franchising authority may only enter into local service contracts with bus operators who hold either a Public Service Vehicle operator's licence or a community bus permit. It also explains that authorities cannot enter into local service contracts with operators who have conditions attached to their licence prohibiting the operator from providing services of the description in the contract.
- 89 The section also requires that services cannot start operating under a local service contract until the contract's effective time has expired. This is to give operators in the area time to transition and prepare for the change in operating model. The effective time in relation to a local service contract is either 6 months, or a longer period specified by the authority in its franchising scheme.
- 90 An authority has to inform a Traffic Commissioner when they enter into local service contracts under a franchising scheme. This is designed to notify a Traffic Commissioner of the date on which services will no longer have to be registered with them in that area.

123L Exceptions to section 123K

- 91 Section 123L provides that the effective time period need not apply where the authority needs to take urgent action. This could occur if, for example, an operator withdraws from a contract or goes out of business or if an unexpected and urgent need for a bus service is identified.

123M Variation of scheme

- 92 Section 123M sets out the process that the authority must follow before varying its franchising scheme. The authority must publish a notice of its decision indicating when the variations to the scheme are to have effect, which must be at least 6 months from the point at which the decision to vary is made.
- 93 To vary a scheme an authority must follow much of the same procedure as it did when it made the franchising scheme. But unless the variation extends the geographical scope of the

³ Community transport operators running services under a section 19 permit are not affected by the Bill, as they are not running a local service.

scheme it does not have to:

- request consent from the Secretary of State (if relevant);
- prepare an assessment of the scheme;
- have its assessment audited and receive an auditor's report.

94 If the authority is a Mayoral Combined Authority, the decision to vary the scheme must be made by the Mayor.

123N Revocation of scheme

95 Section 123N sets out that an authority may revoke a franchising scheme if they think that:

- there would be better local services in the area to which the franchising scheme relates if the scheme were not operating;
- continuing to operate the scheme would cause financial difficulties for the authority; or
- the burdens of the scheme are likely to outweigh its benefits.

96 Before revoking the franchising scheme the authority must publish a notice of their decision and give notice of their decision to a Traffic Commissioner within 14 days of their decision. The notice must set out the date on which the revocation is to have effect, and the date of revocation must fall after a period of 6 months beginning with the date on which the notice is published.

97 If the authority is a Mayoral Combined Authority, the decision to revoke the scheme must be made by the Mayor.

123O Interim services and replacement services

98 Section 123O provides for the situation where an authority has entered into a local service contract with an operator for a specified period but the operator either fails to provide the specified service or ceases to provide the service before the end of the specified period. In this circumstance, the authority may provide the bus services themselves in place of the original service. Such a service is called an 'interim service'. An authority is able to provide interim services in spite of any prohibition, restriction or limitation on the power of the authority to provide local services contained in any other Act.

99 This new subsection also limits the length of time during which an authority can provide an interim service to 6 months. However, if the authority procures a replacement service, the authority may continue to provide its interim service until that replacement service comes into operation.

100 The transition notice period does not apply to replacement services, which means that they can be provided immediately once the local service contract has been entered into.

123P Service permits

101 Section 123P provides for service permits to allow commercial services to operate in a franchised area. They are most likely to be used for cross-boundary services that run through, into or out of an area covered by a franchising scheme, but an operator can also apply for them to provide services which a franchised network does not cover. A service permit is needed if the service concerned is not: specified by the franchising authority under a local service contract; exempted from the scheme by the new section 123J(5) of the Act; or an

interim service under the new section 123O.

123Q Application for service permit

- 102 Section 123Q allows the franchising authority or authorities to determine the application process for a service permit including the information that an applicant has to provide.
- 103 The authority may also charge a fee under subsection (3) for dealing with the permit application on a full cost recovery basis, with the maximum fee level set by the Secretary of State in regulations.
- 104 Authorities must accept applications for service permits where the application has demonstrated that the proposed service would benefit passengers and not adversely impact on any services operated under local service contracts. If the authority or authorities do not grant the service permit, they must inform the applicant of the reasons why within 10 days.

123R Conditions

- 105 Section 123R provides that an authority or authorities may attach conditions to service permits. The types of conditions that can be attached will be set out in regulations made by the Secretary of State.
- 106 The authority has to set out in a notice the types of conditions - from the options available in the regulations - they intend to attach to service permits, together with the circumstances in which they intend to attach those conditions. It will be possible to set out different types of conditions for different types of services or circumstances. Before issuing the notice, the authority must consult local bus operators in the area. If the authority decides to withdraw the notice they must specify the date on which it will be withdrawn and clarify whether it will be replaced by another notice.
- 107 Authorities may retrospectively attach conditions to permits where these have been set out in a notice.
- 108 If an authority grants a permit with conditions attached to it, or attaches conditions to a permit which has previously been granted, they must give notice of their reason for attaching the conditions to the applicant within 14 days.

123S Revocation and suspension

- 109 Section 123S sets out that an authority or authorities may revoke or suspend a service permit granted by them if:
- the criteria for granting the permit are no longer satisfied;
 - the holder of the permit has breached a condition attached to the permit; or
 - the public would be endangered if the service in question continued to operate.
- 110 The Secretary of State may make regulations setting out the period of notice that needs to expire before a revocation or suspension of a permit takes effect.

123T Appeals

- 111 Section 123T sets out the appeals process when: a permit application is not accepted by the authority, conditions are attached to such a permit, and where a service permit is suspended or revoked.
- 112 An appeal is to be made to a Traffic Commissioner, and the appeal must be brought within the time period specified by the Secretary of State in regulations. The Traffic Commissioner

may either uphold, quash or substitute the decision of an authority or authorities.

113 Appeals against Traffic Commissioner determinations may be made to the Upper Tribunal.

123U Regulations about schemes

114 This section is self-explanatory.

123V Transitional provisions about schemes

115 Section 123V provides that the Secretary of State may make regulations in relation to transitional provisions relating to the coming into operation, continuation and ending of franchising schemes.

