



Department  
for Transport

# Bus Franchising Guidance

September 2024

Department for Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR



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# Introduction - the Government's action plan for buses

The Government is determined to deliver better bus services, grow passenger numbers and drive opportunity to under-served regions. It is clear, however, that the current system where services are predominantly run on a commercial basis and bus operators decide on the routes and provision is not delivering for communities across England. This has led to declining levels of bus services and passenger numbers.

The Government has pledged to fix this and has developed a plan for better buses, centred around supporting local transport authorities (LTAs) to take control of their local services. This includes removing barriers which currently limit bus franchising powers and empowering local leaders to deliver better buses faster.

The Government believes that this plan will give local leaders the tools they need to deliver improved and better integrated networks that reflect the needs of local communities that rely on them.

The revisions to this guidance are the first step in delivering on our plan. We have clarified and streamlined the guidance to make what administrative changes we can to make it easier, quicker and cheaper for local authorities to intervene on bus routes. This new guidance will speed up the assessment process and reduce costs, where possible, under the existing franchising legislation. Later in the Parliamentary session, we will bring forward a Buses Bill<sup>1</sup> to go further in bringing down barriers to franchising, including costs, and we will make corresponding changes to this guidance alongside or shortly after Royal Assent.

Alongside this, we are building our capacity within the Department of Transport to provide tangible on the ground support to LTAs who wish to pursue franchising. This will help both simplify and speed up the process for LTAs and ensure best practice is shared.

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<sup>1</sup> <https://www.gov.uk/government/speeches/the-kings-speech-2024>

## How to respond

The consultation period began on 9 September 2024 and will run until 7 October 2024. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at <https://www.gov.uk/dft#consultations> or you can contact [busreform.consult@dft.gov.uk](mailto:busreform.consult@dft.gov.uk) if you need alternative formats (Braille, audio CD, etc.).

Please send consultation responses to:

Address: Bus Franchising Consultation, 2nd Floor, Great Minster House 33 Horseferry Road London SW1P 4DR

Phone number: 07812 685 919

Email address: [busreform.consult@dft.gov.uk](mailto:busreform.consult@dft.gov.uk)

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

If you have any suggestions of others who may wish to be involved in this process, please contact us.

## Franchising

The Government believes that franchising is an important tool for local authorities who wish to take back control of their services. Until recently the franchising powers inserted into the Transport Act 2000 by the Bus Services Act 2017 ('the 2017 Act') could only be used by Mayoral Combined Authorities (MCAs) and Mayoral Combined County Authorities (MCCAs). This guidance sets out the considerations for local transport authorities (LTAs) in franchising their bus services. Opening up franchising to all local transport authorities (LTAs) is the first stage of the Government's plan to make bus franchising easier for LTAs and, on 9 September 2024, the Secretary of State laid legislation in Parliament which would enable any LTA to pursue franchising.

Bus franchising is used extensively across Europe and has existed in London for decades. When implemented effectively, these can deliver transformational improvements in local services. Greater Manchester is the first LTA to use the powers granted in the 2017 Act to deliver a bus franchising scheme, with the first services launching in September 2023. Greater Manchester report a 5% growth in patronage in its first franchised area in the six months from December 2023 to June 2024.

In a franchising scheme, local authorities will determine the details of the services to be provided – where they run, when they run and the standards of the services. Typically bus operators provide their services under contract to the local authority. No other services can operate in the franchised area without the agreement of the franchising authority.

Franchising does not always require the scale of LTA resource and planning seen in London. There are also strong models of franchising in the Channel Islands and other countries which capitalise on the strengths of private sector route planning, marketing and investment as part of the tendering process, whilst ensuring stronger local accountability and financial incentives to prioritise bus services that are accountable to the local authority.

The bus franchising powers inserted into the 2000 Act by the 2017 Act are deliberately flexible. They do not have to be used across the whole of a local authority's area or require all bus services to be operated exclusively under contract – it does not have to be an 'all or nothing' proposition. For example, franchising could be introduced to maximise the benefits of a bus rapid transit scheme and cover that corridor only. In a rural area or market town it could also be used to deliver a fully integrated network, with good 'branch' connections to key corridors, through a combination of franchised services and commercial services operating under 'service permits' awarded by the authority.

Franchising and an enhanced partnership (EP) cannot both cover the same geographical area but there is no reason why they can't be used alongside each other to deliver the best overall outcomes for passengers and communities.

Read the section of this guidance about potential types of franchising<sup>2</sup>.

This guidance sets out how we are giving all LTAs franchising powers, and considerations for LTAs in franchising their bus services. For LTAs other than MCAs and MCCAs, the Secretary of State's consent is still required to pursue a franchising assessment. The factors which the Secretary of State will consider are set out in this guidance.

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<sup>2</sup> [Setting up a bus franchising scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/setting-up-a-bus-franchising-scheme)

# Context for this guidance

## 2.1 The statutory process

The 2000 Act, as amended by the 2017 Act, sets out the process that any authority must follow before it can introduce bus franchising in its area. Two franchising authorities acting together may also make a franchising scheme covering the whole or any part of their area or combined area.

This guidance refers to 'authority', although it is accepted that there may be more than one LTA involved in developing a franchising assessment and scheme.

At a high-level, the process to introduce franchising can be broken down into 5 key stages:

1. Accessing the statutory powers (if needed) and committing to prepare a franchising proposal.
2. Developing the franchising proposal and assessing it against (an)other option(s).
3. Consulting on the proposal.
4. Decision to proceed with franchising.
5. Transition and implementation.

Guidance on each stage is provided in this document and includes two different types of guidance.

### Standard guidance

Guidance which seeks to explain how the franchising legislation works in practice and how the government will approach giving non-mayoral combined authorities access to franchising powers is not statutory. This means that 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.

## Statutory guidance

Statutory guidance is guidance to which a franchising authority or auditor must have regard in exercising relevant functions. Text in this guidance shows where sections of statutory guidance wording begin and ends.

It is issued under the following sections of the act:

- 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.
- 123W(1) in relation to the exercise by franchising authorities of their functions with regards to franchising schemes.

This guidance document is an aid to understanding the overall process. However, it should be read alongside the appropriate legislation – which takes precedence. Individual LTAs must take appropriate legal advice on how these would most appropriately apply to their individual circumstances.

### **Start of statutory guidance wording**

Any authority which published a statutory notice of intent to develop a franchising assessment on or after 4 July 2024 should have regard to the statutory guidance provided in this document.

Any authority which had published a statutory notice of intent to develop a franchising assessment before 4 July 2024 should have regard to the previous versions of this statutory guidance issued by the department, and (as far as possible given the stage of the process the authority has reached) to the following sections of this guidance.

### **End of statutory guidance wording**

The Bus Services Act 2017: new powers and opportunities guidance<sup>3</sup> contains further non-statutory guidance on how both enhanced partnership and franchising schemes can be implemented effectively – for example on meeting the needs of rural communities, providing an inclusive service, improving the safety of bus services and maximising social value.

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<sup>3</sup> [Bus Services Act 2017: new powers and opportunities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/bus-services-act-2017-new-powers-and-opportunities)



## 2.2 Bus Service Improvement Plans

Bus service improvement plans (BSIPs) are how LTAs, working closely with their local bus operators, deliver their priority improvements to bus services. The Government believes that BSIPs are important documents in ensuring a shared vision for bus services between bus operators and LTAs and we remain committed to them.

