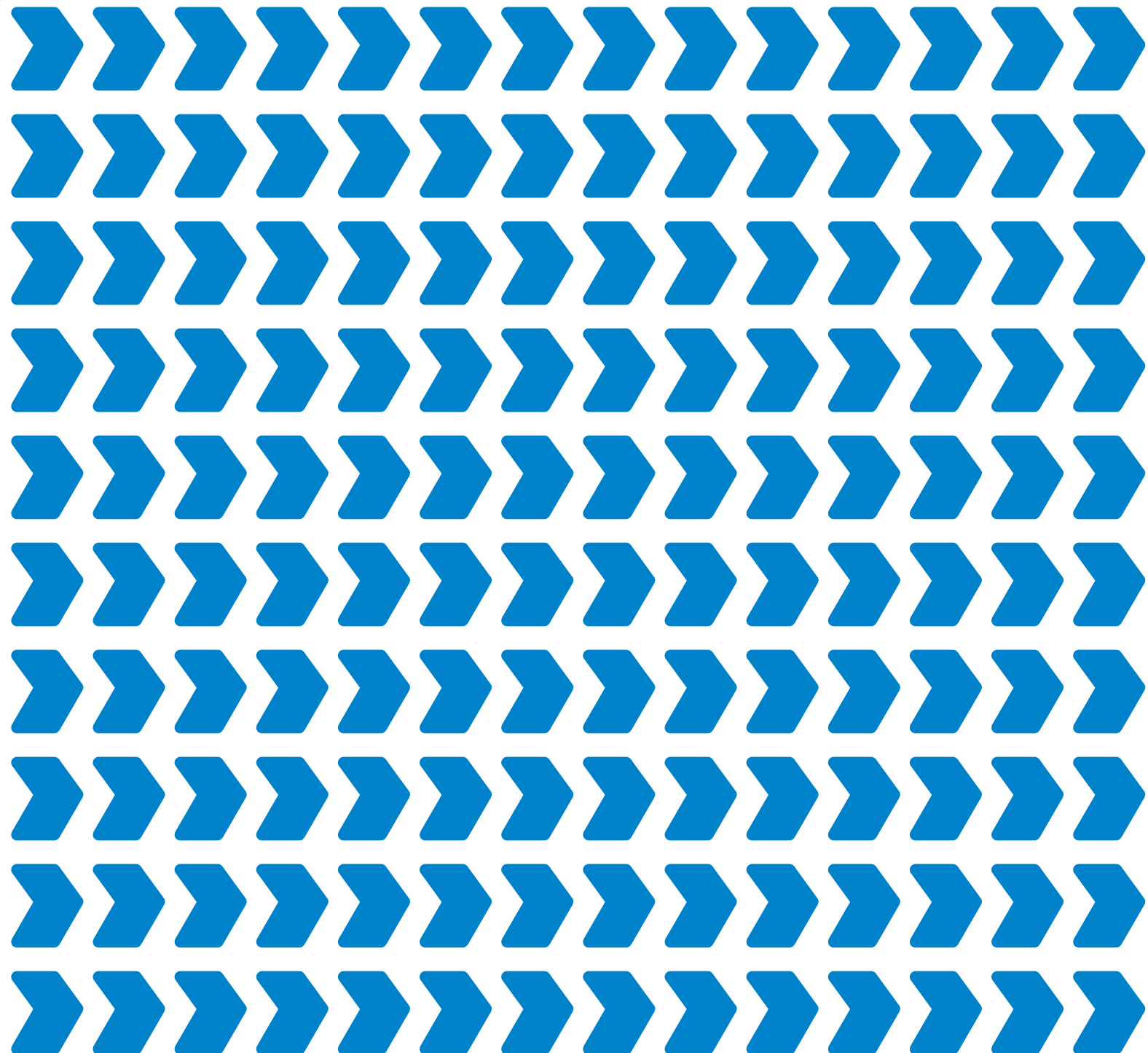




Department
for Transport

The Bus Services Act 2017 Franchising Scheme Guidance



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1. Franchising Guidance

Introduction

- 1.1 The Bus Services Act 2017 provides Mayoral Combined Authorities with the powers to implement bus franchising in their area – akin to the system operated by Transport for London. Other local transport authorities will also be able apply to Government for access to the same powers, where decisions will be taken on a case-by-case basis.

Please also bear in mind that although the franchising arrangements were part of the 2017 Act, that Act amends the Transport Act 2000 (the 2000 Act).

- 1.2 This guidance explains the legal process that an authority or authorities must follow before they can introduce franchising in their area. In addition, the guidance sets out the Government's position on issues such as providing non-mayoral combined authorities with access to franchising powers, and provides more detailed statutory guidance in areas such as the authority's or authorities' preparation of its assessment of its proposed franchising scheme.

- 1.3 The Transport Act 2000 ("the Act") sets out a comprehensive process that any authority or authorities must follow before it can introduce bus franchising in its area. At a high-level, the process is made up of five key stages. These are:

- Preparation of an assessment of the proposed franchising scheme – akin to the development of a business case:
 - Including requesting any relevant information required from operators to develop the assessment
 - Including commissioning a report to be prepared by an independent auditor on the assessment
- Consultation and engagement
- Responding to the consultation and, if the decision is to make a scheme, making and publishing the scheme
- Transition, including staff transfers; and
- Implementation, including the operation of the service permit scheme.

- 1.4 Guidance on each stage is provided below.

- 1.5 This document includes two different types of guidance:

- Guidance which seeks to explain how the new provisions introduced through the Bus Services Act 2017 work in practice and offer some practical suggestions as to their application. This guidance is in normal type; there is no statutory requirement for a local authority or auditor to have regard to it. It may however reference requirements which are themselves set out in statute (such as requirements to follow a particular process or to consult); and

- Statutory guidance to which a local authority or auditor must have regard in exercising relevant functions. This statutory guidance is underlined. It is issued under the following sections of the Act (as amended by the Bus Services Act 2017):
- 123B(5) in relation to the preparation of a franchising scheme assessment by a franchising authority;
- 123D(3) in relation to the matters to be taken into account by a franchising authority when selecting a person to act as an auditor of a franchising scheme assessment;
- 123D(5) in relation to the matters to be taken into account by an auditor when forming an opinion as to whether the information relied on in a franchising assessment, and the analysis of that information, by an authority is of sufficient quality; and
- 123W(1) in relation to the exercise by franchising authorities of their functions with regards to franchising schemes.

Access to Franchising Powers

- 1.6 The Act provides automatic access to franchising powers to mayoral combined authorities. There is a two-step process that needs to be followed before other authorities can access the powers. In October 2016, the Government published a draft policy statement, explaining the approach the Government would take to granting access to franchising powers.
- 1.7 Following further debates during the Act's passage through Parliament, the policy statement has been updated and refined, and sets out an explanation of how the process will work in practice and the broad criteria that the Secretary of State will take into account when determining whether or not to grant access to an authority.