116 It also amends section 6 of the Transport Act 1985. This allows for regulations to be made to allow franchising authorities to extend the notice period for varying or cancelling local bus services. The authority must specify the revised time period for the franchising scheme area in a notice.

117 The regulations may set out certain requirements in relation to the notice that an authority can issue, including requirements about:

- when the authority should publish the notice;
- the publication of the notice;
- alerting a Traffic Commissioner; and
- the extended time period specified, which must not exceed 112 days.

123W Guidance about schemes

118 This section is self-explanatory.

123X Local service contracts: application of TUPE

119 Section 123X provides for Transfer of Undertakings (Protection of Employment) Regulations 2006 (“the TUPE Regulations”) to apply when staff are transferred as a result of local service contracts, and for those staff to be provided with certain pension protection.

120 Where a local service contract comes into force requiring incumbent bus operator to cease providing services and, at the same time, a new bus operator begins to provide bus services in the same area or sub-area then the situation should be regarded as a “relevant transfer” for the purposes of the TUPE Regulations.

121 A “relevant transfer” also occurs if the provider of the local services stops providing them before the new local service contract commences, and so the authority agrees with a new operator to provide those services earlier than they otherwise would have done.

122 Any transfer of staff as a result of franchising that is regarded as a relevant transfer for the purposes of TUPE is also subject to sections 257 and 258 of the Pensions Act 2004.

123 The Secretary of State may make regulations supplementing the provisions in this section. The provisions that may be made by regulations include:

- defining the meaning of “principally connected” with the provision of local services;
- determining any particular “organised groupings” of employees and the new operator who is to be the new employer;

- requiring current operators to provide information relating to employees;
- requiring the franchising authority to provide information;
- pension protection for transferring employees; and
- securing that pension protections are enforceable by the employee.

124 The Secretary of State must exercise powers to make regulations securing pension protections for all transferring employees. These pension rights must be the same as those under the employees' original employment contracts or should count as being broadly comparable, the same or better than those original pension rights.

125 The definition of transferring original employees is an employee who immediately before the date of transfer was providing local services under a contract of employment for an original operator at the "relevant date" for the transfer.

Clause 5: Power to obtain information about local services [j102]

126 Section 5 inserts a new section 143A after section 143 of the Transport Act 2000 concerning the provision of information in relation to franchising schemes.

143A Power to obtain information about local services: franchising schemes

127 Section 143A provides a franchising authority (or authorities)⁴ with the ability to require operators of local bus services to provide it with relevant information for its assessment of the proposed franchising scheme, or when the authority is considering varying the franchising scheme.

128 What constitutes relevant information is set out in subsection (3) which also provides the Secretary of State with the power to specify further types of information in regulations. Operators can only be required to supply information for the period up to five years before the date on which the information is requested.

129 Bus operators in the area will be required to provide information in any form in which the authority deems it reasonable to be provided.

130 If it appears to an authority that an operator has failed to take all reasonable steps to comply with a request for information then the authority must inform a Traffic Commissioner. Schedule 2 of the Bill provides Traffic Commissioners with power to take enforcement action against the operator concerned.

131 The authority may decide not to publish an assessment, consultation document or auditor's report that includes information that the authority deems should not be disclosed in accordance with the Freedom of Information Act 2000 provisions or Environmental Information Regulations 2004.

Clause 6: Further amendments [j190]

132 This clause is self-explanatory.

⁴ References in the notes on this clause to "an authority" should be taken to refer to "an authority or authorities".

Advanced ticketing schemes

Clause 7: Advanced ticketing schemes [j601]

- 133 This clause inserts new sections 134C to 134G into Part 2 of the Transport Act 2000 to strengthen the powers that LTAs (or LTAs acting together) in England have to make joint and through ticketing schemes.
- 134 Such schemes enable passengers to purchase a ticket, or tickets, in a single transaction that may be accepted by different operators, including rail and tram operators, across the scheme area for more than one journey. For example, this may be through a 'travelcard' type product entitling the holder to use transport services within the scheme area over a set period of time.
- 135 The new sections largely replicate sections 135 to 138 of the Transport Act 2000 with additions designed to: achieve a more joined-up approach to ticketing issues across LTA boundaries; and clarify the scope of the powers to accommodate a range of technological possibilities.

134C Advanced ticketing schemes

- 136 The new section 134C enables an LTA whose area is in England, or one or more such LTAs together⁵, to establish an advanced ticketing scheme, if such a scheme would be in the public interest and would contribute to the implementation of local transport plans. An LTA is required to have regard to the desirability of making such schemes jointly with neighboring authorities to facilitate cross-boundary journeys and to ensure, in establishing and managing such schemes, that they co-operate with other LTAs in England.
- 137 Sub-sections (7) and (10) are additions to the current provisions under section 135 of the Act. Sub-section (7) clarifies the ability of the scheme to contain certain details. Its main purpose is to ensure that an LTA could specify in the scheme particular technological options - such as smart ticketing or contactless payment.
- 138 Sub-section (10) aims to ensure that an LTA considers the needs of passengers to travel across LTA boundaries by considering ticketing arrangements in other areas while it is preparing the scheme - not just after it is in place, as under the current section 135 provisions.

134D Notice and consultation requirements

- 139 134D obliges an LTA to comply with notice requirements and consult: operators who will be affected; bus user representatives; the Competition and Market Authority; and a Traffic Commissioner before making a ticketing scheme.

134E Making a scheme

- 140 This new section sets out how the scheme will be made. An LTA has to give 14 days' notice to: a Traffic Commissioner; affected operators; and, if it includes rail or tram journeys, the Secretary of State.
- 141 Rail and tram services may only be included in such schemes by agreement with those operators.

⁵ References in these notes on Clause 7 to "an LTA" should be taken to refer to "an LTA or LTAs".

142 A ticketing scheme cannot come into operation earlier than three months after it is made.

134F Effect of scheme

143 This new section makes the scheme's provisions binding on local bus operators. Once a ticketing scheme is in operation, operators of bus services in the scheme area must make and implement the necessary arrangements required by the scheme.