But BSIPs “firm priorities” only extend to 2028/29, whereas a franchising business case will look much further ahead. Local authorities may therefore also wish to refer to other strategy documents, particularly where they look over a longer time horizon. For example, Local Transport Plans (LTP) which typically extend to 15 years and are updated every 5 years. This guidance refers to throughout to “improvements to bus services” which will be a combination of their BSIP priorities and other LTPs.

Read separate guidance on how LTAs and bus operators can work together to develop a bus service improvement plan<sup>4</sup>.

## 3. Setting franchising in a strategic context

There can be no return to a situation where services are planned on a purely commercial basis with little or no engagement with, or support from, LTAs. Bus services should be considered in the context of user needs, the LTA’s longer-term objectives for the transport system and the area, including environmental objectives.

Achieving these outcomes requires improvements in both bus services themselves and the infrastructure on which they operate, and this must be reflected in the overall bus franchising ‘offer’ to passengers.

Franchising concerns the provision of services. Many bus service improvements will be delivered through the detail of the franchise contracts subsequently awarded to operators (including fare structures and ticketing arrangements, vehicle standards, branding, networks, service levels and the inclusion of demand responsive services).

However, the cost and effectiveness of franchising in delivering a long-term strategy about how to deliver the bus network that local people need is also likely to be materially influenced by infrastructure investment, particularly the provision of measures to save buses time and improve reliability. Infrastructure investment plans and their impact on service costs, passenger numbers and revenue will therefore need to be fully integrated into franchising proposals and time saving/reliability measures taken by the authority included in the franchising scheme.

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<sup>4</sup> [Bus service improvement plan - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/bus-service-improvement-plan)

## Start of statutory guidance wording

A franchising authority should aim to achieve an overall positive transformation in local bus services by using a combination of its own resources and government funding. In doing so it should:

- seek to ensure that franchising plans are complemented by measures to improve reliability and save buses time on-route caused by the effects of congestion or poor road layout, and physical space to install them
- consider how other LTA policies and action will indirectly support bus services (including park and ride) and make them a more attractive alternative to car users - for example, the decision whether to use a car or the bus is greatly influenced by parking policy, cost and availability
- agree how success will be measured. How the data informing progress towards the immediate targets set out in the BSIP will be collected and appropriate action on them taken forward to contribute to longer term objectives.

## End of statutory guidance wording

See chapter 4 of the Bus Services Act 2017: New Powers and Opportunities for further advice on tackling congestion<sup>5</sup>.

## 4. Stage 1 - Accessing the statutory powers and committing to prepare a franchising proposal

The 2000 Act provides automatic access to franchising powers to MCAs. Other LTAs can also apply to government for access to the same powers. Decisions will be taken on a case-by-case basis.

On 9 September 2024 the Secretary of State laid legislation in Parliament to ‘unlock’ franchising powers for any LTA (whether an MCA or not). However, any individual authority within those ‘unlocked’ categories requires consent from the Secretary of State before they can initiate the franchising process.

### Mayoral combined authorities

For mayoral combined authorities the process is as follows.

1. Authority issues notice of intent.
2. Authority develops assessment of franchising scheme.
3. Authority determines whether to implement – then begins implementation.

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<sup>5</sup> [Bus Services Act 2017: new powers and opportunities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/bus-services-act-2017-new-powers-and-opportunities)

## Other authorities

For other authorities the process is as follows.

1. Authority applies to government.
2. If government is content that the criteria set out in this document are met, Secretary of State gives consent.
3. Authority issues notice of intent.
4. Authority develops assessment of franchising scheme.
5. Authority determines whether to implement – then begins implementation.

Once it has access to franchising powers and, regardless of whether it is an MCA or not, the authority does not need to seek any approval or authority from the Secretary of State on any part of the franchising process, on the decision whether to franchise or on the strategy for implementation.

## 4.1 How the process will work in practice

The Government believes that individual LTAs are best placed to decide whether franchising is an appropriate way of improving bus services in their area. Before preparing a franchising assessment, an authority must obtain consent from the Secretary of State to do so.

In considering whether to provide consent, the Secretary of State will take account of the following:

- That the LTA has a clear vision for improving buses – and what this is
- That the LTA has identified the kind of franchising it wants to pursue (see discussion of some potential options at section 17)
- That the LTA has a plan for how it intends to develop the franchising assessment and has identified, after discussion with DfT officials what support is required from DfT
- That a particular office holder (for example the Leader of the Council or the portfolio holder for transport) is responsible for the development of the scheme.

We suggest that LTAs initially explore these issues in discussions with Departmental officials, particularly to ensure that there is a shared understanding of what support is needed from DfT.

Following engagement with the Department, LTAs will need to formally write and seek approval. Where the Secretary of State gives consent, a notice of consent will be published. When consent is received, the authority must publish a notice that they intend to prepare a franchising assessment (the requirement for the authority to publish a notice also applies to MCAs and MCCAs).

## 5. Stage 2 - Developing the franchising proposal and assessing it against (an)other option(s)

Once an LTA has issued a statutory notice, the next stage is to develop the detail of its franchising proposal. The authority's published BSIP will already set out its ambition for local buses and other types of non-registered local transport such as community transport and demand responsive transport (DRT).

The authority now needs to set out how franchising will deliver this and any longer-term plans for bus service improvements – in whole or in part.

The authority's overall plan is set out in a franchising assessment. This is effectively a proportionate business case which:

- describes what franchising is intended to deliver, how it will be set up, structured, funded, managed and complemented by other measures (especially bus priority measures where needed) - this includes setting out details of the initial local service contracts which will translate the authority's franchising plans into bus services and other outcomes (such as a new fare structure or integrated ticketing) 'on the ground'
- compares franchising to the currently available EP alternative

The franchising assessment is subject to independent assurance.

Alongside this the authority needs to develop its proposed franchising scheme. This is the formal legal document that establishes franchising in an area and is based on the consultation and its conclusion. It sets out:

- how franchising will be applied within the LTA's area - bearing in mind that franchising can take many forms and that franchised areas may be divided into 'sub-scheme' areas that may have different implementation dates - Section 123H(3) of the 2000 Act
- the franchised local bus services intended to be provided under contract to the LTA
- the time interval between franchising contracts being signed and the franchised service starting to operate 'on the ground'
- how the authority will consult users on how well franchising is working
- the facilities (such as reliability/journey time improvements, ticketing sales or websites or depots) that the authority will put in place to complement franchised services

## 6. The franchising assessment

### 6.1 Overview

Section 123B of the 2000 Act requires franchising authorities to conduct an assessment of the proposed franchising scheme. The purpose of the assessment is to:

- set out what sort of franchise the authority will deliver,
- explain how far it will deliver improvements to bus service outcomes
- confirm that it is affordable and deliverable and allow an informed decision to be taken whether to proceed by comparing it the currently available EP that has been tabled by operators.

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 can take other factors into account, provided that these are clearly set out and explained as part of the assessment itself.

#### Start of statutory guidance wording

In conducting a franchising assessment, authorities **should identify the objectives which they will use to assess franchising against the currently available EP**. These objectives should be specific, measurable, realistic and time-bound and apply to bus services in the relevant geographical area. It is for the authority to determine how many objectives are appropriate.

**Consider how the targets set in it will be delivered by the franchising scheme.** In particular, paragraphs 67 to 107 of the BSIP guidance set out the areas that the franchised bus network should focus on to improve bus services.