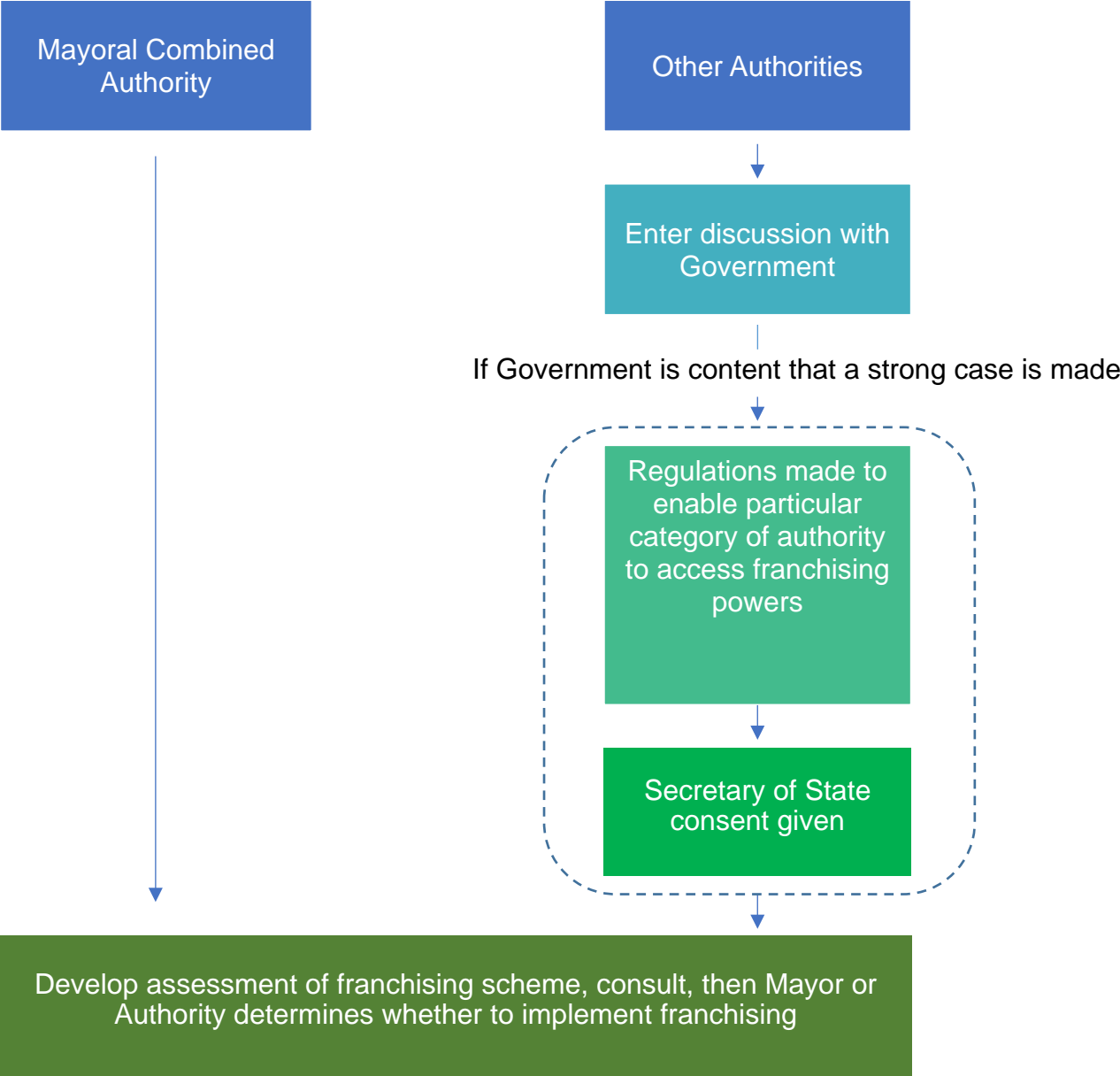
How the process will work in practice

- 1.8 The Act requires two processes to be completed before an authority other than a mayoral combined authority can access franchising powers. Firstly, Regulations must be made which provide that a particular category of authority, such as combined authorities without an elected mayor, county councils or the different types of unitary authority, is a "franchising authority". After, the Secretary of State must give their consent to any individual authority from within that category preparing an assessment of their proposed franchising scheme.
- 1.9 The purpose of the first step - Regulations to provide access to franchising powers to a particular category of authority – is to provide a relatively high level of investment certainty for the bus industry. If a particular category of authority has not been “turned on” then the second step cannot be taken. This should reduce the uncertainty that operators face when making investments.
- 1.10 Once this ability to access powers is “turned on”, individual authorities from within the particular category of franchising authorities then require consent from the Secretary of State before they can initiate the franchising process. The Secretary of State's role in the process is to determine whether the authority in question has clear aspirations which will benefit passengers, a sensible plan in place and the right attributes to make franchising a success. It is important to note that providing an authority with

access to the powers is the first step in the process, and the authority will then need to develop its detailed franchising proposition, assess the proposition, consult, and then decide whether or not to proceed by making a scheme.

1.11 Although the Act requires Regulations to be made and consent to be given, in practice we expect these two processes to be pursued in parallel for any early-adopters of franchising. The Government does not intend to “turn on” a particular category of local authority unless or until it is satisfied that there is one or more local authorities in that category that is likely to satisfy the criteria and to whom the Secretary of State is minded to grant franchising powers.

The proposed process is summarised below.



The criteria or factors that the Secretary of State will take into account

1.12 The Secretary of State's role in the process is not to form a view on a particular franchising proposal – that is entirely a matter for franchising authorities to take once powers have been granted – but rather to determine whether the authority in question has clear aspirations which will benefit passengers, a sensible plan in place and the right attributes to make franchising a success. The points below set out the criteria that an authority must satisfy in order for the Secretary of State to grant them access to franchising powers:

Authority must set out plans for improving bus services

1.13 The authority must be able to articulate their high-level plans to make bus services better for passengers, including how they intend to use franchising to deliver better services, for example by integrating bus services with wider public transport services, increasing services or their frequencies, by lowering fares or introducing more effective or comprehensive ticketing systems. The authority should also give a clear explanation of why these outcomes would not be achieved in any other way, such as the introduction of partnership arrangements with local bus operators, and the difference that access to franchising powers will make to the day-to-day experiences of bus passengers in the area.

Powers to make franchising a success

1.14 The authority must demonstrate that it has a suite of powers in place to make franchising a success – authorities that have control of both local roads and public transport, together with planning responsibilities and control of issues such as parking policy, will be better placed to implement franchising as they are able to directly control many of the factors that impact on bus patronage. Where an authority does not have control of these aspects, they could put in place alternative practical arrangements such as:

- the creation of a key route network of local roads across different authorities – under one management organisation and decision making structure; and
- a proposition for how the authority and its districts or constituent authorities will work together throughout the different tiers to implement franchising with a shared vision and approach for local bus services.

Strong governance arrangements

1.15 The authority must be able to demonstrate that it has effective governance arrangements in place. The decision-making and accountability arrangements need to be transparent to local people, and authorities seeking consent from the Secretary of State will need to set out how this will be achieved by, for example, specifying a named individual such as the Council Leader to take the decision as to whether or not to implement franchising. This will be particularly important where two-tier authorities or groups of authorities are proposing to implement franchising schemes.

Effective geography to make franchising a success

1.16 The authority must be able to demonstrate that franchising can be put into practice effectively across the geography of the area. Authorities requesting franchising powers will need to explain why the geography they propose is appropriate, including information on travel to work and leisure patterns and the nature of existing bus services. Before bringing forward a proposal they should think carefully about the best area in which to implement a franchising scheme given current and potential future travel patterns. This is because the implementation of bus franchising will

impact on services not only wholly within the area concerned but also serving other local authority areas. It is unlikely, for example, that the Secretary of State would wish to consent to an application from a small local authority proposing to work on its own and where many local bus services run significantly beyond its boundaries.

Capability and resources

- 1.17 The authority must be able to demonstrate that it has the capability and resources to deliver franchising. An authority or authorities requesting franchising powers should set out why they believe they have the capability to deliver, demonstrating successful delivery of complex projects, previous commitment to improving public transport and outcomes for passengers, and how they plan to finance and resource a system of franchising. This could include, for example, a clear explanation of the long-term level of funding that the authority or authorities would commit to the development of, transition to, implementation of and management of a franchising scheme were it to decide to implement one.

Case Study: Cornwall Devolution deal

Cornwall Council agreed a devolution deal with Government in July 2015. During negotiations with Government, Cornwall Council put forward a strong case for bus franchising powers as part of its devolution deal. As such, the Secretary of State is minded to grant franchising powers to Cornwall Council should he receive a formal request to do so. This is because:

- as a unitary authority Cornwall Council has all the other powers and levers necessary to support bus services effectively. These include responsibilities for local roads, planning policy and other related issues, such as parking charges;
- again, as a unitary authority there is a 'single controlling mind' in the Council in relation to all of the key local government policy factors that would influence the success of bus services, and robust governance arrangements;
- the nature of Cornwall's geography is such that cross-boundary and other complications that might arise from adopting bus franchising are likely to be comparatively limited, and the Council would have responsibility for services across the wider local economic and transport geography;
- Cornwall Council has demonstrated the importance it attaches to improving local public transport through a sustained programme of investment in rail improvements, which has seen passenger numbers increase by 140% since 2000, and through the prominence it has given to transport measures in its devolution deal, and it also has a strong track-record of delivery;
- Cornwall has a clear "One Public Transport" vision which has improved services for passengers – across modes - at its heart;
- the Council is exploring a range of options for achieving its objectives including pilot partnership arrangements; and
- planned service changes and initiatives within the current Great Western rail franchise provide an ideal opportunity to revisit the integration of bus and rail services to create one public transport system for Cornwall.