134G Guidance

144 This section is self-explanatory.

Clause 8: Further amendments [j602]

145 This clause is self-explanatory.

Enhanced partnership plans and schemes

146 These clauses create a new type of partnership arrangement which is available only to LTAs in England and known as an Enhanced Partnership (EP). An EP is intended to be easier to apply to a wide geographical area than a Quality Partnership (QP) or Advanced Quality Partnership (AQP) scheme. Also, unlike QP and AQP schemes, an EP scheme does not include the concept of admissible objections from specific operators which need to be resolved individually. Instead, operators can object to the scheme at several key stages. If a sufficient number of operators do so, The LTA would then have the opportunity to revise its proposals for reconsideration.

147 Although the powers to make EP schemes are vested in LTAs, the provisions include requirements for LTAs to invite operators to participate in the work of the partnership and the Government anticipates that in practice arrangements will be developed collaboratively between operators and LTAs.

Clause 9: Enhanced partnership plans and schemes [j230]

148 This clause inserts new sections 138A to 138S into Part 2 of the Transport Act 2000 to establish a new type of partnership - known as an Enhanced Partnership - for LTAs in England.

149 These new EP provisions enable LTAs, with the participation of local bus operators, to specify a package of: facilities and/or measures provided or taken by an LTA; and requirements to improve bus services in the EP area.

138A Enhanced partnership plans and schemes

150 This new section gives LTAs - acting jointly or collectively with other authorities⁶ - the power to make an 'enhanced partnership plan' and one or more 'enhanced partnership schemes'. It describes key features of both the plan, in sub-sections (3) and (4), and the scheme, in sub-sections (5), (6) and (7).

151 The EP plan is the higher level of the two types of document. It analyses the local bus market, identifies how bus services contribute to its wider objectives, and sets out how bus services in the area it covers should be improved.

⁶ References in the notes on this Clause 9 to "an LTA" should be taken as referring to "an LTA or LTAs".

152 The EP scheme is more detailed and practical, identifying specific actions that the LTA and bus operators will take to improve bus services in some or all of the partnership area. It can set out facilities that the LTA will provide, measures that the LTA will take and requirements bus operators in the scheme area will need to comply with. An LTA can create multiple schemes for an area covered by one plan.

153 An EP plan and scheme must also set out how they will be reviewed. The scheme may also include provisions about its variation and revocation (see section 138E).

154 138A stipulates that before making an EP plan or scheme the LTA must be satisfied that the scheme contributes to the implementation of the LTA's local transport policies, and that it will:

- bring benefits to passengers by improving services; and/or
- reduce or limit noise or air pollution.

155 This section also places a duty on LTAs to co-operate with each other and consider whether an EP should be made jointly with another LTA.

156 Before an LTA can make a scheme, it has to comply with requirements in the new sections 138F (preparation, notice and consultation) and 138G (1) to (4) (making of plan and scheme) that deal, for example, with process for ensuring that there is an appropriate level of support for the scheme from bus operators. In this paragraph, and through the explanatory material on EP, "support" is taken to mean that no more than a "sufficient number" of operators object to the plan and/or the scheme. "Sufficient number" means such number of persons as together provide certain proportion of qualifying local services (by number of operators and/or market share). These percentages will be defined in secondary legislation.

138B Further parties to a scheme

157 Providing facilities or taking measures contained in an EP scheme may require a traffic regulation order (i.e. temporary or permanent restrictions on traffic within its area). If the road with which such an order is concerned is the responsibility of another local authority or the Secretary of State then this new section requires that they are also a party to the EP scheme.

138C Requirements in respect of local services

158 An EP scheme will set out requirements that can be placed on bus operators to contribute to the objectives outlined in the EP plan. This new section prescribes the scope of these requirements.

159 The Bill (at clause 11) provides for two types of such requirement – "route requirements" that relate to the frequency of timing of bus services; and "operation requirements" which include all other requirements that a scheme can impose.

160 The 'operation requirements' may include:

- vehicle requirement - such as emission standards, "talking buses", common or route-specific branding;
- common ticketing arrangements - including the types of single operator tickets to be provided, branding of tickets, common fare zones across operators, common length of period tickets, methods of payment that must be accepted (such as contactless or smart card); and common terms and conditions - such as the times and circumstances in which concessions are valid;

- the prices of a multi-operator tickets;
- the way in which information is provided to the public; and
- common dates for changing timetables.

161 An EP scheme can include requirements from one or both types of category on a “mix and match” basis. Whatever combination of these requirements that is considered appropriate locally can be included. More than one EP scheme can apply to the same services or geographical area.

162 There are some requirements that cannot be included in an enhanced partnership scheme - such as the prices of single-operator tickets or requirements compelling operators to run services that they do not wish to operate.

163 Scheme requirements cannot be imposed on bus operators by the LTA, but effectively have to have the support of sufficient operators in the scheme area. This is provided for in the new section 138F(5).

164 Community transport operators (operating under a section 22 permit) are exempted from the requirements imposed by the scheme under sub-section (11).⁷

138D Facilities and measures

165 An LTA may commit through an EP scheme to provide facilities or measures - as they could do under an AQP scheme. This section provides that these facilities may not be the same as facilities specified by section 139 and 140 of the Transport Act 2000 that require LTAs to consider what local bus information should be made available to the public and the way in which it should be made available.

138E Conditions relating to variation or revocation

166 The EP scheme may specify cases in which, and how, it may be varied or revoked. This new section gives the LTA and the operators the flexibility to agree, in the scheme mechanism for variation and revocation of the plan/scheme if they feel that such mechanism would be more suitable for local market conditions than the mechanism outlined later in the Bill. Such arrangements could, for example:

- change the way operators can object to the scheme from that provided for in primary and secondary legislation to better reflect the nature of the local bus market;
- recognise different types of variation which would require different levels of operator support or objection to proceed or otherwise; or
- allow minor changes to the scheme to be made without operators having an opportunity to object.

⁷ Community transport operators running services under a section 19 permit are not affected by the Bill, as they are not running a local service.

