



Department
for Transport

Bus Services Bill

Consultation on regulations and guidance





Department
for Transport

Setting the Scene

Stephen Fidler

Head of Buses & Taxis, DfT



Introduction

The screenshot shows the GOV.UK website interface. At the top, there is a search bar and navigation links for Departments, Worldwide, How government works, Get involved, Policies, Publications, Consultations, Statistics, and Announcements. The main content area is titled 'Open consultation' and features the heading 'Bus Services Bill: draft regulations and guidance'. Below this, it lists the source as the Department for Transport, part of the Road network and traffic, and first published on 8 February 2017. A blue box highlights that the consultation closes at 11:45pm on 21 March 2017 and provides a 'Summary' section stating it seeks views on draft regulations and guidance associated with the Bus Services Bill. Under 'Documents', there is a PDF titled 'Bus Services Bill: consultation on draft regulations and guidance' (2.21MB, 151 pages) with a note that it may not be suitable for users of assistive technology and a link to request an accessible format.

- ▶ Consultation launched on 8th February
- ▶ Contains detail on some regulations and guidance stemming from the Bus Services Bill
- ▶ 6 week consultation – ends on 21st March
- ▶ Aim is to finalise the key regulations and guidance as soon as possible once the Bus Services Bill becomes an Act



Update on Bill timescales

Regulations and guidance

Developing key
regulations and
guidance

Consultation

Amend and
update following
consultation

Legal processes
to lay regulations
and Parliamentary
debates where
necessary

Bill completed
passage
through the
House of Lords

Second Reading
in House of
Commons

Bill receives
Royal Assent
and becomes
and Act

Key
regulations and
guidance come
into force

Bill

23 November
2016

Early March
2017

May 2017?

June 2017



What is included in the consultation

- ▶ Consulting on the first tranche of material – does not represent all the regulations and guidance we intend to produce
- ▶ Prioritised those regulations and pieces of guidance that are needed most urgently to enable improvements to be made to local bus services
- ▶ This session therefore focusses on:
 - ▶ Enhanced partnerships;
 - ▶ Franchising; and
 - ▶ Information on varied or cancelled services
- ▶ **This session does not touch on the Open Data or Accessible Information provisions**



Purpose of these sessions

- ▶ The consultation is detailed and technical – it is about the nuts and bolts of how the provisions in the Bill can be made to work in practice
- ▶ **Aim of these sessions is to explain our approach and answer any questions you may have so that you are in a better position to respond to the consultation**
- ▶ Then please go and respond to the consultation at:
<https://www.smartsurvey.co.uk/s/HHNUM/>



Department
for Transport

Franchising regulations and guidance

Deborah Lewis

Buses & Taxis, DfT



What is included in the consultation?

- ▶ The Bill sets out the fundamentals of franchising, but there are gaps to be filled
- ▶ In particular, the consultation sets out more detail regarding the decision-making process that authorities must follow before implementing franchising:
 - ▶ Guidance on the ‘business case’ process
 - ▶ Regulations setting out the information that can be requested from operators
 - ▶ Guidance explaining the role of the auditor
- ▶ The consultation also sets out more detail on how franchising would work in practice:
 - ▶ Regulations on ‘service permits’
 - ▶ Regulations explaining the application of TUPE when staff are transferred
 - ▶ Regulations setting out the pension protection to be provided to staff
 - ▶ Regulations setting out practical measures regarding the transition from de-regulation to franchising and vice versa



Decision-making: 'Business case' guidance

- ▶ The Bill requires authorities to conduct an assessment of their proposed franchising scheme before they can implement franchising – 'business case'
- ▶ The Bill itself explains what authorities should consider as part of their assessments – based on HMT '5-case' model
- ▶ Secretary of State may also issue guidance:
 - ▶ Includes a relatively comprehensive list of the issues that authorities should consider
 - ▶ But leaves it to individual authorities to make their own judgements about their particular approach
- ▶ Aim is to ensure that authorities conduct a thorough assessment of their franchising scheme and think carefully about the impacts and risks
- ▶ Leaves it up to each authority to design a franchising scheme that suits local needs and use the tools and analytical methods they consider appropriate
- ▶ **Consultation seeks views on the contents of the guidance**