#### End of statutory guidance wording

### 6.2 Assessment process

This assessment is the equivalent of a proportionate business case. It should:

- explain what changes are needed and why
- include a high-level comparison of the options to deliver that change
- include a detailed explanation of how the preferred option will be delivered

#### Start of statutory guidance wording

The assessment of the proposed scheme needs to contain sufficient detail to enable an informed decision on whether or not to proceed with franchising or implement improvements using the currently available EP, to be taken by local decision-makers. The

level of detail provided for the franchising option should be broadly equivalent to other significant decisions taken by the LTA or Mayor, for example, approval of a strategic document such as a local plan or a decision to award a large contract.

### End of statutory guidance wording

A franchising assessment considers how improvements to bus services would be delivered under (a) the franchised and (b) the currently available EP option. The LTA then decides if the franchised model is better, or whether the desired bus service outcomes are best delivered via the currently available EP.

Any decision to change the model of bus service delivery is significant and will impact the authority proposing the scheme, neighbouring local authorities, bus operators (both incumbent and aspiring to enter the market) and, most importantly, new and existing passengers. Franchising in urban and rural areas may need to be developed and implemented in different ways. Chapter 4 of the Bus Services Act 2017: New Powers and Opportunities contains further advice on meeting the needs of rural communities. See also advice on the Public Sector Equality Duty in this guidance.

## 6.3 Overview of range of options

Section 123B provides that an authority's assessment of their proposed franchising scheme must describe the likely effects of the scheme and compare making that proposed scheme to at least one other course of action.

All local authorities in England that have not implemented franchising have introduced an EP.

### Start of statutory guidance wording

Therefore, the assessment should compare the authority's preferred franchising model to the currently available EP. A separate 'do nothing' scenario does not need to be considered

A maximum of **three months** should be allowed to develop this option. The LTA should set out any proposals it has developed for interventions which would improve bus services in either an EP or franchised scenario; and bus operators should table any improvements that they are willing to make under an EP scenario.

- The three months begins from the date that the local authority publishes a notice under section 123C(4) of the 2000 Act, stating the authority's intention to prepare a franchising assessment. Any extension to this period requires the agreement of the local authority.
- If the authority decides not to implement franchising, all the obligations on operators and LTAs contained within their EP 'offer' will either be (a) immediately written into the EP Scheme(s) or (b) included in other legally binding agreements.

In this guidance, a reference to ‘currently available EP’ should be considered to be this option.

### **End of statutory guidance wording**

The currently available EP should take the form of clear commitments with timescales for implementation that can either be written into the EP scheme, or enforced via another form of binding agreement – such as a contract. The currently available EP should be treated by the LTA as a ‘final offer’ once the three month period (or any additional period that has been agreed with the LTA) has elapsed and cannot be changed later.

### **Start of statutory guidance wording**

Before considering the specific requirements set in the act, the assessment should explain at a high level:

- the range of franchising options the authority considered. However, there is no requirement on the LTA to consider a range of franchising options or any franchising option that would not, in their opinion, deliver their objectives.
- which one (or more) of these options is preferred and is examined in detail in the remainder of the assessment any why
- explain the currently available EP, including setting out what improvements are proposed for inclusion in it.

### **End of statutory guidance wording**

LTAs may assess more than two options in the franchising assessment if they consider it necessary. Nothing in this guidance is intended to prevent additional options beyond the currently available EP option and the LTA’s franchising option from being assessed.

## **6.4 Detailed assessment of franchising and the operator-tabled EP option**

Section 123B of the 2000 Act sets out the factors which an authority must consider as part of its assessment of its proposed franchising scheme. These reflect, broadly, the Treasury 5-case business case model. The 5 cases (strategic, economic, commercial, financial and management) are closely related and provide the opportunity for the Authority to make the case for franchising.

- The assessment should compare against the currently available EP for the Strategic, Economic and Financial case. The Commercial and Management case need only be set out in detail for the franchising option.
- The section below sets out guidance corresponding to the legislation on the strategic case. See also the section of this guidance<sup>6</sup> on the economic, commercial, financial and management cases.

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<sup>6</sup> [Setting up a bus franchising scheme - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

## **6.5 The strategic case - whether the scheme would contribute to the implementation of the authority's and neighbouring authorities' local transport plans and other policies affecting local services**

Section 123B(3) (a) and (b) explain that the assessment must 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
  - b) other policies affecting local services that the authority have adopted and published
- whether the proposed scheme would contribute to the implementation by relevant neighbouring local authorities of:
  - a) those authorities' policies under section 108(1)(a)
  - b) other policies affecting local services that those authorities have adopted and published. This is the strategic case for franchising. In this section the focus should be on the outputs and outcomes achieved under the two options.

### **Start of statutory guidance wording**

The authority should set out whether – and if so how, the extent to which and how quickly – the options 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. In doing so, the authority should also explain how the options contribute to the overall 'transport offer' to local people - including how local bus services integrate with other types of transport such as light or heavy rail, DRT and services provided, for example, under Section 19 and 22 of the Transport Act 1985 and community car services. The authority should refer to information about local demographics and bus passenger surveys to explain why it considers that its proposal is needed.

In particular, the authority should explain how each option will, with the expected funding that would be applied by the LTA, help achieve their bus service improvements. This should include for each option:

- the overall approach to service planning, including the extent to which services will be integrated with other modes and timetables co-ordinated where appropriate
- what bus reliability/ time saving measures are already in place or the authority (or relevant local highway authority) will implement (with implementation dates) and how they are expected to impact journey times
- the approach to and level of fares
- whether multi-modal fares will be available and, if so by when and how widely



- the technologies expected to be used to sell tickets (for example, smart card, contactless, mobile etc) and whether cash will be accepted on-bus
- whether any DRT or other road transport services will be provided the nature, quality and consistency of network identify and branding
- the nature, quality and consistency of information (such as network diagrams) to be provided at bus stops and on bus and real time data
- how often timetable changes will be made
- customer service standards (including redress arrangements and delivery of a passengers' charter)
- the levels of accessibility at bus stops and bus stations
- the emission standards expected to be achieved over time (including the percentage of the fleet expected to be zero emission on an annual basis and when a fully zero emission fleet will be achieved). Given the likely appraisal period of the scheme, we would expect the fleet to be fully electrified before the end of the period
- the extent to which measures to improve accessibility of services such as audio and visual information and next stop announcements, and an additional wheelchair space will be available across the network

In this section of the assessment the authority should also list its relevant local neighbouring authorities and consider at a high level the extent to which each option would help in (or otherwise impact upon) the delivery of relevant parts of their plans to improve bus services. To do so, authorities should proactively engage with neighbouring authorities to ensure they fully understand those policy objectives and the impacts that each option could have on bus services and transport in their areas.

## 7. Putting people at the heart of franchising

### 7.1 Public Sector Equality Duty

Authorities will have a duty under the Public Sector Equality Duty (PSED s149 Equality Act 2010) to eliminate discrimination, advance equality of opportunity, and foster good relations among diverse groups.

In revising and implementing their franchise proposals, it is crucial for authorities to adopt a people-centred design approach that prioritises the needs and experiences of all users, particularly those from protected characteristics groups. This includes actively engaging with communities early on in the process to understand their needs and preferences and ensuring that services and infrastructure are accessible, inclusive, and equitable.