138F Preparation, notice and consultation

167 138F prescribes the process by which the LTA(s) may make enhanced partnership plans and schemes. An EP plan must be made with an EP scheme, but if a plan and at least one scheme have already been adopted additional schemes can be added at a later stage.

168 This new clause deals with the process between the plan and/or scheme(s) being initiated and consultation (the remainder of the process is described in 138G). The steps are as follows:

- an LTA must give notice of its intention to develop a plan and/or scheme(s);
- it must invite operators of qualifying services (which will be defined in regulations) to participate in the preparation of the proposed plan and/or scheme(s);
- the LTA then prepares the plan and/or scheme(s). While the Bill places the responsibility to produce the enhanced partnership plan and scheme(s) on the LTA, in practice, the Government would expect the LTA and operators to work together to produce the plan and the scheme. The Government envisages issuing guidance (under the new section 138P on the Transport Act 2000) to this effect;
- the LTA notifies all qualifying bus operators of the plan and/or scheme(s). The notice must contain the full details of the plan and/or scheme(s) and state how long operators have to disagree with them (which must be at least 28 days). The LTA can only proceed further in this process if no more than a “sufficient number” of operators objected to the plan and/or the scheme(s). The sufficient number may be based on number of operators and/or their market or mileage share. What constitutes a “qualifying local service” and a “sufficient number” will be detailed in secondary legislation. The plan and/or scheme(s) are dealt with as a package. Sufficient support from operators needs to be required for each plan and/or scheme which is being put forward, otherwise none can proceed;
- after the LTA has obtained appropriate support from the operators it must undertake a consultation. Statutory consultees include: operators of local services in the area; bus passenger representatives; relevant local authorities; a Traffic Commissioner; and the Competition and Markets Authority.

138G Making of plans and schemes

169 138G prescribes the next stages in the process by which the LTA may make an EP plan and/or scheme(s). It deals with the process after consultation until the plan and/or scheme(s)'s adoption (the remainder of the process is described in 138H). The steps are as follows:

- following the consultation, the LTA(s) can decide to proceed with the plan and/or scheme(s) as originally proposed or with modifications;
- before the LTA can adopt (make) the plan and/or scheme(s), the LTA must again seek the support of operators of qualifying local bus services, who are able to object as set out above in relation to the new section 138F of the Transport Act 2000;
- no later than 14 days after the plan and/or scheme(s) has been made, the LTA

must give notice to operators and a Traffic Commissioner. Such notice must contain full details of the plan and/or the scheme(s) and whether it has been modified following consultation.

138H Content of scheme

170 This section specifies what a scheme must contain including:

- what requirements it imposed on operators;
- any facilities provided or measures taken by the LTA(s);
- provisions about variation and revocation of the scheme and its duration; and
- the date from which different requirements come into effect and the date from which any facilities are to be provided and measures taken.

171 A scheme can also specify services that are excluded from it. For instance, the scheme could exempt all services that only have one stopping point in the scheme area or services that do not run further than a certain distance into the scheme's area from its boundary. Community transport services operating under permits granted under section 22 of the 1985 Transport Act are excluded automatically under the new section 138C(11) of the Transport Act 2000 inserted by this Bill.⁸

138I Postponement of scheme or part of scheme

172 There may be circumstances where the LTA needs to postpone some elements of the scheme. For example, the infrastructure it is required to provide is not ready or the operators are struggling to meet a requirement to introduce smart ticketing because the IT is taking longer than expected to set up. This new section gives the LTA the power to postpone the scheme, or part of the scheme, by no more than 12 months. It must consult relevant operators to postpone the scheme but does not require their consent. After making the decision to postpone the scheme, the LTA must give notice to local operators and a Traffic Commissioner.

138J Effect of plans and schemes

173 If the scheme requires the LTA to provide facilities or take measures, this section includes provisions about how and when the LTA's obligations are to be fulfilled. If the plan contains a provision of review, this section places an obligation on the LTA to carry it out in the manner specified in the plan and complete by the date specified in the plan. The section also states that operators must comply with the requirements contained in the scheme.

138K Variation

174 This section gives the LTA the power to vary the plan or scheme(s), provided it complies with the procedure in the new sections 138L and 138M. This provision is designed to enable plans or schemes to be varied if they are no longer responding to the local market conditions or benefiting passengers.

⁸ Community transport operators running services under a section 19 permit are not affected by the Bill, as they are not running a local service.

175 When varying the plan or scheme(s), the LTA must be satisfied that the varied scheme(s) contributes to the policies outlined in the plan and to local transport policies. It must also be satisfied that it brings benefits to passengers and reduces or limits traffic congestion, noise or air pollution.

176 Nothing in this section prevents the scheme being varied in accordance with provisions outlined in the scheme (see section 138E).

138L Variation: preparation, notice and consultation

177 New sections 138L and 138M set out the process by which an EP plan or scheme is varied (alternative variation mechanism can be included in the scheme, see section 138E). The LTA will have to draw up the variation (with the participation of the operators) and seek an appropriate level of support for the change from operators. Before the LTA can proceed with the variation, it must then consult on it. The LTA is able to decide on what is an appropriate consultation for any given proposed amendments, as different types of amendment will require different types of consultation. The only statutory consultee is the Competition and Markets Authority.

138M Variation: making a variation

178 This new section deals with the process from consultation to the making of a variation to an EP plan and/or scheme(s).

179 The default position is that before making the variation, the LTA must again seek the support of the operators. It can do so by giving notice to all operators of qualifying bus services, which must: contain the full details of the plan and scheme, state whether it has been modified following consultation, and state how long operators have to disagree with the variation. The LTA can make the plan and the scheme unless a sufficient number of the operators of qualifying local services disagreed with the proposed plan and/or scheme(s).

180 Once a decision to vary the plan and/ or scheme(s) has been taken, the LTA must give notice of the change.

181 This section provides that further detail of how variations can be made in an EP plan or scheme can be made in secondary legislation. The Secretary of State may specify by regulation what constitutes - in the default scenario - a sufficient number of operators for these purposes, the description of a qualifying local service, as well as specify the minimum period that operators will have to object to the variation.