Decision-making: Information regulations

- ▶ The Bill allows authorities to request information from operators – most notably to inform their assessment or ‘business case’
- ▶ Want to ensure that authorities take informed decisions on the basis of robust evidence and analysis
- ▶ The Bill itself already sets out a list of information that can be requested, including information about journey numbers, fares, revenue and staff
- ▶ Regulations therefore only set out a few other categories:
 - ▶ Information about fixed and variable costs of operating services
 - ▶ Information about the vehicles used to provide services
- ▶ Bill also sets out a number of safeguards
- ▶ **Consultation seeks views on whether these are the right categories of information, whether there are some that should be removed or others that should be added**



Decision-making: Role of the auditor guidance

- ▶ The Bill states that an authority that wishes to proceed with franchising must obtain a report from an auditor on its 'business case'
- ▶ The Bill itself states what should be included in the auditor's report
- ▶ Guidance has been produced to provide more context and explanation as to the role of the auditor, specifically highlighting the sorts of activities the auditor should be carrying out:
 - ▶ Verifying that the authority has used information from recognised sources
 - ▶ Verifying that the information is relevant and up to date
 - ▶ Verifying that the assumptions are based on evidence
 - ▶ Considering the mathematical and modelling accuracy
 - ▶ Verifying the authority has followed guidance
- ▶ Guidance reiterates that the auditor should not pass judgement on decisions
- ▶ **Consultation seeks views on the contents of the guidance**



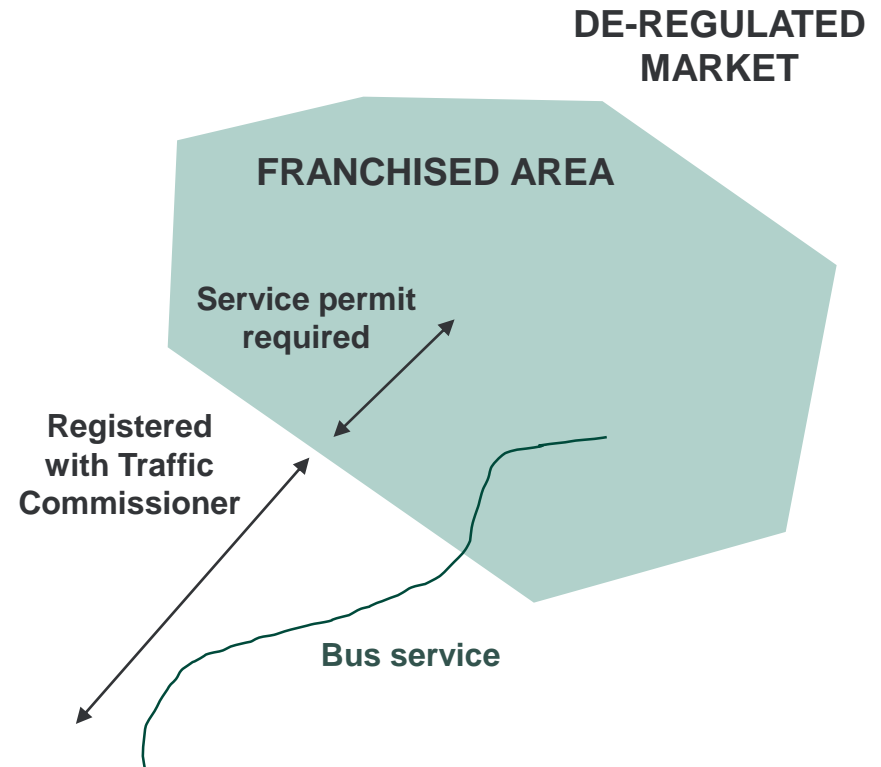
Franchising in practice: Transitional provisions

- ▶ The transition to franchising is likely to be uncertain – the aim of these regulations is to help minimise disruption to services
 - ▶ They put in place a number of practical and transparent processes to assist in the transition from the de-regulation to franchising and vice versa
- ▶ These include:
 - ▶ Procedures for registering new services during the transitional period – ‘short notice’ application for replacement services
 - ▶ Procedures for applying to vary or cancel a service during the transitional period – authorities can extend the variation and cancellation notice period up to max of 112 days
 - ▶ Procedures for applying to register bus services if a franchising scheme is removed and de-regulation re-established
- ▶ **Consultation seeks views on usefulness of these provisions**



Franchising in practice: Service permits

- ▶ Service permits are required for services that do not form part of franchised network
- ▶ Bill sets out the core principles, but detail to be provided in regulations
- ▶ Regulations set out proposals for:
 - ▶ Procedure authorities must follow before they can start to accept applications for service permits
 - ▶ Conditions that authorities can attach to service permits
 - ▶ Fees that authorities can charge
 - ▶ Procedures for revoking and suspending service permits





