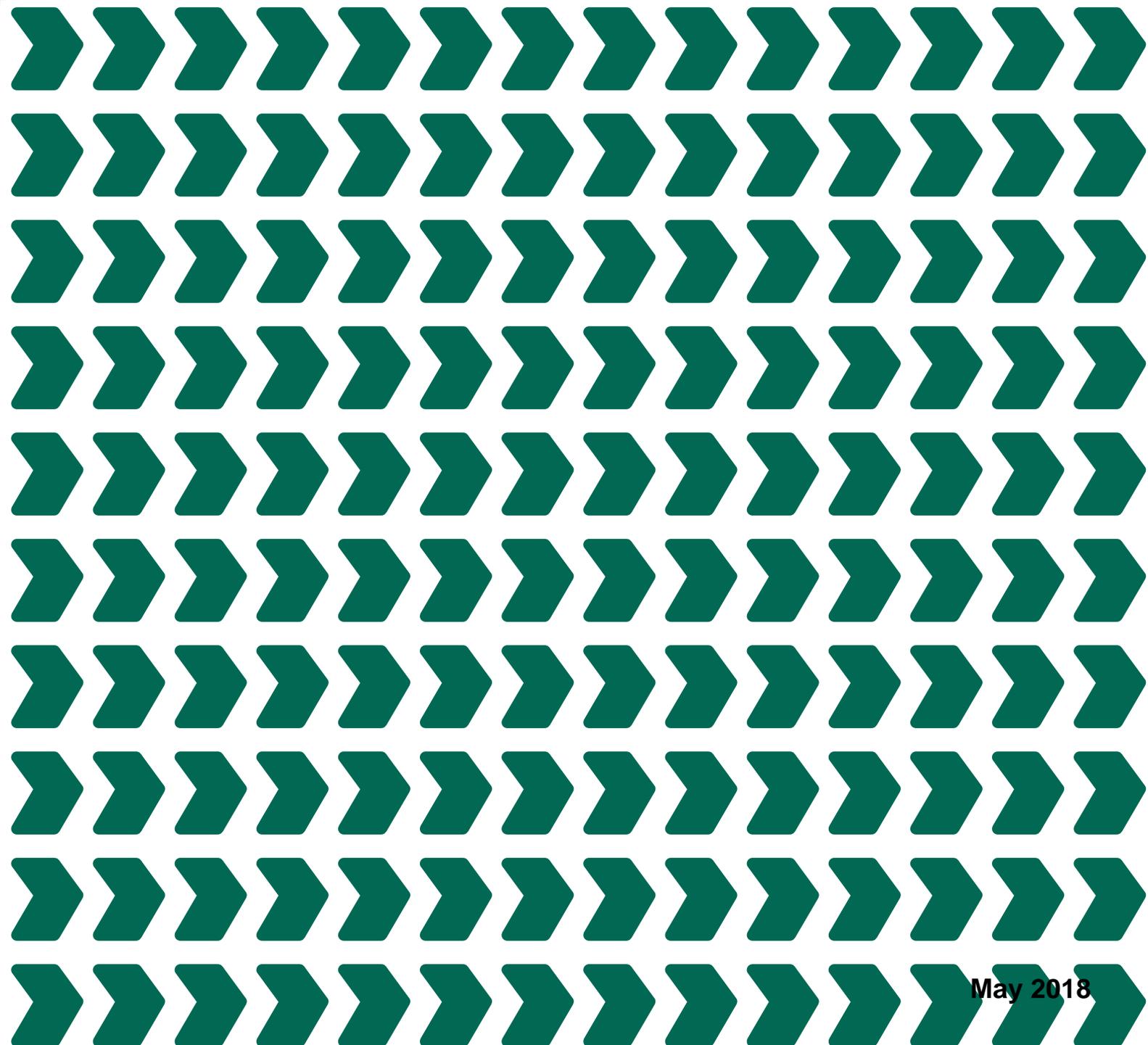




Department
for Transport

Bus Services Act: Consultation on Draft Regulations and Guidance

Registration of local bus services in an Enhanced Partnership area
and the appeal mechanism



May 2018

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1. Who should read this document?

1.1 This consultation exercise will primarily be of interest to local transport authorities, the Office of the Traffic Commissioners and public service vehicle operators providing local bus services in England that are registered with the traffic commissioner.

2. Introduction

2.1 This consultation is about two sets of draft Regulations and the accompanying guidance associated with the Bus Services Act 2017 ('the 2017 Act'). These Regulations cover:

- (a) The mechanisms that allows the powers to register, vary and cancel the registration of local bus services to pass from the traffic commissioner to a local transport authority that is introducing or has introduced an enhanced partnership scheme.
- (b) The procedures to be applied when an operator in an enhanced partnership area appeals a decision made by the local transport authority when it is acting as the registration authority under powers obtained under (a) above.
- (c) The procedures that apply when an enhanced partnership imposes a limit on the frequency of buses that can operate on a particular route, and a local bus operator(s) submits an application to register or vary a service that would breach this limit.
- (d) The procedures to be applied when an operator appeals a decision made by a franchising authority to refuse to grant a service permit that would allow a local bus operator to operate a non-franchised bus service in a franchised area.