138N Variation: supplementary

182 138N determines whether a traffic regulation authority is an Enhanced Partnership authority when a scheme is varied. It largely reflects the terms of the existing sections 121(3) to (8) of the Transport Act 2000 as they apply to QP schemes.

138O Revocation

183 This section provides that the LTA may revoke: (i) the EP plan and all of the associated schemes; or (ii) an EP scheme or schemes (provided that one or more schemes remain in place). The latter ensures that there is always both a plan and a scheme in place. A scheme can also be revoked by an alternative mechanism, when such mechanism is included in the relevant scheme, see section 138E.

184 Before the LTA can make the revocation it must first consult at least the operators of qualifying local services and the Competition and Markets Authority.

185 The LTA must give notice of its intention to all operators of qualifying bus services, which

must include:

- a date on which the plan and scheme is to be revoked;
- the LTA's reasons for the proposed revocation; and
- any arrangements for operators to disagree.

186 The default position is that before the LTA can revoke the scheme, it will have to give operators of qualifying local services an opportunity to object. The LTA cannot make the revocation if a sufficient number of the operators of qualifying local services disagree with the proposed plan and scheme.

187 Notice must be given after the decision has been taken. The date of revocation cannot be earlier than 14 days after notice has been given.

188 Further details of how revocation can be made will be detailed in secondary legislation. The Secretary of State may specify by regulation what constitutes - in the default scenario - a sufficient number of operators for these purposes, the description of a qualifying local service, as well as specify the minimum period that operators will have to object to the revocation.

138P Regulations about plans and schemes

189 This new section is self-explanatory.

138Q Transitional provision about schemes

190 This section gives the Secretary of State power to make by regulation provisions about transitional arrangements including concerning the making, coming into operation, variation and revocation of EP plans and schemes. These may particularly include provisions concerning the procurement of subsidised bus services by an LTA and the implications for the registration of local bus services in an EP area.

138R Guidance about plans and schemes

191 This section is self-explanatory.

138S Application of TUPE

192 There may be some limited circumstances, provided for in clause 12 of this Bill and set out in sub-sections (1) and (2) of this new section, in which an EP scheme could lead to a change in the operator of a local bus services. Section 138S provides for Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the TUPE Regulations") to apply in these circumstances when staff are transferred as a result of an EP scheme and for those staff to be provided with certain pension protection.

193 The practical effect of these provisions is the same as set out in these notes in relation to the new section 123X of the Transport Act 2000 inserted by this Bill.

Clause 10: Information about local services [j232]

194 Clause 10 amends Part 2 of the Transport Act 2000 by inserting a new section 143B to provide LTAs in England with the ability to obtain information from bus operators to assist in preparing, reviewing, varying or revoking an EP plan/scheme. It also amends section 155 of the Transport Act 1985 in relation to sanctions imposed by a Traffic Commissioner.

143B Power to obtain information about local services: enhanced partnership schemes

195 When preparing an enhanced partnership plan and scheme, an LTA or LTAs can require operators to provide relevant information for the purposes of making, reviewing, varying or

revoking the plan or the scheme. Relevant information includes information relating to local services or passengers or any other information described in regulation by the Secretary of State.

196 The operator will need to provide the information in a specified format and if an operator fails to take all reasonable steps to provide the information, the LTA(s) must inform the Traffic Commissioner.

197 If the Traffic Commissioner is satisfied that the operator failed to take all reasonable steps to provide the relevant information, it can take action under section 155 of the Transport Act 1985. Such action can include the payment of a penalty.

198 The information provided under this section must not be disclosed if it could be withheld under the exemptions in the Freedom of Information Act 2000 relating to personal information; information provided in confidence; legal professional privilege; and/or commercial interests.

Clause 11: Registration of local services [j231aa]

199 This clause amends section 6 of the Transport Act 1985 to insert provisions to enforce requirements in EP schemes through the bus registration system. This clause will apply to England only.

6D Applications for registration where an enhanced partnership scheme is in operation

200 If the person operating the service is considered to be unlikely to comply with an operation requirement then the registration must be refused. This is provided for in sub-section (2).

201 Where - as a result of an EP scheme - the local authority has awarded a contract for the provision of services on a particular route, the subsection (3) states that these registrations are to be treated in accordance with regulations. This situation is provided for in clause 12.

202 While this clause refers to the Traffic Commissioner as the registration authority, this Bill (in clause 14) provides for the functions of a Traffic Commissioner in relation to bus registration to be exercised by an LTA in certain circumstances. Therefore, if such functions are delegated, applications for registrations will be dealt with by the relevant LTA.

Clause 12: Cancellation of registration [j231bb]

203 This clause inserts new sub-sections (7A) and (7B) into the Transport Act 1985 so that cancellation of registered services under an EP scheme is possible. It also inserts section 6E.

6E Cancellation and control of registration where enhanced partnership scheme is in operation

204 These provisions allow the Traffic Commissioner (or the LTA, if registration functions have been delegated under clause 14) to cancel registration of services that are not complying with the relevant operation or route requirements.

205 The section also gives the Secretary of State the power to specify in regulation: what services may be registered in place of services whose registration has been cancelled and for how long; and circumstances under which a cancellation of a registration can be revoked or postponed.

206 The provisions in relation to route requirements are designed to ensure that these requirements can be met where there may be more registrations for a particular route than are allowed by the relevant scheme. It would not be legal to reject registration solely on the basis that the maximum frequency allowed on a given route under an EP scheme had been reached. Instead, the LTA(s) would ask operators to draw up a voluntary, competition-law compliant

qualifying agreement that states which operator is operating what service within the parameters set by the scheme. If such a qualifying agreement was not in place by the end of a set period as prescribed in the regulations, the LTA would have to tender services on the particular route to avoid illegally granting an “exclusive right”.

207 A tendered service in these circumstances does not have to involve payment or subsidy - the Government’s intention is that this mechanism allows for the LTA(s) to operate a slot-allocation system by way of tender. The Government intends to cover the operation of these arrangements in the statutory guidance to be issued under the new section 138R of the Transport Act 2000 inserted by this Bill.