Franchising in practice: Service permits

- ▶ Aim is to ensure that franchising authorities openly and transparently set out the details of their 'service permit scheme'
- ▶ Regulations propose that authorities should consult on:
 - ▶ Procedure for applying for service permits
 - ▶ Information that operators must submit with their applications
 - ▶ Fee that must accompany an application
 - ▶ Time period within which an authority will take a decision regarding an application
 - ▶ Lead-in time before the permit becomes effective and service can run
- ▶ Regulations then require authorities to publish their final 'service permit scheme'
- ▶ **Consultation seeks view on whether the procedure seem reasonable and views on whether there is anything that should be changed, added or removed**



Franchising in practice: Service permit conditions

- ▶ Want to ensure that services operated under permits can be integrated with wider network
- ▶ Regulations propose the types of conditions that can be attached:
 - ▶ period for which the permit will be valid
 - ▶ ways in which fares can be paid – for example via contactless
 - ▶ tickets to be accepted and the price to be charged for those tickets
 - ▶ requirements as to discounted travel to be provided for specified groups
 - ▶ requirements for operators to publish specified information about their services
 - ▶ requirements for operators to publish specified information about fares
 - ▶ standards of vehicles, customer service standards and operational standards
- ▶ **Consultation seeks views on whether these are the right sorts of conditions, whether there are some that should be removed or others that should be added**



Franchising in practice: Service permits details

- ▶ Like the London Service Permit system, authorities should be able to recover the cost of administering service permits through fees – this is set out in the regulations
- ▶ We also want to ensure that there are consistent processes in place to resolve issues that may arise with services operated under service permits
 - ▶ Regulations enable authorities to revoke or suspend service permits and sets out the detailed processes they should follow
 - ▶ Regulations also propose that authority should provide 56 days' notice of the suspension or revocation
 - ▶ Regulations enable authorities to suspend or revoke a service permit with immediate effect where there is a danger to the public
- ▶ **Consultation seeks views on these processes**



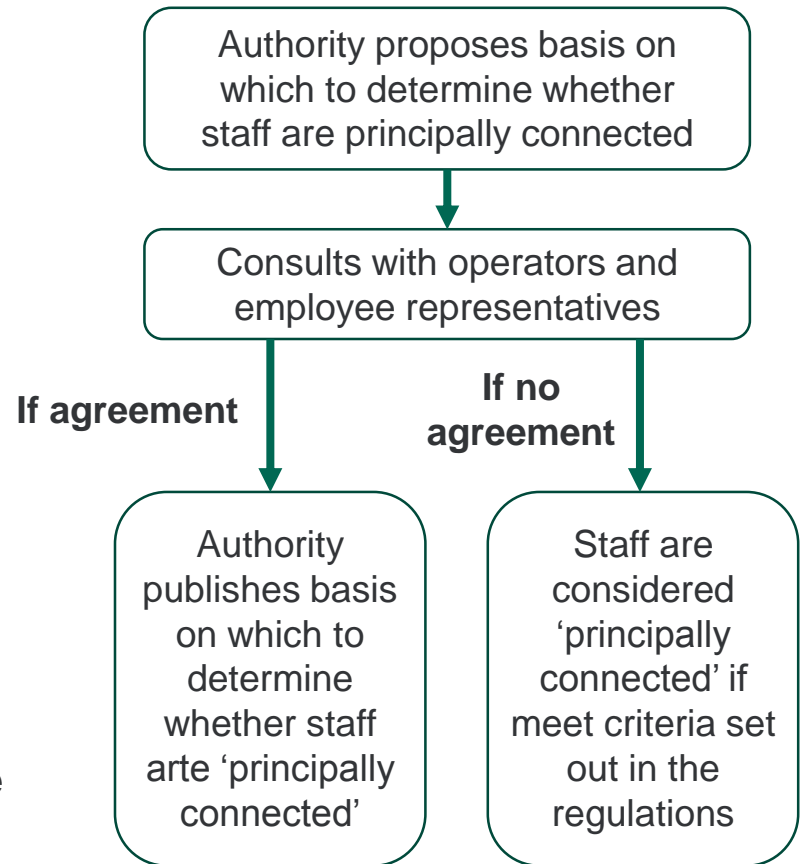
Franchising in practice: TUPE and pensions

- ▶ Where franchising is introduced, incumbent bus operators may be required to cease providing services to enable the winning bidders to start operating under contracts
- ▶ Bill provides that:
 - ▶ Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE) should apply to protect employment rights of employees
 - ▶ Staff transferred when franchising is introduced should be provided with pension protection
- ▶ The regulations set out a number of detailed processes to assist with the transfer of staff
- ▶ We have taken the Quality Contract Scheme TUPE and Pensions regulations as our starting point
 - ▶ Engaged with Trade Unions, authorities and operators to consider whether the Quality Contract Scheme regulations could be improved



Franchising in practice: TUPE – which staff transfer?