2.2 The draft Regulations are set out at Annex B of this consultation paper. These drafts have been developed following informal consultation with key stakeholders and help illustrate how our policy might be reflected in legislation. The responses to this consultation will be used to help refine the legislation before it is brought into force.

The draft guidance associated with these Regulations is set out at Annex C.

3. How to Respond

3.1 The consultation period began on 17 May 2018 and will run until 28 June 2018. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at <https://www.gov.uk/dft/consultations> or you can contact steve.blackmore@dft.gov.uk if you need alternative formats (Braille, audio CD, etc.).

Please send consultation responses to:

Steve Blackmore

Zone 2/15, Great Minster House

33 Horseferry Road, London

SW1P 4DR

07826 918935

3.2 If you wish to respond via email, please send it to:
steve.blackmore@dft.gov.uk

3.3 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

4. Freedom of Information, confidentiality and data protection

4.1 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

4.2 If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

4.3 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

4.4 The Department for Transport is carrying out this consultation to gather opinion on the new draft regulations. All personal information collected is done so under current data protection legislation, which states that as a government department, DfT may process personal data as necessary for the effective performance of a task carried out in the public interest. The Department for Transport is the data controller for any personal information you provide.

DfT's privacy policy

[<https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter>] has more information about your rights in relation to your personal data, how to complain and how to contact the data protection officer.

5. Draft Regulations

Introduction

5.1 The 2017 Act contains powers to enable local authorities in England to, among other things:

- franchise the provision of local bus services
- Introduce a new type of partnership working between local transport authorities and local bus operators called an enhanced partnership.

5.2 Further details on these two regimes is contained in *The Bus Services Act 2017 New powers and opportunities* – which can be downloaded here:

<https://www.gov.uk/government/publications/bus-services-act-2017-new-powers-and-opportunities>

5.3 Detailed guidance on franchising can be found here:

<https://www.gov.uk/government/publications/bus-services-act-2017-bus-franchising-creation>.

5.4 Detailed guidance on the enhanced partnership regime can be found here:

<https://www.gov.uk/government/publications/bus-services-act-2017-enhanced-partnership-creation>.

The purpose of these Regulations

5.5 The 2017 Act enables the Secretary of State to make Regulations implementing the provisions and procedures of key areas of the franchising and enhanced partnership regime for local bus services. This consultation concerns two sets of these Regulations:

The Public Service Vehicles (Registration of Local Services in Enhanced Partnership Areas) (England and Wales) Regulations 2018

5.6 The bus market in England outside London is deregulated and around 80% of local bus services are provided by commercial bus companies. The remaining 20% are provided by local authorities. Under the Transport Act 1985, all local bus services operated in England outside London must have the particulars of the service (e.g. route and timetable) registered with the traffic commissioners – the body that regulates the bus industry in Great Britain.

5.7 The 2017 Act makes provision for the traffic commissioner to enforce the requirements of an enhanced partnership scheme. It also provides for the local transport authority to take over the registration function from the traffic commissioner in areas where an enhanced partnership exists. These Regulations also set out the procedures to be followed in order for the local transport authority to become the registration authority in an enhanced partnership area.

5.8 An enhanced partnership scheme may also stipulate the requirements in relation to the local services to be provided along individual bus corridors or parts of them. This includes requirements about the frequency or timing of local services (route requirements). For example, a scheme could include a requirement that only six buses can operate in either direction along the high street each hour between 9am – 6pm on weekdays. Where such requirements apply, operators must run their services in accordance with that requirement as a condition of registration. Failure to do so can attract enforcement action.

5.9 However, limiting the frequency of buses on individual routes may prevent some operators from running services. Under EU procurement law¹, any arrangements for providing a local bus service that confer an ‘exclusive right’ on a bus operator or group of bus operators, require that service to be subject to competitive tender. These Regulations set out the procedures to be followed where an application is made to register or vary a service which, if accepted, would result in the breach of a route requirement. The purpose of this process is to prevent the creation of an ‘exclusive right’.

The Appeals to Traffic Commissioners (Procedure) (England) Regulations 2018

Enhanced partnerships

5.10 Operators may appeal a decision made by the registration authority to refuse an application to register or vary a service, or to cancel an existing registration for non-compliance. The procedure to be followed will depend on whether the traffic commissioner or the local transport authority is the registration authority that took the decision which is being appealed.