Development of a Franchising Scheme assessment

Introduction

- 1.18 Section 123B of the Act requires franchising authorities to conduct an assessment of their proposed franchising scheme. An authority or authorities cannot implement franchising until this assessment has been completed and the other legislative requirements complied with, such as the need to consult. This section provides an authority or authorities with guidance concerning the preparation of that assessment, sometimes known as the "business case".
- 1.19 Section 123B provides that an authority's or authorities' assessment of their proposed franchising scheme must describe the likely effects of the scheme and compare making the proposed scheme to one or more other courses of action.
- 1.20 Section 123B then goes on to provide that the assessment must also include consideration of:

- Whether the proposed scheme would contribute to the implementation of:
 - a. the authority's or authorities' local transport plan policies made under section 108(1)(a) of the Act, and
 - b. other policies affecting local services that the authority or authorities have adopted and published.
 - Whether the proposed scheme would contribute to the implementation by relevant neighbouring local authorities¹ of:
 - a. those authorities' policies under section 108(1)(a), and
 - b. other policies affecting local services that those authorities have adopted and published.
 - How the authority or authorities would make and operate the proposed scheme
 - Whether the authority or authorities would be able to afford to make and operate the scheme
 - Whether the proposed scheme would represent value for money
 - The extent to which the authority or authorities are likely to be able to secure that local services are operated under local service contracts.
- 1.21 Any decision to change the model of bus service delivery is significant, and will impact the authority or authorities proposing the scheme, neighbouring local authorities, bus operators (both incumbent and aspiring to enter the market) and, most importantly, passengers.
- 1.22 The decision however is one which has been devolved to franchising authorities. The ultimate responsibility therefore lies with local decision-makers and therefore franchising authorities should ensure that the assessment of the proposed scheme contains sufficient detail to enable an informed decision to be taken.
- 1.23 The cross-government guidance on appraisal and evaluation – the Green Book² – is a useful reference point for authorities when preparing the economic case of their assessment in particular. It sets out advice and techniques to help assess which course of action is likely to achieve the desired outcomes, and provide the best use of resources.
- 1.24 Similarly, cross-government guidance on producing robust analysis – the Aqua Book³ - provides useful advice for an authority or authorities to help ensure that the outputs from any analysis, as well as the supporting models, data and assumptions used, are fit-for-purpose. An authority or authorities should consider the relevance of the Green and Aqua Books to their particular circumstances and use them, as far as is appropriate, as a reference source

Overview of assessment process

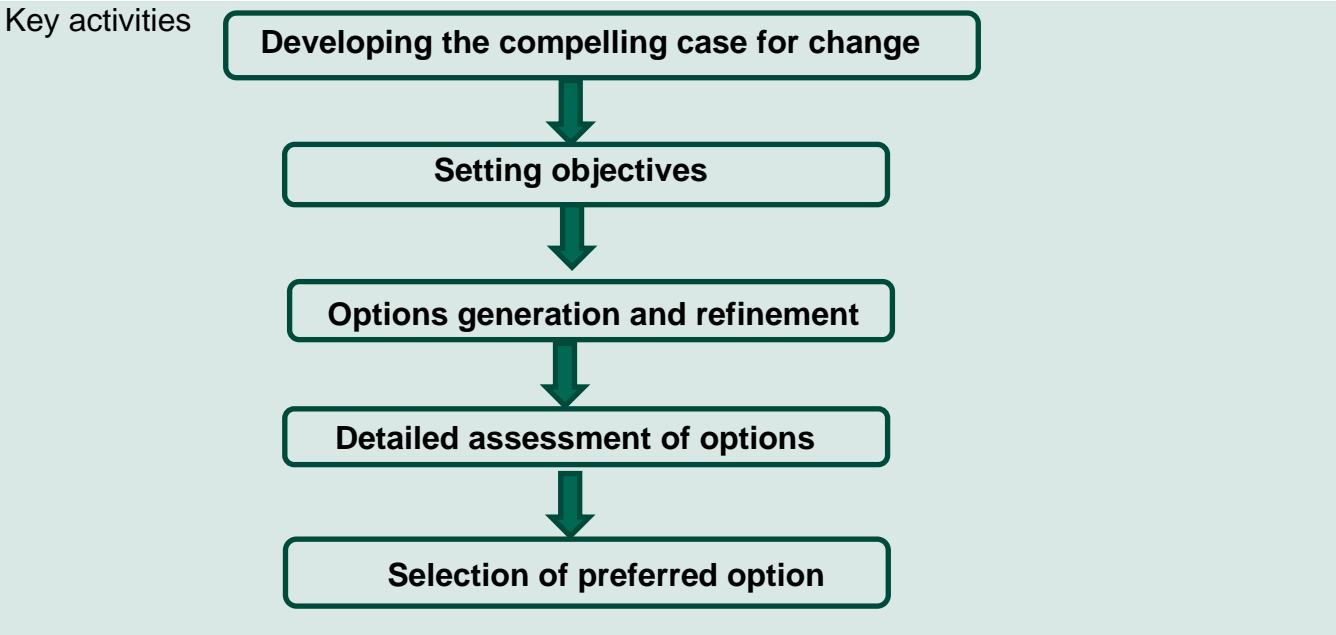
- 1.25 The diagram below sets out the key activities an authority or authorities should undertake when developing their assessment.
- 1.26 The purpose of the assessment is to ensure that an authority or authorities have thoroughly thought through the impacts, risks and practical implications of its

¹ A local transport authority, a London transport authority, or a council in Scotland

² <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

³ <https://www.gov.uk/government/publications/the-aqua-book-guidance-on-producing-quality-analysis-for-government>

proposal to introduce franchising. The assessment requires an authority or authorities to compare its franchising proposal against other courses of action, and consider the benefits, impacts, costs and risks. Following the preparation of the assessment and the other steps in the process, including consultation, the authority or authorities will then be well placed to take their own decision on whether or not to proceed. The legislation sets out a number of factors that must be considered as part of an authority’s assessment of its proposed franchising scheme. An authority or authorities can take other factors into account, provided that these are clearly set out and explained as part of the assessment itself.



- 1.27 It is important to note that the legislation does not require the authority or authorities to pass a particular test or prove that franchising will deliver particular outcomes. It is for the Mayor or authority to decide, based on the assessment of the proposed franchising scheme and the results of the consultation, whether franchising is the right course of action. That decision can be subject to legal challenge through judicial review, as is the case for any local authority decision.
- 1.28 The level of detail that should be included in an assessment is the same as the level of detail that would usually be included in an Outline Business Case⁴. The assessment should include a detailed assessment of the options together with full economic and financial appraisals, including appropriate sensitivity tests. The assessment should also include detail regarding how the preferred option would be procured and how risks to the delivery of the project will be managed. The options, including the proposed franchising scheme, will need to have been developed in some detail to be able to accurately assess their impacts.

Developing the case for change

- 1.29 Any authority or authorities conducting an assessment should set the context by describing the overall aims and objectives of the authority or authorities and the role that transport, and bus services in particular, play in relation to those aims and objectives. The objectives may include, but not be limited to, economic growth,

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469317/green_book_guidance_public_sector_business_cases_2015_update.pdf

housing, social mobility, skills, employment and environmental objectives. The authority or authorities should set out how local bus services fit into the transport system of the area, how they contribute to the authority's or authorities' overall objectives, what challenges have been identified and how changes to the provision of local bus services could help address these challenges.

- 1.30 In developing the assessment, an authority or authorities should draw on information about the current and predicted future performance of local bus services. This should include information about trends in patronage, journey speeds and reliability, the fares charged and tickets available and any relevant data about the environmental performance of the local bus fleet. The authority or authorities should consider this information and should also obtain and consider information about the needs and opinions of passengers in the area and their views on the provision of local services – what passengers are looking for from bus services and public transport more generally, to what extent they are satisfied with current services, and where they would like to see improvements made.
- 1.31 In developing the case for change, an authority or authorities should ensure that they specifically consider:
- information about local travel patterns and demand for travel in the local area;
 - the geography of the area in which they are proposing to make changes and the reasons why such change is appropriate;
 - current levels of competition in the local bus market and the impacts that may be having on the offering to passengers;
 - any external or wider trends (such as technological developments and innovation in smart cities or personal travel) which could impact on local bus services in the area and the potential implications.
- 1.32 Using the information reasonably available to them about current and likely future trends in performance and considering passenger views, the authority or authorities should clearly identify the challenges that they are looking to address and develop a strong 'case for change' that justifies the need for intervention.
- 1.33 The 'case for change' should set out the issues that passengers are currently facing – which could, for example, be related to fares or service coverage for example, and the core drivers of those issues – which could include a lack of competition in the area, or poor integration between bus services and other transport options for example. When considering this case for change, an authority or authorities should rely on evidence and set out the market failures or inefficiencies that they are looking to address. Any particular drivers for change, such as legislative requirements, ongoing trends, economic opportunities or demographic factors, which have led to the assessment being undertaken at this point in time should also be explained clearly.

Setting objectives

- 1.34 In addition, the authority or authorities should clearly set out the objectives it is trying to achieve separately from considering the options available to help achieve those objectives.
- 1.35 The authority or authorities should set out specific, measurable, achievable, realistic and time-bound objectives for local bus services in the relevant geographical area, which will contribute to achieving the authority's or authorities' overall local transport

policies and other relevant and published policies. It is for the authority or authorities to determine how many objectives are appropriate, but there should be a focus on delivering improved services for bus passengers. There should also be specific objectives concerning the affordability of the proposal and the value for money to be achieved. Each objective should be supported by specific measures of success which could be used to identify whether or not it had been, or was likely to be, achieved. Each authority will have its own local market circumstances and beyond this core guidance it is for the authority to identify which and how many objectives are appropriate.

Options generation and refinement

- 1.36 The authority or authorities should complete an options assessment exercise, identifying a number of options that have the potential to achieve the objectives it has set. The authority or authorities should consider, at a high level, the extent to which each of the options is likely to achieve the desired outcomes and meet their objectives. As a result of that analysis, the authority or authorities should focus in on a small number of options for further detailed assessment.
- 1.37 Identifying realistic options should not be a desk exercise however, and authorities should engage with bus operators in the area and explore whether, for example, there is a realistic partnership proposition or ticketing solution that should be considered and assessed alongside the franchising proposition.
- 1.38 The assessment of any proposed franchising scheme must compare making the proposed scheme to one or more other courses of action, so the authority or authorities should not dismiss realistic alternative options to franchising at an early stage without further detailed assessment.