- ▶ Only employees that are considered as ‘principally connected’ to the services that have to cease operating will transfer under TUPE
- ▶ Regulations set out consultation process aimed at reaching agreement on this issue
- ▶ Also includes a ‘back-up’ should agreement not be reached:
 - ▶ Spends at least 50% of working time on services; and
 - ▶ Have been in employment for a continuous period of time
- ▶ Regulations then require authorities to consult regarding which operators staff are to transfer to
- ▶ **Consultation seeks views on usefulness of these processes and values to be used in ‘back-up’**





Franchising in practice: TUPE - information

- ▶ Regulations set out the categories of employee-related information authorities can request:
 - ▶ Particulars of employment
 - ▶ Information in relation to collective agreements
 - ▶ Information about the services to which employee's employment is principally connected
 - ▶ Other information required for the purposes of calculating the costs and liabilities likely to arise from the application of TUPE
- ▶ Regulations then set out timescales in which information can be requested and operators should respond
- ▶ Regulations also require operators to provide revised information about employees should it change between the operator responding to the request and the implementation of franchising – this will ensure the right people transfer
- ▶ **Consultation seeks views on this information and the process set out**



Franchising in practice: Pensions

- ▶ Regulations set out further details regarding the authority's duty to ensure that pension protection is secured for every employee that is transferred when franchising is introduced:
 - ▶ Each employee must receive either the same pension rights that they had as an employee of the original company, or pension rights that count as being broadly comparable to, or better than, those rights
 - ▶ 'Broadly comparable' defined as where employees do not suffer any material detriment in terms of their future accrual of pension benefit
- ▶ Regulations require compensation to be paid to employees where there are exceptional circumstances which mean it would not be practical for a new operator to provide pension rights which are broadly comparable
- ▶ Regulations also require operators to obtain a pensions statement from a qualified actuary verifying that the pension offered meets the requirements of the regulations
- ▶ **Consultation seeks views on the provisions**



Department
for Transport

Enhanced Partnerships regulations and guidance

Steve Blackmore

Buses & Taxis, DfT



What is included in the consultation?

- ▶ The Bill sets out the fundamentals of partnerships, but there are gaps to be filled using guidance and regulations.
- ▶ In particular, the consultation sets out more detail on how Enhanced Partnerships can be set up and delivered, including:
 - ▶ Regulations setting out the information that can be requested from operators in connection with an Enhanced Partnership
 - ▶ Regulations setting out the operator objection mechanism to be used in Enhanced Partnerships
 - ▶ Guidance on delivering an enhanced partnership
- ▶ The consultation also sets out further detail including:
 - ▶ Regulations on the application of TUPE if staff are transferred and pension protection
 - ▶ Guidance on competition considerations
 - ▶ Advanced Quality Partnership Schemes regulations