Authorities must clearly demonstrate how they have considered the diverse needs of communities in their plans, and they should regularly assess and report on the impact of their decisions to ensure compliance with the PSED. In ensuring that the needs of people are placed at the centre of their franchise proposals, authorities are not only fulfilling their

legal obligations but will also be enhancing service accessibility and delivery, whilst increasing community trust and user satisfaction.

Chapter 4 of Bus Services Act 2017: New Powers and Opportunities contains further advice on providing and designing an inclusive bus network, driver disability awareness and providing inclusive information. It also provides advice on maximising social value and improving safety. Guidance on how to comply with the new accessible information regulations can be found on [gov.uk](http://gov.uk).

## **7.2 Personal safety**

Authorities should be proactive in upholding the personal safety of passengers and staff on the transport network at all times and mitigate the risk of passengers and staff being subjected to violence, harassment and discrimination. Particular regard should be given to groups with protected characteristics, and to tackling Violence Against Women and Girls (VAWG) and addressing Anti-Social Behaviour (ASB).

Examples of ways that Authorities could seek to do this when scoping and implementing a franchising scheme are provided below. These options are not exhaustive but focus on areas that are known to address issues that undermine feelings and experience of personal safety on the transport network.

### **7.2.1 Mandatory bus driver training**

Training frontline staff on issues related to VAWG and ASB, will empower them to be able to recognise and deal with incidents linked to these issues effectively. Such training should focus on both incidents involving staff and passengers and enable staff to know how to signpost victims for further support.

### **7.2.2 Reporting mechanisms**

VAWG and ASB-related incidents are largely under-reported, particularly on the transport network.

Encouraging and enabling staff and passengers to report incidents can improve the data available to authorities on the types of incidents and when and where they occur. This can help identify problem routes and areas and inform where resources and interventions need to be targeted to tackle inappropriate behaviour. Consideration needs to be given to how incidents can be reported in a way that is consistent across the network and accessible for passengers and staff. It will also be crucial to consider how data collected will be acted on and shared with relevant stakeholders (e.g. enforcement authorities, civil society).

Authorities are encouraged to consider having a single reporting mechanism for all people using their franchised network which can be used to report a broad range of issues beyond VAWG and ASB, for example issues regarding disabled peoples' travel experience. Consideration of interactions with other neighbouring networks and how best to make this work with partners, including the police, is also important but is for local decisionmakers to determine.

### **7.2.3 Infrastructure design and maintenance**

Well-maintained and well-designed environments are conducive to improved perceptions of safety. Careful consideration should be given to how bus infrastructure is designed and located. For example, authorities could encourage the use of CCTV and consider whether there is sufficient lighting and information (e.g. up-to-date, legible timetable, real-time journey information if appropriate) at bus stops and stations. Where CCTV is deployed authorities should consider how it will be monitored, the associated resource required to do this, and where it could be most usefully deployed.

Authorities should also consider how they can facilitate reporting of faulty or poorly maintained infrastructure so issues can be addressed in a timely manner. In addition to making people feel safe, appropriate and well-maintained infrastructure is also relevant from an accessibility point of view – having appropriate shelter, seating, lighting, information provision, as well as ensuring that facilities on vehicles are in working order (e.g. ramps, lowering mechanisms, AV equipment, call buttons) is key to providing a positive journey experience for disabled people.

### **7.2.4 Communications**

Communications is a powerful tool in raising awareness and educating passengers on acceptable and unacceptable behaviours and how to deal with incidents if they occur. Both staff and passengers should be the target audience as part of any communications campaigns. Authorities are encouraged to give adequate space within their proposed marketing activity to the issue of passenger and staff safety.

Personal safety communications campaigns can focus on a range of issues – for example: raising awareness of inappropriate behaviours, encouraging reporting, discouraging perpetrators, empowering bystanders, or signposting victims to support services. The focus of the campaign will depend on the specific issues that are being faced in a local area and Police and potentially British Transport Police (where appropriate) input should also be sought whilst shaping a campaign. It is important to evaluate any campaign to understand its impact, enable learning and inform refinements to future communications.

### **7.2.5 Community Safety Accreditation Scheme (CSAS) accredited officers**

Where local issues and priorities evidence the need for it, authorities are encouraged to deploy CSAS accredited officers specifically to work on the franchised network. Officers provide reassurance to both passengers and staff and are a visible deterrent to perpetrators, especially when they have a remit to act where they encounter unfavourable behaviour (including the power to enforce). Authorities and franchised operators will need to work in partnership with local enforcement agencies to agree which powers are available to CSAS accredited officers working on the transport network and how best to work together to achieve the common objective of a safe transport network that feels safe for all passengers and staff.

### 7.3 Driver Welfare Standards

In planning routes and services and letting franchise contracts, authorities should, wherever possible, ensure that access to appropriate welfare facilities that meet the needs of a diverse workforce are provided. This should include access to appropriate toilet facilities on bus routes wherever possible, rather than just at depot locations. Franchising authorities should seek views and advice from bus sector employees working in the area covered by the franchising scheme, including relevant trade unions, in developing their approach to this issue.

## 8. Gathering information

An authority will need to gather what it considers appropriate and robust information and data to inform the preparation of the assessment. In developing the assessment, an authority should draw on information about the current and predicted future performance of local bus services in delivering outcomes and relevant targets. LTAs should give consideration to what data they consider they need and the level of granularity they require. The volume of data required to develop a franchising assessment will be substantial and supplying it will be challenging for operators, so LTAs should consider whether data is actually required before they request it. LTAs may wish to request:

- passenger numbers, possibly broken down by route, time of day and/or ticket type
- Data on bus journey times and/or vehicle speeds by route and time of day, for example using GPS vehicle data
- Fares data, such as volumes and average prices for the main single and multi-operator fares, and concessionary passes, as well as the split between cash and electronic payment
- bus service frequency (including days of operation)

### End of statutory guidance wording

LTAs should consider whether the Analyse Bus Open Data Service (ABODS) could help with information requests. ABODS is part of the Bus Open Data programme, is a service available to local authorities and operators providing bus service performance information. This may provide a more direct source when compiling bus data.

Analyse Bus Open Data is an extension to the Bus Open Data Service (BODS) that provides consistent and free-to-access reporting and analytics to operators and all local transport authorities (LTAs) and may be useful to support the monitoring and evaluation of franchised contracts.

The service provides a dashboard overview, data feed monitoring and on-time performance analyses for individual operators and services. Additional features include the provision of network corridor/route segment analyses and journey time analysis and can identify opportunities for bus network improvements.

ABODS also enables the use of punctuality data to inform and improve operational performance and compliance.

ABODS translates bus live location data into operational insights to help LTAs and local bus operators to deliver faster, better quality and more frequent bus services to the public. The ABODS analysis may also be able to help with developing a franchising assessment – as a tool to analyse current performance of the network as well as identifying gaps in service provision.

Read separate guidance about the Bus Open Data Service<sup>7</sup>.

The 2000 Act also enables an authority 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 section 143A(3) of the Act and in regulations. (The Franchising Schemes and Enhanced Partnership Plans and Schemes (Provision of Information) Regulations 2017 (2017/1091)).

An authority can 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 may set out. Examples of data that can and cannot be requested are set out in the section of this guidance<sup>8</sup> on information provision. This is for information only. The precise information that can be requested will, of course, depend on all the applicable circumstances.