Detailed assessment of options

- 1.39 The authority or authorities should conduct a detailed assessment of each of the shortlisted options to determine the benefits, impacts and costs, and further determine the extent to which each option would meet the objectives.
- 1.40 Section 123B of the Act sets out the factors which an authority or authorities must consider as part of its assessment of its proposed franchising scheme. The factors that the Act requires authorities to consider reflect, broadly, the Treasury five case business case model. The sections below set out guidance, presented under headings that correspond to the five case model, to help authorities meet their statutory obligations and develop a robust assessment.

Strategic case

- 1.41 Section 123B requires authorities to consider, as part of their assessment, whether and extent to which the proposed franchising scheme would contribute to the implementation of their local transport plan policies and any other of their published and adopted policies that affect local bus services, for example an environmental policy. Similarly, the authority or authorities are required to consider whether the proposed scheme would contribute to the implementation of neighbouring authorities local transport policies and other policies which affect their local bus services.
- 1.42 In order to meet this requirement the authority should explain the extent to which each of the options considered will help achieve their policy objectives, and should

similarly list its relevant local neighbouring authorities⁵ and consider the extent to which the options would help in the delivery of their policy objectives. Authorities should proactively engage with neighbouring authorities to ensure they fully understand those policy objectives and the impacts that the proposed options could have on bus services and transport in their areas.

- 1.43 This assessment will be central to the final decision on which option the authority or authorities should select.

Economic case

- 1.44 Section 123B requires authorities to consider, as part of their assessment, whether the proposed scheme would represent value for money.
- 1.45 The authority or authorities should consider the economic case in terms of impacts on wider society, both from the proposed franchising scheme and from the other options being considered. Authorities should assess the economic, social and environmental costs and benefits, rather than solely focussing on the transport impacts of the different options.
- 1.46 The options should be considered against a counterfactual – a realistic ‘do nothing’ scenario. The counterfactual should take account of any business as usual improvements or plans that the authority would put in place regardless of the proposed scheme, such as continuing to subsidise certain services. The counterfactual should also include any improvements or changes that operators in the area have planned, using appropriate forecasts where feasible – such as to fares or changes to services that are likely to increase or decrease passenger journeys. The possibility of market entry or exit should also be considered.
- 1.47 This aspect of the authority’s or authorities’ assessment should clearly explain the impacts of the options on different groups in society. This should include passengers, the authority, wider society and bus operators – with both the potential impacts on incumbent operators and the potential benefits to new entrants considered. Particular consideration should be given to small and medium sized operators, and the potential impacts of the options on that group. Similarly, particular consideration should be given to the impacts of the options on passengers in neighbouring areas that could be affected by the changes.
- 1.48 An authority or authorities should conduct a thorough assessment of local operators that they consider to be small and medium sized. An authority or authorities should also take account of the overall nature of their market, the operator’s fleet size and consider the turnover of the operators – where necessary including its parent structures – as a whole.
- 1.49 When conducting the assessment, the authority or authorities should identify the nature and scale of the impacts of each proposal on small and medium sized operators operating services with stopping places in the authority’s area, specifically stating where options are likely to bring benefits to certain groups, and where they are likely to result in disbenefits or costs. For example, existing users could benefit from more frequent services or reduced fares, local residents could benefit from improved air quality, and users of other transport modes could benefit from greater transport choice or reduced congestion.

⁵ A local transport authority, a London transport authority or a council in Scotland

- 1.50 In addition, the authority or authorities should also assess the likely impacts of the transition period of each option, particularly on passengers, as it is likely that some options will involve more disruption for passengers. An authority or authorities should think in particular about the likelihood of disruption or withdrawal of services during the transition from the current model of bus services delivery, and the potential disbenefits to local passengers that could arise. An authority or authorities should also consider any mitigation plans or strategies that they would put in place.
- 1.51 In considering the impacts of the options the authority or authorities should think about the distribution of benefits, costs and risks between different groups. With respect to franchising proposals, the authority or authorities should ensure they have considered:
- impact on bus users – bus users will receive benefits from changes in fares and measures that improve the quality of their journey experience (such as changes to the ticketing offer or on-board information);
 - fare-box revenue – whether a gross cost or net cost franchising model is being proposed;
 - Bus Service Operators Grant (BSOG) payments – these will be devolved to any authority that pursues franchising and, as a consequence, the funding to bus operators will decrease. Thought needs to be given to how this funding would be used;
 - operating costs – such as costs for leasing assets, staff, training, marketing and branding for example;
 - capital costs – such as investments in depots or buses for example;
 - bidding and administration costs – cost to operators to bid for contracts, and authorities to manage the franchise bidding process, and any costs that the operation of partnership arrangements would incur for all parties;
 - implementation costs – including additional staff required, for authorities, operators and elsewhere in the system, or expert advice to put the scheme into practice;
 - operator margins – based on evidence from existing franchising and contractual arrangements. The authority should consider whether margins are likely to change, potentially as a result of changes in the competitive environment, between the first and subsequent franchise periods;
 - environmental impacts – such as changes in air quality due to changes in congestion or service levels.
- 1.52 With respect to enhanced partnership proposals in particular, the authority or authorities should ensure that it has considered:
- the costs of administering bus registrations – under an enhanced partnership with “route” level requirements, local transport authorities will take on responsibility for registering bus services; and
 - ongoing management costs for the authority or authorities and for local bus operators.
- 1.53 This aspect of the assessment should include sufficient detail so that the scale of the benefits and impacts on different groups can be understood. Much of this will require the authority or authorities to make assumptions about the likelihood of certain

events occurring based on the nature of their proposed options. For example, bus operators currently running services in the area will incur certain costs if they are unsuccessful in winning future contracts under a franchising model. The likelihood of this happening however will be dependent on the nature of the franchising scheme put forward by the authority or authorities.

- 1.54 All significant assumptions used in the economic and financial cases should be documented as the assessment is developed – identifying the evidence on which they are based where possible.
- 1.55 Given the above, the authority or authorities should think carefully about the most suitable appraisal period for assessing the impacts of the options, and should explain its decision in the assessment documentation. The authority or authorities should also consider how best they can demonstrate the ongoing sustainability of the different options, bearing in mind the long-term implications of a decision to change the model of bus service delivery in an area. The assessment should indicate clearly whether there is anticipated to be any substantive change in outcomes in the years immediately following the end of the chosen appraisal period.
- 1.56 The authority or authorities should then look to present the net present value of each option, derived from the present value of the costs and benefits of each option. The authority or authorities should also perform a number of sensitivity tests, to provide a range of results around the options, to account for uncertainty and optimism. The cross-government Green Book could be a useful starting point to develop the appropriate methodology.

Financial case

- 1.57 Section 123B of the Act requires an authority or authorities to consider, as part of their assessment, whether the authority or authorities would be able to afford to make and operate the proposed franchising scheme.
- 1.58 An authority or authorities should think about the financial implications of the proposed options, not only with respect to the initial introduction of the arrangements, but also factoring in the ongoing management and operation.
- 1.59 Authorities should set out the capital and revenue requirements for the different options over their lifespan, together with an assessment of how the options would impact upon the balance sheet, income and expenditure account of the franchising authority. Any requirements for external or additional funding must be set out clearly together with an explanation of how the funding will be secured.
- 1.60 In developing the financial case for the assessment, an authority or authorities should ensure they have considered:
- whether the options would require capital spending, such as for the purchase of depots, buses or other infrastructure;
 - whether the options would require revenue spending, such as for additional staff, in particular considering the costs associated with the TUPE transfer of staff and their pension protection where relevant;
 - how devolved BSOG funding will be used; and
 - all of the other issues raised at paragraph 1.51 and 1.52 above.
- 1.61 Particular consideration should be given to demonstrating the longer-term financial sustainability of the options – with a move to a system of franchising in particular

being a long term change that will need to be sustainable for the authority in question.

1.62 Specifically, the financial case element of the assessment should set out:

- A year by year cost analysis, broken down by capital and resource expenditure, for the authority or authorities;
- the budget available to the authority in each of the relevant years;
- a year by year income forecast for the authority if relevant (for example if a gross cost franchise is proposed);
- whether the option requires additional borrowing by the authority and if so what interest assumptions and repayment arrangements have been used;
- a summary of the key financial risks, particularly to any forecast income to the authority and including any quantified impacts and high level mitigation plans; and
- a sensitivity analysis, reflecting the range of financial risks.

Commercial case

1.63 Section 123B of the Act requires an authority or authorities to consider, as part of their assessment, the extent to which the authority or authorities are likely to be able to secure that local services are operated under local service contracts.