5.11 If the traffic commissioner is the registration authority, the 2017 Act² provides that the operator is to appeal to the General Regulatory Chamber of the Upper Tribunal³. However, if the local transport authority is the registration authority, the 2017 Act confers a right of appeal to the traffic commissioner. These Regulations set out the procedures to be followed when an appeal is made to a traffic commissioner.

Service permits in franchised areas

5.12 The criteria that franchising authorities must apply when determining whether or not to grant a service permit are set out on the face of the 2017 Act. Such authorities may charge a fee for issuing a service permit and they may also attach conditions when issuing permits - for example, to require the operator of the service to accept a certain type of ticket. The 2017 Act sets out the circumstances in which franchising authorities can revoke or suspend a service permit. The procedures in these Regulations will also therefore apply if an appeal is made to a traffic commissioner in connection with a decision by a franchising authority not to grant, revoke or suspend a service permit or to attach conditions.

¹ EU Regulation No. 1370/2007 – Article 3.1

² See section 13 of the 2017 Act inserting new section 6F into the Transport Act 1985 (enhanced partnership schemes: appeals).

³ See The Tribunals, Courts and Enforcement Act 2007

6. The content of these Regulations

The Public Service Vehicles (Registration of Local Services in Enhanced Partnership Areas) (England and Wales) Regulations 2018

Identifying the lead authority

6.1 If an enhanced partnership covers more than one local authority area, one of the local authorities acting jointly must be identified as the 'lead' authority for the purposes of the Registration Regulations. These Regulations specify the information that the lead authority must provide and confers a duty to consult with the other authorities when exercising the powers conferred by the Regulations.

Notifications to the traffic commissioner

6.2 The Regulations cover the information that the local transport authority must provide to the traffic commissioner when an enhanced partnership is made, varied, postponed or revoked, so that the traffic commissioner can properly enforce its requirements. They also cover the information that the traffic commissioner must provide to the LTA.

6.3 The Regulations also require the LTA to notify the operators if it is to take on the registration function from the traffic commissioner.

NOTE: the requirements for the local transport authority to notify the traffic commissioner when it intends or is required to take over the registration function in an enhanced partnership area is contained in the Transport Act 1985⁴.

Calculation of registration fees

6.4 The traffic commissioner currently charges a fee to operators for registering local bus services or varying existing registrations. The 2017 Act allows the local transport authority to charge fees if they are acting as the registration authority. The Regulations set out how any fee charged by the local transport authority should be calculated.

Recording and publication of registration information

6.5 These Regulations set out the requirements for retaining and publishing the particulars of individual registrations when the local transport authority is the registration authority.

Cancellation of individual registrations

6.6 The 2017 Act contains powers for the registration authority to cancel individual registrations if they do not comply with the requirements of an enhanced partnership scheme. The Regulations set out the procedures to be followed.

⁴ See section 6G of the Transport Act 1985 as inserted by section 14 of the 2017 Act

Arrangements where a route requirement is not met

6.7 The Regulations set out the procedures to be followed when an application is made to register or vary bus services which, when taken together with other registered services on the route, would breach a route requirement.

Obligations on local authorities when tendering for services to replace services cancelled as a result of a failure to meet a route requirement

6.8 The 2017 Act contains powers for the local transport authority to tender for the provision of local bus services to replace those which, taken together, do not meet a route requirement specified in an enhanced partnership scheme. The Regulations set out the process the local transport authority must follow when tendering for these services.

Co-operation between traffic commissioners and local transport authorities

6.9 Because the registration mechanism in an enhanced partnership area requires close working between the local transport authority and the traffic commissioners, the Regulations require them to co-operate with each other when exercising their respective functions and to exchange information within a prescribed time limit.

The Appeals to Traffic Commissioners (Procedure) (England) Regulations 2018

Objective

6.10 The provisions and procedures in these regulations are modelled on the existing traffic commissioner and tribunal processes. The regulations deal with the process where traffic commissioners hear appeals about decisions concerning service permits in franchised areas and registrations in areas where the local transport authority has been delegated the role of a local service registration authority. The overriding objective of the regulations is to enable the commissioner to deal with appeals fairly and justly and operators and local authorities are required to co-operate and help the traffic commissioner achieve this outcome.

Case management powers

6.11 This regulation sets out the traffic commissioners' powers to manage appeals, including issuing directions, deciding what to do in the event of any irregularities, and striking out appeals if there is no reasonable prospect of success.

Representatives

6.12 This regulation provides that parties to an appeal may represent themselves or appoint a representative to act on their behalf.

Calculating time

6.13 This regulation provides that where an act is required by these Regulations, or a direction to be done on or by a particular day, it must be done before 5pm on that day. It also defines the meaning of 'working day' and clarifies that this does not include a Saturday, Sunday, Christmas Day, Good Friday or bank holiday under section 1 of the Banking and Financial Dealings Act 1971.