Clause 13: Appeals [j231cc]

208 This clause inserts a new section 6F into the Transport Act 1985 to give a right to bus operators to appeal the decision of the responsible registration authority (which under clause 14 of this Bill can be a Traffic Commissioner or an LTA) against: a decision to record a requirement, refusal of registration, or cancellation of registration. If the Traffic Commissioner is the responsible registration authority, then the appeal is to be made to the Upper Tribunal. If an LTA is the responsible registration authority, then the appeal is to be made to the Traffic Commissioner. Further appeal then can be made to the Upper Tribunal (by either the bus operator or the LTA).

209 This clause will apply to England only.

Clause 14: Traffic commissioner functions [j231dd]

210 This clause inserts new sections 6G to 6I into the Transport Act 1985 to provide for further changes to bus registration arrangements relating to EP schemes. This clause will apply to England only.

6G Traffic commissioner functions where an enhanced partnership scheme in operation

211 This section details the functions of the Traffic Commissioner where an EP scheme is in place. It also requires the LTA to notify the Traffic Commissioner whether a new or varied schemes includes operation and/or route requirements.

212 The Bill enables relevant registration functions to be delegated from a Traffic Commissioner to an LTA. This has the effect of making the LTA concerned the registration authority. Other than as provided for in clause 13 the Traffic Commissioner is no longer involved in the decisions taken by the LTA. Relevant registration functions include application to register and vary a service and cancellation of a service that operate wholly in the area covered by the enhanced partnership scheme.

213 If the scheme is made by more than one LTA, the LTAs involved must also notify the Traffic Commissioner which is the ‘lead’ LTA. This is important, as the Traffic Commissioner can only delegate the registration function to the ‘lead’ LTA.

214 If the scheme contains a route requirement related only to services running wholly in the EP scheme area, the relevant registration function must be delegated from the Traffic Commissioner to the (lead) LTA. If the scheme does not contain such route requirements, the (lead) LTA may elect to carry out the relevant registration function. The delegation will come to an end when the relevant scheme ceases to operate.

6H Fees relating to relevant registration functions

215 6H provides that if relevant registration functions are delegated from the Traffic Commissioners to an LTA, the LTA may charge a fee for the exercise of these functions. This section details the fees that the LTA can charge. These include a fee for application for

registration, variation of registration, cancellation of registration. The fees are to be determined in accordance with regulations.

6I Record of registration etc.

216 If relevant registration functions are delegated from the Traffic Commissioners to an LTA, this new section requires that the LTA must keep a record of services that are registered, varied or cancelled in the area covered by the enhanced partnership scheme. The LTA must supply this information to the Traffic Commissioner and allow a member of the public to inspect them on request. Regulation may specify the form and the particulars of the record, as well as the particulars that are to be supplied to the Traffic Commissioner.

Clause 15: Further amendments [j235]

217 Schedule 4 contains minor and consequential amendments in relation to an enhanced partnership scheme.

Power to make traffic regulation orders

Clause 16: Powers to make traffic regulation orders [j236]

218 This clause includes consequential amendments to the Road Traffic Regulation Act 1984, as a result of the introduction of the new franchising, Advanced Quality Partnership and Enhanced Partnership schemes provisions.

Information about English bus services

Clause 17: Power to require provision of information about English bus services [j301]

141A Power to require provision of information about English bus services

219 This section inserts new section 141A into the Transport Act 2000 to provide open data on all bus services in England, outside London. It does this by providing for regulations under which new applicants registering bus services, existing operators, franchising authorities and in some circumstances Traffic Commissioners may be required to provide prescribed information.

220 These powers enable a single repository of information to be created that could contain all the information about routes, timetables, fares and tickets for local buses including live information about bus arrival times. The information so collected would be open to the public and could be used by software developers to create, for example, information applications for mobile devices through which passengers could access real-time bus arrival information.

221 The regulations will set out the detail of the information that will be required including when and how it is to be provided. This section will only apply to services that run in England except Greater London. Where an operator fails to comply with the regulations, a Traffic Commissioner may apply the existing sanctions available under section 155 of the Transport Act 2000.

Registration of bus services

Clause 18: Variation or cancellation of registration: service information [j302]

222 This section inserts new section 6C into the Transport Act 1985.

6C Variation and cancellation or registration: service information

223 6C makes provision for regulations under which operators of local bus services are required to provide the LTA with certain information relating to patronage and revenue of the service when making an application to vary or cancel a bus service. In particular, the regulations will prescribe how much historical information the bus operator has to provide, when and how information is to be provided and the role of Traffic Commissioners in ensuring compliance. Regulations will also provide for the circumstances under which LTAs may disclose such information to third parties who may be tendering for the services that are being varied or cancelled.

224 This clause implements a recommendation from the Competition Commission (now the Competition and Markets Authority).

Clause 19: Rail replacement bus services [j401]

225 This section amends section 6 of the Transport Act 1985 (registration of local services). The effect is to exempt temporary rail replacement bus services in England from the need for registration.

226 New subsection 6(1D) of the Transport Act 1985 sets out whether a service is considered to be a temporary rail replacement bus service in England. New subsection 6(1E) of the Transport Act 1985 makes provision for circumstances where a temporary rail replacement bus service operates both inside and outside England.

227 This section also amends section 179 of the Greater London Authority Act 1999 so that a temporary rail replacement bus service is not considered to be a London local service.

Clause 20: Registration of English local services: fees where functions contracted out [j701]

228 This section inserts new section 6J into the Transport Act 1985.

6J Contracting out of registration functions: fees

229 Existing legislation already enables the Secretary of State to authorise a person to accept applications to register, vary or cancel a local bus service instead of the Traffic Commissioner. This clause provides that the authorised person will be able to recover the costs of their activities in carrying out this function through registration fees payable by operators. The fee amounts will be set by the Secretary of State in regulations.