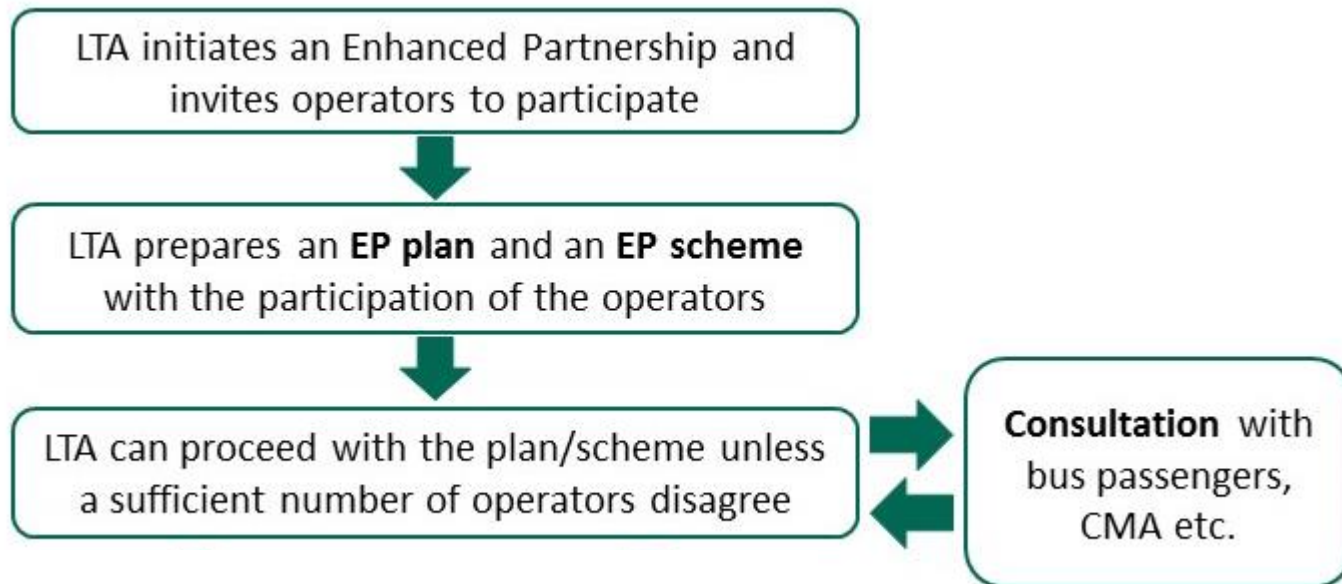


Enhanced Partnership – Information from operators

- ▶ The Bill allows authorities to request information from operators:
 - ▶ When an Enhanced Partnership Plan or Scheme is under development
 - ▶ When considering varying or revoking existing enhanced partnership arrangements
- ▶ Information can be supplied to all the authorities involved in the Enhanced Partnership
- ▶ Authorities cannot require information that is more than 5 years old
- ▶ The regulations set out all of the information that can be required to be provided:
 - ▶ How and when services are used
 - ▶ How and when services are likely to be used
 - ▶ Fare structures
 - ▶ Types of tickets used
 - ▶ Time taken for journeys
 - ▶ Vehicles used
- ▶ **The consultation asks for views on the categories of information that should be provided – particularly whether revenue information be included**



Enhanced Partnership - Operator objection mechanism





Operator objection mechanism – how it works

- ▶ The mechanism sets out two thresholds that must be satisfied to stop the next stage of Plan/Scheme development from going ahead – only one must be met:
 - ▶ **Market share** – Operators representing (25%) of mileage, provided that mileage is made up of at least (3) individual operators (not subsidiaries of a single operator).
 - ▶ **Number of operators** – at least (50%) of operators object that together represent more than (4%) of mileage.
- ▶ Regulations also exclude some types of ‘local’ service:
 - ▶ Subsidised services operated under ‘gross cost’ contracts with local authorities.
 - ▶ Excursions and tours
 - ▶ Interurban and other long distance services.
- ▶ We are particularly interested in your views on the objection mechanism itself and the suggested figures in it.



Delivering an enhanced partnership guidance

- ▶ The Bill offers two types of partnership (AQPS and EPS) and the guidance seeks to:
 - ▶ Explains the differences between them.
 - ▶ Explain the process for introducing an EPS – Both formal (required by the Bill) and informal – including the operator objection process.
 - ▶ How the required documents (draft Plan and Scheme) should be produced and what they should cover.
 - ▶ What can be included in Schemes (both by the LTA and operators) – particular emphasis on ticketing.
 - ▶ How to review, postpone and revoke Plans and Schemes.
- ▶ **Consultation seeks views on whether the guidance is clear and covers the right areas**



TUPE and Pensions in enhanced partnerships

- ▶ The Bill allows an Enhanced Partnership Scheme to specify the maximum frequency of service along a defined route – e.g. to address congestion issues.
- ▶ Special arrangements apply if an operator (an existing one or a new one) submits a registration to run or revise a service that would exceed the maximum frequency defined by an Enhanced Partnership Scheme.
- ▶ If this happens – and the operators involved cannot collectively reach agreement to run their services within the frequency limit - EU legislation requires that route to be put out to competitive tender.
- ▶ If this happens it is possible that staff could be transferred to the new, contracted operator under TUPE.
- ▶ We do not expect this to happen very often.
- ▶ **This mechanism will be the same as for franchised areas – so the consultation seeks views on how this mechanism applies to both franchised and EP areas.**