### **Start of statutory guidance wording**

An authority 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. Operators should be proactive in engaging with an authority in the provision of data. If an operator fails to provide information within a reasonable timeframe, an LTA is entitled to notify the Traffic Commissioner. The Department would also like to be notified.

In addition, an authority 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 to deliver bus service improvements. 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.

### **End of statutory guidance wording**

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<sup>7</sup> [Bus open data implementation guide - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>8</sup> [Setting up a bus franchising scheme - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

## 9. The franchising scheme

### 9.1 Overview

The franchising scheme is the legal document through which franchising is implemented. The contents of the scheme itself are comparatively limited. The Department intends to develop template documents for franchises, including the franchising scheme.

The scheme needs to specify the following.

#### **The geographical area(s) that franchising will cover**

The 2000 Act provides flexibility for an authority to determine the way that franchising will be implemented and what services it will cover and to phase-in their franchising scheme in stages through the use of 'sub-areas'. An authority is 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. See sections 123H(2)(a) and 123H(3) of the act.

#### **The local services to be provided under franchised local bus service contracts**

See sections 123A(3)(a) and 123H(2)(b) of the act), and the service permit proposals (sections 123P to 123T).

#### **The date when initial franchising contracts are first to be entered into, and the time interval to those services starting to operate 'on the ground'**

See sections 123H(2)(c) and (d) and 123H(4) of the act.

This is so that all, particularly local people and existing and potential local bus operators, can be aware of when a franchised bus network will begin to operate. The 2000 Act provides that the interval cannot be less than 6 months.

#### **How the authority will consult users on how well franchising is working**

See section 123A(9) of the act.

#### **Start of statutory guidance wording**

This should set out the frequency of consultation and the initial groups to be consulted (recognising that these may change over time). As a minimum this should include Transport Focus or any successor body. It should not be a generic statement such as that the authority will consult "such groups as it sees fit" at "periods of its choosing".

#### **End of statutory guidance wording**

#### **The facilities that the authority will put in place to complement franchised services**

#### **e to complement franchised services**

See section 123A(3)(d) of the act.

**Start of statutory guidance wording**

The authority should set out in the scheme any facilities that it is providing which are central to the success of franchising. This might include depots, ticketing systems, equipment or other types of facility. The authority should also include in the scheme all existing and funded measures to improve bus reliability/ journey times that it provides or intends to provide, including for future measures their expected operational dates.

**End of statutory guidance wording**

Franchising authorities can exempt certain services from regulation arising because of their franchising scheme (and so allow to continue to operate as now). For example, school services provided by local authorities which will be covered by the franchising scheme unless the authority exempts them from it in the scheme itself. Only school services that fall within the definition of a 'local service' need to be considered for an exemption. Where a rail replacement service falls within the definition of a 'local service' the Department would expect the LTA to provide an exemption from the service permit regime.

**Start of statutory guidance wording**

An exemption should also generally be made for a service that has 10% or less of its overall distance (not just the distance within the franchised area) registered as a local bus service. This might include interurban or other long-distance scheduled services that are not generally used for local journeys within the franchised area, but may use bus stops within it and would not compete with a franchised service.

**End of statutory guidance wording**

In addition, all services operated under permits issued under section 22 of the Transport Act 1985 are automatically exempted. However, , community bus services can provide an important contribution to meeting overall bus transport needs, especially in rural areas. We would encourage LTAs and community transport operators to co-operate together to deliver what the LTA consider desired outcomes in franchised areas.

These services (or relevant parts of them) should continue to be registered with the traffic commissioner, as now.

The geographical area of a statutory partnership scheme cannot overlap a franchised scheme area. If the geographical area of a proposed franchising scheme would overlap the geographical area of an existing advanced quality partnership scheme (AQPS) or EP (in whole or in part), the franchising scheme must make provisions to revoke the AQPS or EP in the overlapping area when it is made. Section 123H(6)-(9) of the 2000 Act.

**Start of statutory guidance wording**

However, LTAs should discuss with operators the effect of any revocation of a statutory partnership scheme on services within or crossing into the proposed franchised area. This is particularly important where a franchised area would replace, be surrounded by, or abut against a revised EP area.

This might happen, for example, where a franchising scheme only covers the geographical area of a large market town, with the remainder of the LTA area surrounding it covered by a pre-existing EP. It may also abut against an EP in another LTA area.

In this case, the LTA should discuss with the other LTA(s) and its operators the effects of introducing an abutting franchising scheme and how to avoid adverse effects to passengers, particularly on cross-boundary services.

## **End of statutory guidance wording**

### **9.2 Additional business cases**

In addition to the strategic case, the legislation (Section 123B(3) (c) to (f)) also requires the authority to produce 4 additional business cases that cover different elements of the assessment. The Department intends to develop template documents for franchises, including the business case.

Read this section of the guidance<sup>9</sup> for more information about the 4 additional business cases.

### **9.3 Conclusion**

#### **Start of statutory guidance wording**

The authority should clearly set out its conclusions having completed the detailed assessment of the options, drawing clear distinctions between the performance of each option with respect to achieving its desired outcomes.

The authority should then identify its preferred option, clearly setting out the rationale for this decision.

The assessment should conclude with an executive summary setting out the recommended option and the key reasons for it from each of the other sections.

#### **End of statutory guidance wording**

## **10. Independent assurance report**

Once a franchising authority has prepared its assessment it must obtain an independent assurance report on its assessment. The assurance report must outline whether:

- the information relied on by the authority in producing the economic (value for money) and financial (affordability) cases of their assessment is generally of sufficient quality;
- the analysis of that information is of sufficient quality

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<sup>9</sup> [Setting up a bus franchising scheme - GOV.UK \(www.gov.uk\)](http://www.gov.uk)



- that the authority has had due regard to guidance issued by the Secretary of State under section 123B of the 2000 Act in preparing its assessment

Although the Act requires the report to be prepared by an ‘auditor’ this is not intended or required by the Act to be a formal audit report in accordance with Financial Reporting Council guidelines. The policy intent of the legislation is that the report provides a high-level independent assurance that the assessment prepared by the authority has been produced in good faith and professionally and does not contain obvious material or arithmetic errors which could cast doubt on its overall conclusions. In particular, the aim of the report is to provide assurance:

- in the accuracy of the data used
- that the affordability and value for money analyses have been developed with appropriate care by suitably qualified experts
- that the process followed was robust

Together, the assessment and report should allow a decision on whether or not to proceed with franchising to be taken with confidence and reduce the risks of an authority’s decision being challenged in the courts on the grounds of reasonableness.

The report is not designed as a test to be passed or failed.

### **Start of statutory guidance wording**

Authorities are encouraged to invite the auditor to become involved in the assessment process as soon as the LTA believe it is sensible to do so, and at least to review a small number of drafts of the assessment before a formal report is provided.

### **End of statutory guidance wording**

This will allow any significant weaknesses to be identified and addressed before a formal report is produced. The auditor should work collaboratively with the authority to strengthen the quality of the business case, assumptions used and/or approach adopted. Whilst the auditor must remain independent, the aim should be to improve the documentation, so an informed and robust decision can be reached as quickly as possible.

### **Start of statutory guidance wording**

Any reviews of the draft assessment should be documented by the authority, including the views and recommendations of the auditor and any actions taken as a result.

### **End of statutory guidance wording**

The 2000 Act currently requires the Secretary of State to issue guidance in relation to two issues in connection with the assurance 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 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, and the analysis of that information by the authority, is of sufficient quality.