1.64 The authority or authorities should consider how the options could be procured competitively and what the contractual arrangements would look like, with the view to ensuring, for franchising proposals in particular, that the proposed franchised services could be secured under local service contracts or through service permits. In particular, an authority or authorities should consider how they intend to facilitate the involvement of small and medium sized operators, bearing in mind the need to ensure competition for the first and subsequent rounds of procurement.

1.65 An authority or authorities should also clearly set out how they intend to facilitate cross-boundary services, including how the service permit system will be used to enable those services to operate.

1.66 In addition, an authority or authorities should consider the transition periods to the new options, setting out how they intend to ensure that services to passengers are protected during that period, and what commercial arrangements they plan to put in place to manage that process.

1.67 In developing the commercial case of the assessment, an authority or authorities should ensure they have considered the following factors, set out their proposal in relation to each and their reason for adopting such a proposal:

- the commercial model they intend employ;
- the size and geographical scope of the areas to which contracts will relate;
- the length of contracts;
- whether franchising will be phased-in gradually;
- other key contractual arrangements, including those relating to the transfer of staff;
- how they intend to facilitate strong competition for contracts; and

- the key commercial risks, their potential impacts and how they would be mitigated and managed.

Management case

- 1.68 Section 123B of the Act requires an authority or authorities to consider, as part of their assessment, how the authority or authorities would make and operate the proposed franchising scheme.
- 1.69 The authority or authorities should consider how it would successfully deliver and manage the options, and to set out the arrangements it plans to put in place to manage and mitigate risk in relation to each option.
- 1.70 In particular, the authority or authorities should set out how it intends to manage the transition process from the current system to the introduction of any of the proposed options. This is likely to require most thought with respect to the franchising proposition, and the authority should ensure they clearly set out any contingency plans for providing replacement services should operators stop running their services before the introduction of the franchising scheme and any other plans they may have put in place to manage those risks.
- 1.71 In developing the management case of the assessment, an authority or authorities should ensure they have considered for each option:
- The programme management structure they will employ, including whether additional specialist staff or advice will be required. If additional staff are required this should include the numbers of staff and recruitment strategy.
 - What procurement and contract management processes, if any, are required for the successful introduction and ongoing management of the proposal; and
 - The risk management and mitigation arrangement that the authority or authorities plans to put in place, with particular focus on management of the transition process from the status quo to a franchised market.

Conclusion

- 1.72 The authority or authorities should clearly set out its conclusions having completed the detailed assessment of options, drawing clear distinctions between the performance of the different options with respect to achieving the objectives of the authority, and their impacts on different groups in society.
- 1.73 The authority or authorities should then identify its preferred option, clearly setting out the rationale for this decision.

Information request

- 1.74 An authority or authorities will need to gather robust information and data to inform the preparation of the above assessments. The Act enables an authority or authorities to request certain data from operators of local services in the area in which the franchising scheme is proposed in order to help develop their assessment – the specific categories of information that can be requested are set out in new section 143A(3) of the Act. An authority or authorities are able to request the information in any form that it is reasonable to expect operators to provide it, bearing

in mind the ways in which operators currently hold the information, and within such a reasonable timescale as the authority or authorities may set out.

- 1.75 An authority or authorities should engage proactively with local operators before and throughout the information request process to understand the ways in which operators hold the relevant information and how long it may take them to collate and provide it.
- 1.76 In addition, an authority or authorities should look to supplement the information gathered from operators with other information to ensure they have a strong evidence base on which to take decisions regarding the most suitable model of bus service delivery. This should include information gathered from passenger surveys or information about local travel patterns, other research and evidence about the likely benefits or impacts of particular changes to bus services.

Assurance report prepared by the auditor

- 1.77 Once a franchising authority or authorities has prepared its assessment, otherwise known as a 'business case', if it wishes to proceed with its proposed franchising scheme, it must obtain a report from an independent auditor on its assessment. The auditor's report must outline whether:
- the information relied on by the authority or authorities in producing the economic (value for money) and financial (affordability) cases of their assessment is of sufficient quality;
 - the analysis of that information is of sufficient quality; and
 - that the authority or authorities has had due regard to guidance issued by the Secretary of State under section 123B of the Act in preparing its assessment.
- 1.78 The Act requires the Secretary of State to issue guidance in relation to two issues in connection with the audit process. The first is guidance for franchising authorities as to the matters to be taken into account by a franchising authority when selecting a person to act as an auditor. The second of guidance is for appointed auditors, concerning matters to be taken into account by auditors when forming an opinion as to whether the information relied on by the authority or authorities, and the analysis of that information by the authority or authorities, is of sufficient quality.

Matters to be taken into account by a franchising authority when selecting a person to act as an auditor

- 1.79 Franchising authorities must have regard to this guidance when selecting a person or body to act as their independent auditor for the purposes of section 123D of the Act.
- 1.80 The Act specifies that the auditor must be a person or body with a recognised professional accountancy qualification offered by a qualifying body. The Act also explains that the auditor must be able to act as the auditor of the franchising authority's or authorities' accounts in order to perform the franchising audit function. This means that the auditor needs to be a qualified accountant with no conflicts of interest that would lead to difficulties in acting as the auditor of the local authority's or authorities' account.
- 1.81 The independent auditor could be the authority's or authorities' usual external auditor, or could be engaged specifically for the purposes of conducting the franchising audit function. The auditor should act with independence and ensure that the authority or

authorities is in the best position to take a well-informed decision in the interests of passengers.

- 1.82 A franchising authority or authorities should not appoint an independent auditor or audit company for the purposes of section 123D of the Act if that auditor or company was also engaged by the authority or authorities to assist with any aspect of the assessment of the authority's or authorities' proposed franchising scheme for the purposes of section 123B of the Act. It is important that they preparation of the assessment, or 'business case', and the auditing of that case are kept separate.

Matters to be taken into account by the auditor when forming an opinion

- 1.83 Appointed auditors must have regard to this guidance when forming an opinion for the purposes of section 123D of the Act.
- 1.84 The auditor's report must state whether, in the opinion of the auditor:
- the information relied on by the authority or authorities in considering the matters referred to in section 123B(3)(d) or (e) of the Act is of sufficient quality;
 - the analysis of that information in the assessment is of sufficient quality; and
 - the authority or authorities had due regard to guidance issued under section 123B of the Act in preparing the assessment.
- 1.85 When forming their opinion as to whether the information relied upon, and the analysis of the information by the authority or authorities, is of sufficient quality, auditors should take into account the quality and timeliness of any information received from bus operators and the following criteria:
- whether the information used comes from recognised sources;
 - whether the information used is comprehensive or selectively supports the arguments in favour, or against, any particular option;
 - whether the information used is relevant and up to date;
 - whether the assumptions recorded as part of the assessment are supported by recognised sources; and
 - the mathematical and modelling accuracy of the analytical methods used to calculate the impacts of the options.
- 1.86 Should the auditor consider that one or more of these criteria have not been satisfied, then they should advise the franchising authority or authorities accordingly.
- 1.87 The auditor should not report or pass judgement on the decisions taken by the authority or authorities or the outcomes of the assessment – their role is purely to consider the process that has been followed, the accuracy and robustness of the information that has been used in the analysis, and that the mechanics of the process have been carried out correctly.

Consultation

- 1.88 Following the preparation of the assessment, and the report prepared by the auditor, the authority or authorities should then consult widely on their proposals. This should ensure that local passengers, businesses and transport providers are able to

comment on the proposals before the authority takes the decision as to whether to implement the franchising scheme.

1.89 The Act requires an authority or authorities to publish, as part of the consultation process, the following documents:

- A consultation document relating to the proposed scheme;
- the assessment of the proposed scheme; and
- the report prepared by the auditor.

1.90 The Act then goes on to explain what the authority or authorities should include as part of its consultation document. In summary, the consultation document should include:

- a summary of the assessment of the proposed franchising scheme;
- the area within which the proposed franchising scheme would operate, and any sub-areas within it;
- a description of the franchised services that the authority or authorities proposes to provide;
- a description of any services, or types of service, that the authority or authorities proposes to except from regulation arising because of the franchising scheme;
- the date on which the authority or authorities proposes to make the franchising scheme, together with the first date or dates by which the authority or authorities proposes to enter into contracts with operators to provide franchised services;
- the periods that must expire between the authority or authorities entering in to a contract, and services starting to be operated under that contract;
- a description of the authority's or authorities' plans for ongoing engagement throughout the life of the franchising scheme to seek views on how well the scheme is working;
- a description of how the authority's or authorities' plans to facilitate involvement of small and medium sized operators through the procurement process; and
- the date by which responses to the consultation must be received.

1.91 In terms of services, or types of services, that a franchising authority or authorities may wish to except from regulation arising because of the franchising scheme, it is important to note that many school services provided by local authorities are local services as defined in the Transport Act 1985, and the prohibition set out at section 123J(3) will apply in relation to such services. The prohibition will not apply if the authority or authorities excepts them from regulation arising because of the scheme by a provision in the scheme. An authority or authorities should consider the sorts of services that should be excepted from regulation arising because of their scheme, in particular school services, and how the provision of such services will work once the franchising scheme has been implemented.