Competition issues guidance

- ▶ You told us that the threat of action by the competition authorities was a **major barrier** to partnership working.
- ▶ Whilst EPSs must comply with competition law, the EPS provisions in the Bill do attempt to address these issues.
- ▶ The guidance seeks to explain how competition law is applied to EPSs. This covers:
 - ▶ The role of the local authority – who must ensure competition law is complied with.
 - ▶ How an EPS reduces the risk of action against participating bus operators.
 - ▶ How operators can raise competition concerns with the Competition and Markets Authority.
- ▶ **The consultation seeks views on whether this guidance is clear and covers the right areas.**



Advanced Quality Partnership Schemes - Overview

- ▶ The Bill changes the existing Quality Partnership legislation in three ways:
 - ▶ It removes the requirement that local authorities must provide ‘facilities’ – e.g. new bus stops/ shelters.
 - ▶ It allows local authorities to introduce ‘measures’ that encourage bus use – such as reducing car parking provision or increasing parking charges.
 - ▶ It allows the scheme to include requirements about:
 - Smart-ticketing – including how passengers pay for travel
 - How information is provided to passengers
 - How bus services are publicised – e.g. using a single marketing name for all the bus services in the partnership area (e.g. ‘RoverBus’).
- ▶ The existing Quality Partnership legislation will only apply to schemes in Wales and English/ Wales cross-border schemes.



Advanced Quality Partnership Schemes - Detail

- ▶ The existing secondary legislation will be applied 'as is' to Advanced Quality Partnership Schemes. As before, this will cover:
 - ▶ Identification of the 'lead authority' – where a scheme involves more than one.
 - ▶ Mechanism for dealing with 'admissible objections' from operators where a scheme includes requirements relating to:
 - Maximum fares.
 - Frequency and timing of services.
- ▶ The Bill also extends this mechanism to any requirements relating to:
 - ▶ Vehicle requirements – type, emissions, type of fuel or power.
 - ▶ Ticketing schemes.
- ▶ Regulations also allow authorities to include any 'facilities' that are more than 5 years old if no operator objects.
- ▶ **Consultation seeks views on the proposals, particularly whether facilities over 5 years old should be allowed to be included**



Department
for Transport

Information on varied and cancelled services regulations

Sherri Davis

Buses & Taxis, DfT



Information on varied and cancelled services - overview

- ▶ The Competition Commission completed its investigation into the local bus services market in 2011 and in respect of supported services concluded that:
 - ▶ where an operator is deregistering (withdrawing or reducing) a service authorities should have the power to request information about the patronage and revenue of the service
 - ▶ Authorities should have the power to disclose the information to potential bidders for subsequent tenders
 - ▶ information should be provided to the authority within the 14 day pre-notification period (prior to the service change being registered with the Traffic Commissioner)
- ▶ Clause 19 in the Bill enables regulations to be made requiring operators to provide patronage and revenue information, where the authority requests this - draft regulations set out the details of the process
- ▶ All authorities in England will have the power to request this information from operators



Information on varied and cancelled services - detail

- ▶ To enable the request and exchange of information the draft regulations are based on introducing a 14 day pre-notification period.
- ▶ **The consultation seeks views on whether the pre-notification period should be set at 14 or 28 days allowing operators and LTAs more time to discuss the implications of any proposed changes to the service**

A draft of the proposed application is sent by the operator to the local authority 14 days in advance of the date they intend to cancel or vary a service



The local authority has 7 days to consider and contact the operator to request information if necessary



The operator has 7 days to supply the relevant information



The operator submits its application to vary or cancel a service to the Traffic Commissioner.



Information on varied and cancelled services - detail

- ▶ Under the draft regulations authorities would be able to request the following information:
 - ▶ total number of journeys undertaken by passengers on the service or relevant parts of the service
 - ▶ numbers and types of passengers using the service, the types of fares and tickets used
 - ▶ revenue received from the service, including revenue attributable to particular types of fares or journeys undertaken on particular times of the day or week.
- ▶ Information must be for the 12 month period before the date on which the information request is made or from the date on which the service started, whichever is shorter.
- ▶ Information can be disclosed to operators if the authority decides to provide a subsidised service
- ▶ Operator may request that information is not disclosed on the basis it would damage its commercial interests, but the decision to disclose rests with the authority
- ▶ **The consultation seeks views on the circumstances when the information can be requested, the information to be provided, the disclosure of information and the pre-notification period**



Please respond to the consultation!

<https://www.smartsurvey.co.uk/s/HHNUM/>