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

The 2000 Act currently 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.

#### **Start of statutory guidance wording**

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.

#### **End of statutory guidance wording**

The auditor must at least be a statutory auditor, as defined by s.123D(8) of the act. The auditor should act with independence and ensure that the authority is in the best position to take a well-informed decision in the interests of passengers.

#### **Start of statutory guidance wording**

The authority should ensure that the auditor has, or has access to, appropriate transport experience to inform their report. This experience could be provided by another individual or body who offers advice on the assessment and/or contributes to the auditor's report, provided that the final report also represents the auditor's own view on the assessment having considered the advice available to them.

A franchising authority should not appoint an independent auditor or audit company for the purposes of section 123D of the 2000 Act if that auditor or company (or any adviser to them with transport experience) was also engaged by the authority in relation to the assessment of its proposed franchising scheme, unless the authority is confident that appropriate arrangements are in place to ensure that the report is not influenced by work undertaken on the assessment. Any such arrangements should be set out clearly in the audit report.

#### **End of statutory guidance wording**

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

Appointed auditors must have regard to the statutory guidance in this section when forming an opinion for the purposes of section 123D of the Act.

The independent assurance report must state whether, in the opinion of the auditor:

- the information, considered collectively, relied on by the authority in considering the matters referred to in section 123B(3)(d) or (e) of the 2000 Act is of sufficient quality

- the analysis of that information in the assessment is, considered collectively, of sufficient quality
- the authority had due regard to guidance issued under section 123B of the 2000 Act in preparing the assessment

### **Start of statutory guidance wording**

When forming their opinion as to whether the information relied upon and the analysis of the information by the authority is of sufficient quality, auditors should look at the assessment in the round. The auditor does not need to review in detail every data source or assumption, but should consider whether there are significant areas of weakness, omission or error which individually or collectively could have a material impact on the assessment's conclusions on the costs, benefits, risks or value for money of any of the options. In doing so they should consider:

- whether there are any significant and material gaps in the information used
- whether the information used generally comes from recognised sources
- whether the information used appears to have been selected objectively, rather than to support the arguments in favour, or against, any particular option
- whether the assessment takes into account any effects or potential effects from the COVID-19 pandemic
- whether the information used, collectively, is relevant and not significantly out of date
- whether the assumptions used in the assessment are recorded and, where reasonably possible, supported by recognised sources
- whether, where information and evidence is less well defined, but would otherwise lead to an absence of data from the assessment, the authority's approach is not unreasonable and potential risks associated with the assumptions made are identified
- whether appropriate ranges have been used for forecasts and associated uncertainties identified in the assessment
- the mathematical and modelling accuracy of the analytical methods used to calculate the impacts of the options
- whether the authority's assumptions on the costs and benefits of the best EP reflect the evidence available of what could realistically be delivered through an EP at the point at which the assessment was developed
- the availability, quality and – where relevant – timeliness of receipt from bus operators of the information available to the authority

### **End of statutory guidance wording**

Where information and evidence is less well defined, but would otherwise lead to an absence of data, the authority should flag where an auditor has questioned the basis of the assumption and include the potential consequence to the business case of the assumption being removed. This allows the potential risk identified by the auditor to be clearly included within the business case and addressed via a sensitivity.

### **Start of statutory guidance wording**

The auditor should not expect the authority to update the assessment for information that becomes available or is updated at a late stage unless they consider it would have a material impact on the conclusions of the assessment and the choice between options.

Should the auditor consider that there are material issues with the quality of the information or its analysis they should advise the franchising authority accordingly and identify, where relevant, what different approach or data source they would recommend.

The auditor should not report or pass judgement on the decisions taken by the authority 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.

As explained above, the auditor is not expected to produce a formal audit opinion within the scope of Financial Reporting Council guidelines.

### **End of statutory guidance wording**

## **11. Stage 3 - Consulting on the proposal**

Following the preparation of the assessment, and the report prepared by the auditor, the authority 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.

The 2000 Act requires an authority 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
- the report prepared by the auditor
- The Act also explains what the authority 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 franchising scheme would operate, and any sub-areas within it

- a description of the franchised services that the authority proposes to provide
- a description of any services, or types of service, that the authority proposes to exempt from regulation arising because of the franchising scheme – including any routes or services that will continue to be provided by the commercial sector under service permits
- the date on which the authority proposes to make the franchising scheme, together with the first date or dates by which the authority proposes to enter into contracts with operators to provide franchised services
- the periods that must expire between the authority entering into 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 or authorities plan to facilitate involvement of small and medium sized operators through the procurement process
- the date by which responses to the consultation must be received

### **Start of statutory guidance wording**

An authority 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.

### **End of statutory guidance wording**

The 2000 Act also specifies a number of key stakeholders that an authority must consult on their proposals, including:

- local bus operators and other PSV operator's licence and permit holders who may be affected
- representatives of employees of such operators
- organisations representing local passengers
- any local authority 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

An authority must consult these bodies, but they have the freedom and flexibility to consult any other individuals or bodies they consider appropriate. Following any initial

consultation, consideration of the responses or subsequent events may lead an authority to decide that some further consultation is required as a matter of fairness or would be desirable before any decision is taken.

## 12. Stage 4 - Decision, consultation response and making the scheme

Following the consultation process, an authority 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.

### **Start of statutory guidance wording**

An authority should summarise and address key issues raised by respondents to the consultation as part of their response, including setting out any changes to the franchising assessment and scheme that they intend to make as a result.

Depending on the significance of any changes, an authority may choose to consult again.

The decision whether to franchise should be reached by reviewing the overall conclusions of the assessment, alongside the auditor's report and the consultation response - the governance process should allow sign off with a full understanding of the potential risks identified by the auditor and mitigations proposed by the authority. This is a balanced judgment to be taken across all of the available evidence: particular weight does not need to be given to individual elements of the assessment.

### **End of statutory guidance wording**

Where the authority is an MCA, the 2000 Act provides that it must be the mayor that takes the decision as to whether or not to proceed with a franchising scheme.

If the authority 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.

In giving consideration to the role of small and medium sized operators, LTAs should consider the nature of the local bus market and capabilities of local operators. Options could include some smaller tenders, which smaller operators might be able to bid for, or alternatively, to give consideration to how to encourage sub-contracting.

At the same time as the authority publishes its response to the consultation, it must also make and publish the final version of the franchising scheme.

It is important to note that the legislation does not require the authority to pass a particular test to introduce franchising. Nor does the Secretary of State need to be consulted or give any kind of approval.

### **Start of statutory guidance wording**

It is for the mayor or authority to decide, using the assessment of the proposed franchising scheme, the results of the consultation and any other relevant factors, whether franchising is the right course of action to deliver their desired outcomes, the targets it sets, and other outcomes that individual LTAs consider necessary to improve bus services. That decision can be subject to legal challenge through judicial review, as is the case for any local authority decision.

Where an authority has conducted a franchising assessment and decides not to implement a franchising scheme, the Government expects them not to conduct another franchising scheme assessment in the next 5 years, so as to provide certainty to enable bus operators to invest in the market.

### **End of statutory guidance wording**

## **13. Stage 5 - Implementation**

Where an authority has decided to implement a franchising scheme the market will need to transition to the new system. The 2000 Act and supplementary regulations set out a number of measures to help smooth the transition and ensure that passengers are provided with reliable services during the transition period.