Bus companies: authorities in England

Clause 21: Bus companies: limitation of powers of authorities in England [j501]

230 Clause 21 prohibits a relevant local authority from forming a company for the purposes of providing a local bus service.

231 Existing municipal bus companies are not affected by this clause.

General

Clause 22: Power to make consequential and supplementary provisions etc [jconseq]

232 This clause is self-explanatory.

Clause 23: Transitional, transitory or saving provisions [jtransit]

233 This clause is self-explanatory.

Clause 24: Extent [jextent]

234 This clause is self-explanatory.

Clause 25: Commencement [jcommence]

235 This clause is self-explanatory.

Clause 26: Short title [jtitle]

236 This clause is self-explanatory.

Schedules

Schedule 1: Further amendments: advanced quality partnership schemes [j290s]

237 The schedule contains only consequential amendments. It amends the Transport Act 2000 so that sections 114-123 on Quality Partnership Schemes apply only to Wales. The Bill inserts new sections to the Transport Act 2000 (section 113C-113O) that provide for Quality Partnership Schemes in England.

238 The schedule also amends the Road Traffic Regulation Act 1984 and the Transport Act 1985, so that it reflects that (i) England and Wales are now covered by different provisions, and (ii) ‘measures’ are included alongside ‘facilities’ throughout existing legislation.

239 It also amends Schedule 10 of the Transport Act 2000 to include AQP scheme alongside QP scheme and other statutory schemes that are covered by the competition test contained in Part 1 of Schedule 10.

Schedule 2: Further amendments: franchising schemes [j190s]

240 This section amends section 26 of the Transport Act 1985 and section 155 of the Transport Act 2000 to allow Traffic Commissioners to impose sanctions on bus operators who either:

- fail to provide information relating to staff for the purposes of TUPE;
- run a services in a franchising area illegally and failed to take reasonable steps to avoid doing so; or
- fail to take all reasonable steps to provide information to a franchising authority under the new section 143A of the Bill.

241 This will allow Traffic Commissioners to impose certain sanctions and financial penalties on operators, and attach conditions to the operator’s operating license.

242 The schedule also contains consequential amendments. It amends the Transport Act 2000 so that sections 124-134B on Quality Contracts Schemes apply only to Wales. The Bill inserts new sections into the Transport Act 2000 (section 123A-123X) that provide for franchising schemes in England. It will no longer be possible for an English LTA to make a Quality Contracts Scheme.

Schedule 3: Further amendments: advanced ticketing schemes [j690s]

243 This schedule makes consequential changes to the Transport Act 1985 to enable Traffic Commissioners to attach a condition to Public Service Vehicle operators licences prohibiting the operators from using vehicles under the license unless they have made and implemented the arrangements required under any advanced ticketing scheme.

244 This schedule also amends section 135 of the Transport Act 2000, so that after the provisions on advanced ticketing schemes are in force, English LTAs may only make ticketing schemes under section 135 where such a scheme is made joint with one or more LTAs and at least one of those LTAs is an authority whose area is in Wales. Section 135 provisions on joint and

through ticketing schemes also apply to schemes made by LTAs whose area is in Wales. This schedule also makes other consequential amendments to the Transport Act 2000.

Schedule 4: Further amendments: enhanced partnership plans and schemes [j235s]

245 The schedule makes consequential amendments to the Transport Act 1985 and the Transport Act 2000. It for example dis-applies traffic regulation conditions in an enhanced partnership area (Transport Act 1985) and includes the enhanced partnership plan and scheme in the scope of section 162 (interpretation) of the Transport Act 2000.

246 This schedule also amends Part 2 of the Transport Act 2000 (section 153) and Schedule 10 of Transport Act 2000. This amendment includes enhanced partnership schemes alongside other statutory bus improvement schemes that have to comply with the competition test contained in Schedule 10 of the Transport Act 2000.

Commencement

247 The extent, commencement and short title of this Act, together with the powers conferred by the Bill to make secondary legislation, would come in to force on the day on which it is passed. Other provisions would come into force two months after Royal Assent.

Financial implications of the Bill

248 The Bus Services Bill is a piece of enabling legislation which in itself does not trigger immediate financial implications. It will be for LTAs to decide how they wish to use the devolved powers, and assess the financial impact of their policy choices.

Parliamentary approval for financial costs or for charges imposed

249 The Bill contains a new fee, allowing franchising authorities to charge fees to bus operators for considering their permit application. It also allows authorities to whom the Traffic Commissioner registration function is delegated as part of an enhanced partnership to charge a fee for registering bus services. Finally, the Bill allows any other body to which the Traffic Commissioner registration function may be delegated in future to charge a fee for registering bus services. All of these fees have been agreed with HMT and do not constitute “taxes” for the purpose of needing a ways and means resolution.

Compatibility with the European Convention on Human Rights

250 Lord Ahmad of Wimbledon, Parliamentary Under Secretary of State for Transport, has stated that in his view the provisions of the Bus Services Bill are compatible with the Convention rights. A statement of compatibility with Section 19 of the Human Rights Act 1998 will be provided.

Related documents

251 The following documents are relevant to the Bill and can be read at the stated locations:

- Background information on a series of bus reform workshops held in autumn 2015; the presentations that were given; and a summary of the discussions at the workshops can be found at <https://www.gov.uk/government/publications/bus-reform-workshops-background-information>.