1.92 An authority or authorities should aim to make their consultation materials as accessible as possible to all interested parties, and ensure that local passengers in particular are aware of, and able to input to, proposals relating to their local bus services.

- 1.93 The Act also specifies a number of key stakeholders that an authority or authorities must consult on their proposals, including:
- Local bus operators
 - Representatives of employees of such operators
 - Organisations representing local passengers
 - Local authorities who would be affected by the proposed scheme, including National Parks Authorities where relevant
 - A Traffic Commissioner, Chief Officers of Police for areas to which the proposed scheme relates, Transport Focus (the Passengers' Council), and the Competition and Markets Authority.
- 1.94 An authority or authorities must consult these bodies, but they have the freedom and flexibility to consult any other individuals or bodies they consider appropriate.

Responding to the Consultation

- 1.95 Following the consultation process, an authority or authorities must prepare and publish a report setting out their response to the consultation together with their decision as to whether or not to proceed with the proposed franchising scheme. An authority or authorities should address issues raised by respondents to the consultation as part of their response, including setting out any changes to the franchising proposal that they intend to make as a result. Depending on the significance of any changes, an authority or authorities may choose to consult again.
- 1.96 If the franchising authority or authorities decides to proceed with the franchising scheme, they must include within their response to the consultation, how they will facilitate the involvement of small and medium sized operators in the provision of services through their procurement processes.
- 1.97 Where the authority is a Mayoral Combined Authority, it must be the Mayor that takes the decision as to whether or not to proceed with a franchising scheme.

Making and publishing a franchising scheme

- 1.98 At the same time as the authority or authorities publishes its response to the consultation, it must also make and publish the franchising scheme. This is the process of finalising and establishing what the franchising scheme will look like in practice.
- 1.99 As part of making and publishing the final franchising scheme, the authority or authorities must set out the geographic area to which the franchising scheme will relate, the local bus services that are to be provided under franchise contracts, the date on which the authority can first enter into contracts with bus operators to provide those services, and the period of time that must elapse between those contracts being entered into, and services starting to be provided under those contracts – this period being a minimum of 6 months.
- 1.100 The Act provides flexibility for an authority or authorities to phase-in their franchising scheme in stages through the use of 'sub-areas'. An authority or authorities are able to split their franchising scheme area into a number of sub-areas, with the services in

each sub-area transitioning to franchised services at different times. Should an authority or authorities decide to split its franchising scheme areas into sub-areas, they should also set out the date on which the authority or authorities can first enter into contracts with bus operators to provide services in each sub-area, and the period of time that must elapse between those contracts being entered into, and services starting to be provided under those contracts – this period being a minimum of 6 months.

Transition to a franchising scheme

- 1.101 Where an authority or authorities has decided to implement a franchising scheme, the market will need to transition from a de-regulated system, where operators register services with a Traffic Commissioner, to a system whereby the majority of services are specified by the authority or authorities and operated under contract to that authority or authorities.
- 1.102 The Act and supplementary Regulations will set out a number of measures to help smooth the transition and ensure that passengers are provided with reliable services during the transition period.

Transitional notice – extending the cancellation or variation notice period

- 1.103 We want an authority or authorities to be provided with notice of upcoming changes to services during the transition phase, to enable them to take action where necessary to ensure that services are maintained or replaced.
- 1.104 Regulations that will be made under the Act provide franchising authorities with the option to extend the cancellation and variation notice period that operators must observe from the current 56 days to a maximum of 112 days. Should an authority or authorities wish to increase the notice period they must publish a ‘transitional notice’ at the same time as they make and publish their franchising scheme setting out the new notice periods.
- 1.105 An authority or authorities are able to set different notice periods for different circumstances or different types of services. For example, an authority or authorities may want to consider leaving the cancellation and variation notice periods at 56 days for services which only have a few stopping places in the franchising scheme area, whilst increasing it for services that operate exclusively within the franchising scheme area.

Ability to register services at short notice

- 1.106 Regulations that will be made under the Act will also enable certain services to be registered at short notice, where the authority or authorities has entered into an agreement with an operator to provide a service in the transition period. Where this is the case, the service can start to be provided from the point at which the Traffic Commissioner accepts the application to register the service, without the need for a 56 day notice period.
- 1.107 Where an authority or authorities decide to reduce the area to which a franchising scheme relates, or to revoke a franchising scheme, the market will need to transition from a system whereby the majority of services are operated under local service contracts to the de-regulated system where operators operate services registered

with a Traffic Commissioner. Regulations under the Act provide that a Traffic Commissioner must not accept an application to register a service, or vary or cancel such a service, if the application is made later than 70 days before the reduction or revocation of the franchising scheme in which it has a stopping place. This does not apply to a service that is to be provided under an agreement between an authority or authorities and an operator.

Staff Transfers

- 1.108 The Act recognises that where franchising is introduced, there may be a need for staff to transfer to new operators who have won local service contracts to provide franchised bus services. In recognition of the fact that it is not entirely clear whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) would apply to the franchising scenario, particularly when franchising is first introduced, the Act makes specific provision for TUPE to apply to these situations. This should protect existing staff working on the affected bus services, help reduce the burden of redundancy payments for operators who have to cease trading or downsize because of franchising while ensuring that there is a workforce ready to provide the new franchised services.
- 1.109 Regulations that [have been/will be] made to support the Act set out further detail regarding the processes to be followed when applying TUPE. The franchising authority should in the first instance look to reach agreement with the existing local operators who are affected by franchising, and local employee representatives about the criteria to be applied when determining which staff are 'principally connected' with the affected local services and therefore in scope for TUPE and potential transfer to a new operator. This determination of whether employment is 'principally connected' could be made on the basis of the amount of time an employee spends working on services that will be affected by franchising, or on whether the staff member forms part of a particular groups of employees that work on certain services. At the start of the process towards reaching any agreement, Regulations require the franchising authority to publish a notice setting out:
- the criteria by which they propose to determine whether a member of staff is 'principally connected' with the provision of particular services and should therefore transfer under TUPE;
 - the consultation process and agreement sought;
 - the time period over which the consultation process will take place; and
 - what constitutes agreement between the parties.
- 1.110 The franchising authority should then consult with the relevant local employers and employee representatives, with the aim of reaching agreement and publishing a final notice setting out the agreed criteria by which to determine whether staff members are in scope for TUPE and should transfer. The authority should engage with affected local operators and employee representatives as early as possible in the process and ensure that sufficient time is given to the consultation, bearing in mind the complexity of the proposed franchising scheme and potential for staff to be transferred.
- 1.111 We recognise that in practice it may be difficult to reach agreement locally. The Regulations provide that where there is no agreement, the determination as to

whether employees are principally connected is to be based on whether such employees spend at least half their working time assigned to affected services. This provision should only be used if the authority is content that agreement cannot be reached between the three parties.

- 1.112 Once the authority, operators and employee representatives are in agreement about the staff who should transfer, a process should be undertaken to determine where they should transfer to i.e. which employees should transfer to each individual local service contract. The Regulations require authorities to consult affected operators and employee representatives about the proposed 'allocation arrangements' – the plan which sets out which employees should transfer to which local service contract.
- 1.113 All affected employees who transfer when franchising is introduced should be provided with access to a broadly comparable pension scheme. The Regulations set out the requirement placed on the new employer of transferred employees to obtain a pension statement. The statement is to be provided in writing from a Fellow of the Institute and Faculty of Actuaries who is to certify that the new employer's pension scheme offers the transferred employees, rights to the same or broadly comparable pension benefits as they had with the former employer. It is the responsibility of the franchising authority to ensure contracts are made on the basis that bidders commit to providing broadly comparable pension schemes.

Employee related information

- 1.114 To aid with this and later processes, the Regulations enable the authority to request information from operators about employees at any point after they have made their franchising scheme. The Regulations provide details about what relevant employee information that can be requested. When requesting employee information the authority must:
- specify the date by which the operator should respond to the request, which must not be earlier than 21 days after the request is issued;
 - ensure the request contains sufficient information about the franchising scheme to enable operators to respond effectively;
 - only request the information that they need to carry out their functions in connection to TUPE;
 - refrain from requesting personal data, unless in connection with employee representatives.
- 1.115 Should an operator, on receipt of such a request, be of the opinion that the authority has not included sufficient information about the franchising scheme to enable them to respond effectively, they should inform the authority within 14 days of receiving the request, and provide a description of the further information they require. On receipt of such a request for clarification from an operator, the authority should consider the extra information that the operator may require, and provide that information to the operator, together with specifying a revised time period within which the operator should provide their response, which must not be less than a 21 day period.
- 1.116 The Regulations provide further detail regarding the obligations on operators when they receive such a request for information from an authority, including the process to be followed should an operator consider that they are unable to provide any of the

information requested. Operators should ensure that the information they provide is complete and accurate, and should provide revised information at later stages, should it change.