See The Public Service Vehicles (Registration of Local Services) (Franchising Schemes Transitional Provisions and Amendments) (England) Regulations 2018.

### **13.1 Transitional notice – extending the cancellation or variation notice period**

An authority should 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.

Regulations made under the 2000 Act provide franchising authorities with the option to extend the cancellation and variation notice period that operators must observe from the current 70 days to a maximum of 112 days. In addition to the 28-day pre-notification period required under The Public Service Vehicles (Registration of Local Services) (Amendment) Regulations 2018.

Should an authority 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.

An authority is able to set different notice periods for different circumstances or different types of services. For example, an authority may want to consider leaving the current cancellation and variation notice periods for services which only have a few stopping places in the franchising scheme area, whilst increasing it for services that operate exclusively within it.

### **13.2 Ability to register services at short notice**

The relevant regulations also enable certain services to be registered at short notice, where the authority 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 the current notice period.

Where an authority decides 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 deregulated system where operators operate services registered with a traffic commissioner. Regulations under the 2000 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 and an operator.

### **13.3 Staff transfers**

The 2000 Act recognises that where franchising is introduced staff may need to transfer to new operators who win local service contracts and provides that in those circumstances the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) would apply. 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.

Regulations made to support the Act set out further detail regarding the processes to be followed when applying TUPE. (The Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) (England) Regulations 2017.)

#### **Start of statutory guidance wording**

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.

#### **End of statutory guidance wording**

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
- what constitutes agreement between the parties

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.

### **Start of statutory guidance wording**

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.

### **End of statutory guidance wording**

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.

### **Start of statutory guidance wording**

This provision should only be used if the authority is content that agreement cannot be reached between the three parties.

### **End of statutory guidance wording**

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.

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 authority to ensure this is achieved.

### **Start of statutory guidance wording**

Therefore, the franchising authority should ensure that local service contracts are made on the basis that bidders commit to providing broadly comparable pension schemes.

## End of statutory guidance wording

### 13.4 Employee related information

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

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.

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.

## 14. Implementation and operation of a franchising scheme

### 14.1 Service permits

Where a franchising scheme is introduced, an authority will also need to operate a 'service permit scheme'. A service permit is required for any additional PSVs operating in the franchising scheme area but outside of the franchising scheme itself, which are carrying passengers for hire or reward; this includes some community bus services, demand responsive transport and any services running tours or excursions, for example.

Further to the section of this guidance on potential types of franchising agreement<sup>10</sup>, there are a number of ways that a service permit scheme could operate to support the franchised network – for example, so that services which the LTA has determined will:

- complement franchised services
- encourage commercial operators to provide them
- can be viably operated and therefore contribute to delivering desired outcomes

This should also ensure that other services, which are not exempt from franchising and 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.

Before an authority can start to operate its service permit system, it must first consult on its proposed service permit system. An authority 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. However, if an LTA decides that overall service provision should be provided by a mix of a franchised and encouraged service permit network, it should consult on both at the same time.

As part of the consultation on the service permit scheme, the authority 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 the statutory notice period for doing so
- the time period or periods for which permits will be valid
- One aspect that an authority can set out in the service permit scheme is the time for which the permit is valid, for example a 3-year or longer period. This gives operators more certainty over the length of the commitment they will need to make to the services and gives an authority the ability to review the services after a period of time.

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<sup>10</sup> [Setting up a bus franchising scheme - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

### **Start of statutory guidance wording**

The authority 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 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 and neighbouring authorities.

### **End of statutory guidance wording**

Following the consultation, the franchising authority should then consider the response and update its service permit scheme accordingly. The authority should then publish a consultation response setting out:

- a summary of the consultation responses received
- the authority's proposed actions in light of the responses

This should be published together with 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 above.

In addition to the notice mentioned above, the 2000 Act also allows an authority to publish a notice setting out the conditions that they may decide to attach to service permits.

### **Start of statutory guidance wording**

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.

### **End of statutory guidance wording**

The service permit scheme 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 is able to attach to service permits are set out in regulations which supplement the act<sup>11</sup>. No other conditions may be attached to a grant of a service permit.

Franchising authorities are able to attach different conditions in different circumstances, or for different sorts of services. For example, the authority 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 service.

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<sup>11</sup> [The Franchising Schemes \(Service Permits\) \(England\) Regulations 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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.

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 2000 Act requires the authority 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 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 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.

The 2000 Act and supplementary regulations<sup>12</sup> set out the details regarding how permits can be suspended or revoked. The act sets out the grounds on which a franchising authority 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
- that the public would be endangered by the service continuing to run

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

Where a franchising authority 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

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<sup>12</sup> The Franchising Schemes (Service Permits) (England) Regulations 2018

- the date on which the suspension or revocation will take effect
- the effect of the revocation or suspension

If a service permit is suspended, the authority 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 plans to put in place to review the suspension.

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 the statutory notice period for registration changes after the authority issues the notice.

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.

Further details of the process to be followed by operators when appealing is set out in supplementary regulations - the Franchising Schemes (Service Permits) (England) Regulations 2018.

## **14.2 Role of the traffic commissioner**

Traffic commissioners are responsible for the licensing of bus operators and the registration of local bus services. (Except in EP areas where the registration function has been delegated to the LTA.) 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.

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.

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, 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.

However, enforcement of local service contracts themselves, and the standards imposed by those contracts, is a matter for the franchising authority.

### **Start of statutory guidance wording**

Franchising authorities should ensure they build in the necessary contractual mechanisms to local service contracts to ensure that relevant better bus service outcomes are being delivered (where applicable) and to deal with poor performance.

**End of statutory guidance wording**

An authority is 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 repute of an operator should be reported to the relevant traffic commissioner.

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 by the 2000 Act. These services should continue to be registered with the traffic commissioner as now.

**14.3 Varying a franchising scheme**

At any point after a franchising scheme has been made, the authority 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, changes which do not involve a change to what has been specified in the scheme, such as the introduction of new or amended fares or ways to pay, changes to passenger information or new marketing initiatives, changes to day-to-day service requirements (e.g. timetabling of individual services) can, in principle, be made without recourse to the formal processes set out in the act.

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 6 months after the date on which the variation notice was published. Should the franchising authority be an MCA, then the mayor is required to take the decision as to whether or not to vary the scheme.

The process that an authority 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 must consult on their proposals, and ensure that local stakeholders, including those set out in section 123E(4) of the act, are consulted.

**Start of statutory guidance wording**

The authority must prepare a consultation document in line with section 123F(1) of the act, and as part of that document, an authority 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 and how, for example and if applicable, better they will deliver their envisaged outcomes. In any case, where variations are proposed, the authority should seek to engage closely with local communities to ensure that the impacts of the proposed changes are thoroughly debated and explored.

**End of statutory guidance wording**

Once the authority has 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.

Where the authority plans to vary what is specified in the scheme 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.

#### **14.4 Revoking a franchising scheme**

We recognise that there may be good reasons which mean that it may be better for passengers for a franchising scheme to be revoked.

The 2000 Act sets out the circumstances in which an authority can revoke a franchising scheme. An authority may only revoke such a scheme if they are satisfied that:

- local services and/or BSIP and other longer term outcomes 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
- the burdens of continuing with the scheme are likely to outweigh the benefits of doing so

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 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 publishes the notice setting out its decision.

Where the authority is a mayoral combined authority, the mayor must take the decision to revoke the scheme.