Annex A - Territorial extent and application in the United Kingdom

The Bill extends to England and Wales and applies to England only.⁹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	No	No	No	No	Yes	Yes	No
Clause 2	Yes	No	No	No	No	No	No	No
Clause 3	Yes	No	No	No	Yes	Yes	Yes	No
Clause 4	Yes	No	No	No	No	No	Yes	No
Clause 5	Yes	No	No	No	Yes	Yes	Yes	No
Clause 6	Yes	No	No	No	No	No	Yes	No
Clause 7	Yes	No	No	No	Yes	Yes	Yes	No
Clause 8	Yes	No	No	No	No	No	No	No
Clause 9	Yes	No	No	No	No	No	Yes	No
Clause 10	Yes	No	No	No	Yes	Yes	Yes	No
Clause 11	Yes	No	No	No	No	Yes	Yes	No
Clause 12	Yes	No	No	No	No	Yes	Yes	No
Clause 13	Yes	No	No	No	No	Yes	Yes	No
Clause 14	Yes	No	No	No	No	Yes	Yes	No
Clause 15	Yes	No	No	No	No	No	No	No
Clause 16	Yes	No	No	No	Yes	Yes	Yes	No
Clause 17	Yes	No	No	No	No	Yes	Yes	No
Clause 18	Yes	No	No	No	No	Yes	Yes	No
Clause 19	Yes	No	No	No	No	Yes	Yes	No
Clause 20	Yes	No	No	No	No	Yes	Yes	No
Clause 21	Yes	No	No	No	Yes	Yes	Yes	No

⁹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clauses 22 - 26	Yes	No	No	No	No	No	No	No

Minor or consequential effects¹⁰

The following provisions that apply to England have effects outside England, all of which are, in the view of the Government of the United Kingdom, minor or consequential:

Clause 1: Advanced quality partnership schemes

A quality partnership scheme in an area in England may impose restrictions on the registration of local services and must specify criteria by reference to which a Traffic Commissioner must decide whether or not to accept an application for registration. This will impact on the operator of a local bus service which runs in a quality partnership scheme area.

Clause 4: Franchising Schemes

Operators of local bus services who run local services across the border from Scotland and Wales into a franchise area in England, unless not subject to regulation under a franchising scheme or operating under a local service contract, will have to apply for a service permit to be able to operate in that area. For the purposes of TUPE, such operators will also have to provide the relevant authority with information about any employees that transfer to another operator as a result of franchising.

Clause 5: Power to obtain information about local services

Operators of local bus services who run local services across the border from Scotland and Wales into a franchise area in England will be obliged to provide information to the requesting authority about local services in the authority's area in connection with its functions in relation to franchising.

Clause 6 (Introducing Schedule 2): Further amendments

If an operator of a local bus service who runs a local service across the border from Scotland and Wales contravenes the provisions prohibiting operation in a franchise area, or fails to provide information to a franchising authority when required to do so, including in relation to TUPE matters, the Traffic Commissioner may order that monies be paid by the operator. If an operator does not pay

¹⁰ References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

as ordered, a penalty may be imposed in relation to orders that are not already a penalty. A penalty can be enforced as a civil debt. Conditions may also be attached to a public service operator's licence in the same circumstances as those that enable an order to be imposed.

Clause 9: Enhanced partnership plans and schemes

Operators of cross border services which operate in an enhanced partnership area must comply with requirements imposed by the enhanced partnership scheme within the scheme area. Failure to comply would result in the service registration being terminated by the Traffic Commissioner.

Clause 10: Information about local services

Operators of local bus services who run local services across the border from Scotland and Wales into an enhanced partnership area in England will be obliged to provide relevant information to the requesting authority for the purpose of it preparing its enhanced partnership plan and scheme.

Clause 15 (introducing Schedule 4): Further amendments

If an operator of a local bus service who runs a local service across the border from Scotland and Wales contravenes a requirement that applies to a local service area or fails to provide information to an authority when required to do so, including in relation to TUPE matters, the Traffic Commissioner may order that monies be paid by the operator. If an operator does not pay as ordered, a penalty may be imposed in relation to orders that are not already a penalty. A penalty can be enforced as a civil debt. Conditions may also be attached to a public service operator's licence when a requirement is contravened or if information is not provided in relation to TUPE matters.

Clause 17: Power to require the provision of information about English bus services

Except in Greater London, new applicants registering bus services, existing operators, franchising authorities and in some circumstances traffic commissioners may be required to provide information about routes, timetables, fares and tickets for local buses, including live information about bus arrival times. The information would be "open" to the public and software developers. Information will need to be provided for the part of any cross border service that has one or more stopping places in England except for Greater London.

Clause 18: Variation or cancellation of registration: service information

Bus operators wishing to vary or cancel a bus service may have to provide historic patronage and usage data for that service to the local authority. The authority may disclose this information to other operators tendering for the varied or cancelled service. Information will need to be provided with respect to any cross border service that is registered under section 6 of the Transport Act 1985 and has a stopping place in the local transport authority in England that has requested the information.

Clause 19: Rail replacement bus services

A rail replacement bus service in England provided under an agreement with the provider of a railway service does not have to be registered with the traffic commissioner. In Scotland and Wales it remains the case that such a service has to be registered with the Traffic Commissioner unless it is exempted for some other reason. The part of a cross border rail-replacement service that runs in England will not need to be registered with the Traffic Commissioner.

Clause 20: Registration of English local services: fees where functions contracted out

Traffic Commissioners' function in registering bus services may be taken over by another body and that body will be able to charge and keep fees payable by operators when registering a service as

prescribed in regulations. The “English” part of any cross border service will need to be registered with the body that is undertaking the Traffic Commissioners’ registration functions.

Subject matter and legislative competence of devolved legislatures

The Department considers the provisions that are identified as being within the legislative competence of the National Assembly for Wales to be so because they relate to one of the subjects listed under the headings in Part 1 of Schedule 7 to the Government of Wales Act 2006, namely “transport facilities and services” which is listed under the “Highways and transport” heading (paragraph 10 of Schedule 7 to that Act) and does not fall within any of the exceptions specified in that part of the Schedule.

The Department considers the provisions that are identified as being within the legislative competence of the Scottish Parliament to be so because they relate to local bus services, which is not a reserved matter under Schedule 5 to the Scotland Act 1998 (and, in particular, is not reserved by Head E - Transport in that Schedule).

The Department considers the provisions that are identified as being within the legislative competence of the Northern Ireland Assembly to be so because they relate to local bus services which is a transferred matter under the Northern Ireland Act 1998 (it not being either an excepted matter under Schedule 2 to that Act or a reserved matter under Schedule 3 to that Act).

BUS SERVICES BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Bus Services Bill [HL] as introduced in the House of Lords on 19 May 2016 (HL Bill 2).

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