1.117 Implementation and operation of a franchising scheme

Service Permits

1.118 Where a franchising scheme is introduced, an authority or authorities will also need to operate a 'service permit scheme' to ensure that other services, which do not form part of the network of services operated under local service contracts, are still able to operate. This should include services which operate cross-boundary, i.e. in both the franchising area and the area outside, and also other services which complement the services operated under local service contracts.

1.119 Before an authority or authorities can start to operate its service permit system, it must first consult on its proposed service permit system. An authority or authorities may want to combine the consultation on the service permit system with the consultation on the proposed franchising scheme, but the precise timing of this is at the authority's or authorities' discretion.

1.120 As part of the consultation on the service permit scheme, the authority or authorities should set out:

- the procedure that must be followed by a person applying for a service permit;
- the information that a person applying for a service permit must submit with the application;
- the fee, if any, that must accompany the application;
- the period or periods of time within which the franchising authority must take a decision on an application for a service permit;
- the period or periods of time that must expire before the service permit is effective;
- the period or periods of time which must expire before the variation or withdrawal of a service by an operator is to take effect, which must not exceed 56 days and;
- the time period or periods for which permits will be valid.

1.121 One aspect that an authority or authorities can set out in the service permit scheme is the time for which the permit is valid, for example a 3 year period. This gives operators more certainty over the length of the commitment they will need to make to the services, and gives an authority or authorities the ability to review the services after a period of time.

1.122 The authority or authorities should ensure that operators of local services are consulted on the proposed service permit scheme, together with any other local authorities that will be affected by the granting of the service permit, and any other people or organisations that the franchising authority or authorities thinks fit. Services operating under service permits will have a key role in facilitating bus travel across the boundary into other local authority areas. A franchising authority should engage closely with neighbouring local authorities about the operation of their service permit scheme to ensure that services are sustainable and meet the needs of both the franchising authority or authorities and neighbouring authorities.

- 1.123 Following the consultation, the franchising authority or authorities should then consider the response and update its service permit scheme accordingly. The authority or authorities should then publish a consultation response setting out a summary of the consultation responses received and the authority's proposed actions in light of the responses, together with publishing a notice setting out the final details of the service permit scheme (but no earlier than the date the franchising scheme is published), covering the aspects set out in paragraph 1.119 above.
- 1.124 In addition to the notice mentioned above, the Act also allows an authority or authorities to publish a notice setting out the conditions that they may decide to attach to service permits. Before they publish a notice franchising authorities should also consult on the sorts of conditions they may decide to attach to service permits as part of their wider consultation on the service permit scheme. This will ensure that neighbouring authorities and operators in the area are able to feed back about the potential impacts of proposed conditions on services. The sorts of conditions that an authority or authorities are able to attach to service permits are set out in Regulations which supplement the Act. No other conditions may be attached to a grant of a service permit.
- 1.125 Franchising authorities are able to attach different conditions in different circumstances, or for different sorts of services. For example, the authority or authorities may apply a 'lighter-touch' set of conditions to services which have a limited number of stopping places in the franchising area, but may require services which operate wholly within the franchising area to comply with more stringent conditions, to ensure they integrate effectively with the network of franchised services. They might also offer permits for tourist services that are registered as local bus services that confer a right, but not an obligation, to operate. In addition, franchising authorities are able to specify different periods of time in which they can take their decision regarding whether or not to award a service permit with respect to different sorts of services, or in different circumstances, and likewise for the period of time that must expire before the service permit is effective and the period of time which must expire before a variation or withdrawal is effective. This should provide franchising authorities with the flexibility to cater for the range of scenarios that they foresee, for example to award permits at short notice should there be an urgent transport need.
- 1.126 Once the franchising authority has issued its notice setting out the details of the service permit scheme and the notice of conditions they may decide to attach to permits, they can start to accept applications from operators. The Act requires the authority or authorities to grant service permits where the service in question will benefit local passengers, and where it will not adversely impact on any of the services in the franchised network. It will be down to each franchising authority or authorities to take these decisions on a case-by-case basis, and they should think carefully about the information that they require operators to provide when making their applications to ensure that the authority's decisions are well-evidenced. Where a franchising authority or authorities rejects an application for a service permit it should clearly set out its reasons in writing to the operator concerned. They must give the applicant notice of their reasons within ten days.
- 1.127 The Act and supplementary regulations set out the details regarding how permits can be suspended or revoked. The Act sets out the grounds on which a franchising authority or authorities can revoke or suspend a permit. These grounds are:
- that the service no longer benefits local passengers;

- that the service is having an adverse impact on any of the services in the franchised network;
- that the holder of the permit has failed to comply with a condition attached to the permit; or
- that the public would be endangered by the service continuing to run.

1.128 A franchising authority or authorities may not suspend or revoke a service permit unless at least one of these grounds is satisfied.

1.129 Where a franchising authority or authorities decides to revoke or suspend a service permit, they must issue a notice to the relevant operator, in writing, setting out:

- the grounds on which the service permit is being suspended or revoked;
- the date on which the suspension or revocation will take effect; and
- the effect of the revocation or suspension.

1.130 If a service permit is suspended, the authority or authorities must also include, as part of the notice, the measures that the operator must take to have the suspension lifted, the date on which the suspension will be lifted, should the operator take the relevant steps, and any arrangements the authority or authorities plans to put in place to review the suspension.

1.131 Franchising authorities are able to suspend or revoke service permits with immediate effect where there is a danger to the public if the service continued to run. In all other cases, suspensions and revocations are not to take effect earlier than 56 days after the authority issues the notice.

1.132 Where an operator is unhappy with the decision of a franchising authority in either refusing to grant a service permit, attaching any or certain conditions to a permit, or in suspending or revoking a service permit, they are able to appeal to the Traffic Commissioner and from there to the Upper Tribunal. The procedure to be followed is set out in the Appeals to Traffic Commissioners (Procedure) (England) Regulations 2019. Annex A sets out how this appeals process works.

Role of the Traffic Commissioner

1.133 Traffic Commissioners are responsible for the licensing of bus operators and the registration of local bus services. They also have powers to take action against bus operators where they consider that they are not running punctual or reliable services, or where operators pose a risk to road safety.

1.134 The introduction of a franchising scheme will change the role that the Traffic Commissioners play to an extent. The paragraphs below explain the changes in roles and responsibilities.

1.135 Where franchising is introduced, services no longer need to be registered with the Traffic Commissioner if, for example, they are operated as part of a local service contract, or through a service permit. However, as with Enhanced Partnerships, enforcement is still the responsibility of the Traffic Commissioner as they remain the body responsible for licensing and regulation of the industry. Traffic Commissioners are able to take action against operators, including attaching conditions to licenses and issuing fines, where operators are running services in the franchising scheme area, for example, when prohibited from doing so or where they fail to provide information when requested by an authority under the Act.

- 1.136 However, enforcement of local service contracts themselves, and the standards imposed by those contracts, is a matter for the franchising authority or authorities, and franchising authorities should ensure they build in the necessary contractual mechanisms to deal with poor performance. Similarly, an authority or authorities are able to take action against operators that are not complying with the conditions of their service permit, by revoking or suspending such a permit. However the Traffic Commissioner will act as the appeal body. Any issues in relation to safety or which could impact on the good reputation of an operator should be reported to the relevant Traffic Commissioner.
- 1.137 Franchising authorities can exempt certain services from regulation arising because of their franchising scheme. In addition, all services operated under section 22 Transport Act 1985 permits are automatically exempted. These services should continue to be registered with the Traffic Commissioner as now.

Varying a franchising scheme

- 1.138 At any point after a franchising scheme has been made, the authority or authorities that made the scheme can vary it. Franchising authorities will need to follow the formal process of varying their scheme when they are seeking to amend what has been specified in the scheme such as the area to which the scheme relates or the description of the local services intended to be provided under local service contracts. However, more minor changes, such as the introduction of new fares, changes to day-to-day service requirements within the scheme's overall description of local services, can be made without recourse to the formal processes set out in the Act.
- 1.139 Should an authority decide to vary what is specified in the scheme, it must publish a notice stating the date on which the variations are to have effect, and give notice of its decision to a Traffic Commissioner within 14 days of publishing the notice. The variation cannot take effect until six months after the date on which the variation notice was published. Should the franchising authority be a Mayoral Combined Authority, then the Mayor is required to take the decision as to whether or not to vary the scheme.
- 1.140 The process that an authority or authorities must follow before they can vary what is specified in the scheme is substantially similar to that which must be followed before first making the franchising scheme. An authority or authorities must consult on their proposals, and ensure that local stakeholders, including those set out in section 123E(4) of the Act, are consulted. The authority or authorities must prepare a consultation document in line with section 123F(1) of the Act, and as part of that document, an authority or authorities should clearly highlight the changes that they plan to make to what is specified in the scheme, including setting out the potential benefits and impacts of such changes. In any case where variations are proposed, the authority or authorities should seek to engage closely with local communities to ensure that the impacts of the proposed changes are thoroughly debated and explored.
- 1.141 Once the authority or authorities have consulted on their proposed variation, when required, they must publish a response to the consultation, and must set out the decision on whether or not the variation will be made.
- 1.142 Where the authority or authorities plans to vary what is specified in the scheme so as to add a new area to the scheme – for example bringing a town within the franchising scheme area – they must follow the same process as followed when

making the scheme. This includes preparing an assessment, which is particularly relevant to this sort of a variation as it would require incumbent operators to cease operating their registered services, and obtaining a report from an auditor on that assessment.