Sending and delivery of documents

6.14 This regulation sets out how documents are to be communicated between the parties including via electronic means.

Lead cases

6.15 Where a traffic commissioner is hearing two or more cases on similar points of law, these regulations enable them to designate one or more of them as 'lead case(s)'. In this event, proceedings in the other cases are stayed until the issue that is common to all the cases has been decided in the leading case(s). The regulations also establish the subsequent procedures that will apply including, the right of the parties to an appeal to apply to the commissioner for a direction that the decision in the lead case(s) does not apply and is not binding in connection with their appeal.

Notices of appeal, response and appellant's reply

6.16 These regulations set out when and how a decision may be appealed including the requirements for making an 'out of time' appeal and for notification of an appeal to be provided to the respondent. They also set out the requirement for the respondent to an appeal to send a response notice to the commissioner and the consequences if any response is made out of time.

Hearings

6.17 Traffic commissioners are required to hold hearings to consider appeals except where all parties to an appeal agree to proceed without one, or the traffic commissioner considers that it would be unnecessary. Unless there are urgent or exceptional circumstances, or where all parties agree a shorter timescale, relevant parties to an appeal are generally entitled to 21 days notice about the timing and location of a hearing. Information about the hearing must be published in Notices and Proceedings (N&Ps), published by the traffic commissioners. Hearings can be postponed to a later date if the commissioner considers it necessary but the details of such a hearing must be published in N&Ps in advance of the rescheduled hearing.

6.18 Unless there are sensitive personal, commercial or exceptional circumstances which it would be inappropriate to disclose, appeal hearings are generally to be held in public. The Regulations set out circumstances where hearings may proceed in a person's absence.

6.19 The Regulations also set out the right of participants to give evidence, call or cross examine witnesses, and address the traffic commissioner although the traffic commissioner has discretion in deciding what is permitted. The traffic commissioner may refuse to permit information which they consider irrelevant, repetitious, frivolous or vexatious.

Decisions

6.20 This regulation sets out how the traffic commissioner will give their decision on any appeal.

7. Relevant sections of the Bus Services Act 2017

7.1 Section 12 of the 2017 Act adds new section 6E into the Transport Act 1985 which provides for the traffic commissioner to cancel a local bus service registration in an enhanced partnership area and a power to make regulations.

7.2 Section 13 of the 2017 Act adds section 6F to the Transport Act 1985 allowing regulations to make provisions about the procedures, time and manner of appeals to the traffic commissioner.

7.3 Section 14 of the 2017 Act adds new section 6G, 6H and 6I to the Transport Act 1985. This allows:

(a) The delegation of the registration function from the traffic commissioner to a local transport authority that has made an enhanced partnership and a power to make regulations;

(b) Powers allowing registration fees to be levied by a local transport authority that has taken on the registration function and a power to make regulations;

(c) Making regulations concerning the records held by a local transport authority acting as registration authority and the information to be supplied to the traffic commissioners.

7.4 Section 123T of the 2017 Act allows regulations to be made about appeals against decisions by local transport authorities about service permits in a franchised area.

8. Consultation Proposals - Draft Guidance

8.1 This document includes background on the registration of local bus services in enhanced partnership areas and includes step-by-step guides on how to perform the various processes set out in the accompanying secondary legislation. It also includes an explanation of the powers of the traffic commissioner when conducting appeal hearings.

9. Consultation questions

9.1 When considering the draft documents enclosed with this consultation we should be grateful if you could provide responses to the following questions:

Q.1. The Registration Regulations only determine the information that the LTA should provide to the traffic commissioners. Should the Regulations also prescribe the information that the LTA should provide to operators when acting as the registration authority?

NOTE: When considering your response to this question, please bear in mind that these Regulations cannot require the traffic commissioners to provide information to operators.

Q.2. Do you have any comments on the draft Registration Regulations?

Q.3. Do you have any comments on the draft Appeal Regulations?

Q.4. Do you have any comments on the draft guidance?

10. What will happen next?

10.1 A summary of responses, including the next steps, will be published within six weeks of the consultation closing on the .GOV.UK website. Paper copies will be available on request.

11. Impact assessment

11.1 These Regulations only provide detailed procedures on the exercising of powers or requirements that are already set out in primary legislation, or procedures to implement requirements that are in existing EU legislation. Therefore, we have not produced a separate impact assessment for these Regulations. The impact assessments for the primary legislation can be found here:

<https://www.gov.uk/government/publications/bus-services-bill-impact-assessments>

Annexes

Annex A: Consultation principles

The consultation is being conducted in line with the Government's key consultation principles. Further information is available at <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator

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Zone 1/29

Great Minster House

London

SW1P 4DR

Email: consultation@dft.gsi.gov.uk

Annex B

See two separate documents published alongside this consultation document.

Annex C

See separate document published alongside this consultation document.