Revoking a franchising scheme

1.143 The intention is that franchising will be a long-term model. However, we recognise that there may be good reasons which mean that it may be better for passengers for a franchising scheme to be revoked.

1.144 The Act sets out the circumstances in which an authority or authorities can revoke a franchising scheme. An authority or authorities may only revoke such a scheme if they are satisfied that:

- local services in the area to which the scheme relates are likely to be better if the scheme did not apply;
- the continued operation of the scheme is likely to cause financial difficulties for the authority; or
- the burdens of continuing with the scheme are likely to outweigh the benefits of doing so.

1.145 The revocation of a franchising scheme is subject to the same procedure as the making of a franchising scheme except that section 123G(3) does not apply. Should an authority or authorities satisfy itself that at least one of the situations above applies, then they must publish a notice of their decision to revoke the scheme, setting out the date on which the revocation is to take effect, and give notice of their decision to the Traffic Commissioner, within 14 days of taking the decision. The franchising scheme cannot be revoked until at least six months after the authority or authorities publishes the notice setting out its decision.

1.146 Where the authority is a Mayoral Combined Authority, the Mayor must take the decision to revoke the scheme.

Annex A: Service permit appeal arrangements

- A.1 The arrangements for appeals concerning decisions about service permits are set out in the Appeals to Traffic Commissioner (Procedure) (England) Regulations 2019. These regulations also cover decisions about service registrations in areas where the local transport authority has taken on the registration role from the Traffic Commissioner as part of an Enhanced Partnership.

Starting an appeal

- A.2 A notice of appeal must be sent to the Traffic Commissioner so that it is received within 28 days of the date of the decision being appealed. It must include:
- The name and address of the appellant (and their representative, if any);
 - The operator's licence number if known;
 - An address (or electronic address) where documents for the appellant may be sent or delivered;
 - The name and address of the franchising authority or authorities that made the decision against which the appeal is made ("the respondent");
 - Details of the decision under appeal;
 - The decision the person who made the appeal ("the appellant") is seeking;
 - The grounds on which the appellant relies.

The appellant must also provide any written record of the decision being appealed, and if available, any statement giving reasons for the decision.

- A.3 Where the notice of appeal is sent so that it arrives after the 28 day period, the appellant must request an extension and give reasons why the notice was not provided in time. It is then for the Traffic Commissioner to decide whether to grant the additional time and accept the notice or refuse to admit the appeal.
- A.4 Where an action is required on a specific day, it must be done by 5pm. Where the specified time period ends on a public holiday, Saturday or Sunday, then the time period is regarded as ending on the next working day. Documents provided to the traffic commissioner can be sent by post, by hand or electronically.

Replying to an appeal

- A.5 The respondent (i.e. the person whose decision is being appealed) must send a response notice to the Traffic Commissioner so that it is received within 28 days of the date on which the commissioner sent the notice of appeal. It must include:
- the name and address of the respondent (and their representative, if any)
 - an address (or electronic address) where documents for the respondent may be sent or delivered;

- a statement setting out whether the respondent opposes the appellant's case, and if so, any grounds for doing so.
- A.6 Where the appellant has not supplied a written record of the decision under appeal, and a statement of reasons for the decision, with the notice of appeal for whatever reason, the respondent must supply these documents if they have them or can reasonably obtain them.
- A.7 Where the response notice is sent so that it arrives after 28 days, the respondent must request an extension and explain why they did not provide the notice within the required timeframe. Extending the time allowed for the notice, and deciding whether to admit a late response, is entirely at the discretion of the Traffic Commissioner.
- A.8 The Traffic Commissioner will send a copy of the response notice and any accompanying documents to the appellant, unless they have refused to admit the response.
- A.9 Following the response notice, the appellant may make a written submission and provide further documents in reply, which must be sent to the Traffic Commissioner within 14 days of the date on which the commissioner sent the response notice to the appellant. Where the reply is sent so that it arrives after 14 days, or another timescale specified by the Traffic Commissioner, the reply must request an extension and explain why it was not provided within the required timeframe. Again, extending the time allowed for the reply, or refusing to do so, is entirely at the discretion of the Traffic Commissioner.
- A.10 The Traffic Commissioner will send a copy of the reply and any accompanying documents to the respondent, unless they have refused to admit the reply.

Hearing an appeal

- A.11 The Traffic Commissioner will hold a hearing before determining an appeal, except where they have agreed with the appellant and respondent that it can be determined without one.
- A.12 Where an appeal is being heard, the Traffic Commissioner will give at least 21 days notice of its time and place, except in urgent or exceptional circumstances or where the appellant and respondent both consent to a shorter period. The time and place of the hearing will be published in Notices and Proceedings.
- A.13 Hearings are held in public, except where the Traffic Commissioner directs that it is just and reasonable to do so. Reasons for holding a hearing fully or partially in private can include the likelihood that intimate personal or financial circumstances, or information that is commercially sensitive or obtained in confidence would be disclosed, and other exceptional circumstances.

Disposing of an appeal

- A.14 A commissioner can dispose of an appeal without a hearing if they strike it out. Reasons for striking out may include the commissioner concluding that an appeal has no chance of success. Not complying with one or more aspects of the appeals process does not necessarily constitute grounds for striking out. While striking out is an option where this occurs, the commissioner may also decide to waive the requirement in question, require the failure to be remedied, or restrict that party's participation in the appeal. Where an appeal is struck out, the appellant may apply within 28 days to the Traffic Commissioner for it to be reinstated, giving the grounds on which reinstatement is sought.

A.15 If the commissioner holds a hearing to deal with a preliminary issue, and no further issue remains to be determined, then the commissioner may dispose of the appeal without a further hearing.

Lead cases

- A.16 Where there are two or more cases which raise similar issues of fact or law, the Traffic Commissioner may consider it appropriate to specify a 'lead appeal' and stay the others. When the Traffic Commissioner reaches a decision on the related issues, they must send a copy to the appellants and respondents in the stayed appeals. If either party wishes to appeal that the decision should not apply in their case, they must apply in writing to the Traffic Commissioner within 28 days. The Traffic Commissioner must then give directions as to whether they will dispose of the appeal, or issue further directions.
- A.17 Where the lead appeal is withdrawn before a decision is reached, the Traffic Commissioner will give directions as to whether they intend to specify another lead case and whether any direction affecting the cases should be set aside or amended.

Attendance at a hearing

- A.18 The appellant and respondent to an appeal are entitled to attend the hearing and to send written representations to the Traffic Commissioner. They are entitled to give evidence, call or cross-examine witnesses, and address the Traffic Commissioner on the evidence and the general subject matter of the hearing. Other people may also do this but only at the Traffic Commissioner's discretion.
- A.19 The Traffic Commissioner determines who is permitted to attend a hearing or part of a hearing held in private. They may also exclude anyone whose presence they consider disruptive or inappropriate. Similarly, they may refuse to permit the giving or calling of evidence, cross-examinations or presentation of other matters if they consider it to be irrelevant, repetitious, frivolous or vexatious. They may give a direction permitting or requesting any person to attend and take part in a hearing, or to make written submissions, in relation to a particular issue.
- A.20 Anyone taking part in a hearing may be represented by counsel, solicitor or by any other person at the discretion of the Traffic Commissioner.
- A.21 The commissioner must send a copy of any written representations received to any other person entitled, permitted or requested to attend the hearing.
- A.22 If a person entitled, permitted or requested to attend a hearing fails to attend, the Traffic Commissioner may proceed with it if they are satisfied that the person has been notified of the hearing, or that reasonable steps have been taken to notify them. The Traffic Commissioner may also proceed with the hearing if they consider that it is in the interests of justice to do so.

Results of an appeal

- A.23 The Traffic Commissioner can give their decision orally on the day, or reserve their decision to a later date. However, once a decision has been made, the Traffic Commissioner must send the appellant and respondent a notice setting out their decision and their reasons for it. A notice must also be published in Notices and Proceedings.
- A.24 A notice is not required where the parties have been able to reach a consensual decision.

Decision following an appeal to the traffic commissioner

A.25 Any Traffic Commissioner's decision can be appealed to the Upper Tribunal (PSV 353A provides details) and notification of this right is included with the Traffic Commissioner's decision notice.

Note: This means that the franchising authority can also appeal the Traffic Commissioner's decision to the Upper Tribunal.

Parties on appeal to the Upper Tribunal

A.26 The parties to a case on appeal to the Upper Tribunal are:

- The operator that lodged the appeal;
- The relevant franchising and local transport authorities, or lead authority;
- The Traffic Commissioner.

Bus Services Act - Franchising Guidance