## **15. Information provision**

This chapter is intended to describe in more detail what information can or cannot be sought under the s143a 2000 Act and The Franchising Schemes and Enhanced Partnership Plans and Schemes (Provision of Information) Regulations 2017.

### **Passengers**

Information about the total number of journeys undertaken by passengers on the local services operated by the operator in the area.



A breakdown of total journeys into individual routes or services, to periods (monthly, weekly, daily and also by peak and off peak periods), or to ticket types etc. This would not include passenger survey data on all individual journeys undertaken at a transactional level.

## **Fares**

Information about the structure of fares for journeys on local services.

A description of all period tickets (validity one day or longer), including prices, validity rules and geographical areas and/ or service list within which specific ticketing products are valid (e.g. zones or corridors). It would not include, for example, all HOPS data on all individual journeys undertaken to a transactional level.

Rules governing the eligibility of groups of passengers to purchase and use ticket types other than the standard adult fare.

Point to point fares by ticket type (such as adult and child ticket) single and return tickets, based on fare stages (not individual bus stops), usually presented in a fare table.

If return fares are calculated by a set formula (e.g. 190% of single fare rounded to nearest 5p), a statement of the formula and parameters used, and the dates the formula and parameters were applicable.

Reference information linking fare stages in fare tables to the geographical location of specific bus stops

## **Revenue**

Information about revenue received from those local services, including information about revenue attributable to particular types of fares or derived from journeys undertaken on particular parts of those local services.

Revenue collected by the operator for the sale of period tickets (i.e. tickets which are valid for one day or longer) through any channel including (but not limited to) on-on bus, off-bus, travelshops, online or through mobile ticket apps.

The number of fares issued by the operator to passengers detected travelling with no ticket or an incorrect or invalid ticket.

The amount of fare revenue estimated to be lost to the operator due to fare evasion, where operators make such estimates. This could be a money amount (£) or a percentage of fare revenue (%).

Aggregated revenue derived from services including fares (on-bus and off-bus sales), advertising and other sources by category in as far as these are associated with local bus operations –in the area proposed for franchising. Some suggested categories are:

- on-bus fares
- off-bus fares

- concessionary support
- tender subsidy
- advertising
- distribution of free newspapers

## **Costs**

Information about the fixed and variable costs incurred by the operator in operating the local services in the franchising authority's area.

Costs incurred (money) and time allocations for driver training.

Peak vehicle requirement (PVR) to operate each service/ route or service/route group, disregarding engineering spares. For some services/ routes this may be zero – e.g. where service/route is interworked with another.

Totals of scheduled hours and actual hours operated by vehicles on local services (and which therefore relate to variable costs), both live (in service) and dead (positioning trips, start and end of shift etc.), reported at the service level (or for groups of services where they are interworked), not for individual vehicles. Operated hours may be lower than scheduled hours (e.g. trips lost due to mechanical failure) and may be higher than scheduled hours (e.g. due to traffic congestion).

Where operators run services crossing the area and already hold records for operated hours split into within the area and outside the area.

Information about the cost of maintaining, overhauling and replacing operators' fleets through their normal life cycle. This may include for each vehicle the average maintenance cost per vehicle per year by vehicle type.

Information about the costs of participating in pension schemes, including any fixed and variable costs of participating in a pension scheme, in so far as that related to staff employed by the operator.

## **Vehicle fleet information**

Information about the vehicles used by the operator in operating those local services, including about the age of those vehicles, emissions and types of fuel or power.

Information for each vehicle used by operators to deliver or support local services in the area. This may include information about the age of those vehicles, emissions and types of fuel or power used and may also for each vehicle a mean miles per breakdown by depot and by vehicle type.

Information about the frequency of maintaining, overhauling and replacing operators' fleets through their normal life cycle.

The ratio of engineering spare vehicles to in-service vehicles by depot.

## Vehicle distance

Information about the total distance covered by vehicles used by the operator in operating those local services.

The scheduled and operated mileage for each service, both live (in service) and dead (positioning trips, start and end of shift etc.), reported at the service level, not for individual vehicles.

Operated mileage is likely to be lower than scheduled mileage on some services, where trips have not run or have been turned back short for various reasons (mechanical, traffic etc.).

This can include data from operators running cross-boundary services if they already hold mileage records that split mileage into within the area and outside the area.

## Staff

Information about persons employed by the operator in the provision of those local services.

Headcount and full-time equivalent (FTE) count of staff employed or contracted to deliver the operator's bus services within the franchised area, including staff directly and indirectly delivering and supporting the delivery of those services, including front line, back office, management and head office staff (or as otherwise grouped by the operator). Separate categories/counts for drivers, customer service and revenue protection staff.

Wage structures and salary bands and scales used to pay staff involved in the delivery of local bus services in the franchised area, including hourly rates (standard, overtime etc) and annual salaries as appropriate to each relevant staff group.

Information about grade progression rules, including progression within or to different grades or information about closed grades, for drivers and engineering staff.

Details of any future wage structures agreed with the employees or their representatives.

Information about pension schemes which staff involved in the delivery of local bus services in the area. This includes pension schemes which are only for employees of the operator and multi-operator/ multi-company pension schemes, but does not include information about deferred members or pensioners.

Employment terms and conditions covering issues such as standard working week, minimum/ maximum rostered hours, holiday entitlement, overtime arrangements, sick pay, maximum unpaid breaks, minimum guaranteed paid week.

## Forecasts

Information about journeys that the operator has forecast will be undertaken by passengers on those services and revenue that the operator has forecast will be received from those services.

Forecasts regarding expected or anticipated patronage and revenue including historic forecasts.

## 16. The 4 additional business cases

This section is intended to describe in more detail what should be included in the 4 business cases other than the strategic case.

### 16.1 The financial case

Whether the authority would be able to afford to make and operate the scheme.

This is required under section 123B(3)(d) of the 2000 Act and is the equivalent of the financial case.

An authority should consider the financial implications of franchising against the EP option, not only with respect to the initial introduction of the arrangements, but also factoring in the ongoing management and operation.

#### Start of statutory guidance wording

It is important to confirm that the preferred option is affordable, so authorities should set out the capital and revenue requirements for the 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.

In developing the financial case, an authority should ensure they have considered the impacts of the options on both:

- capital spending - such as for the purchase of depots, zero emission buses, introduction of new ticketing systems or other infrastructure – including measures to improve bus reliability/ journey times
- revenue spending – including any revenue received (including fare box income, contractual payments and devolved BSOG), any additional costs incurred (such as for implementation of the option, service enhancements and fares reductions) and – where relevant – the impacts on tender/contract prices of:
- staff costs, in particular considering the costs associated with the TUPE transfer of staff and their pension protection
- other operating costs - such as savings from reduced journey times achieved through bus priority, fuel costs, costs for leasing or purchasing assets, marketing and branding
- bidding and administration costs – to bid for, award and manage contracts and operate EP arrangements

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 with an explanation of how these totals have been built up
- LTAs should carry out a quantified risk exercise or another similar exercise to help inform appropriate levels of contingency in any cost build up assumptions on funding which will need to be identified from within the authority in each of the relevant years and what funding will come from central government, for example, any assumptions about ongoing funding to support delivery, devolved BSOG and other existing and future government funding schemes. Consideration should also be given to how on-bus revenue can be increased by encouraging greater bus use by fare-paying passengers
- 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.

### **End of statutory guidance wording**

#### **16.2 The economic case**

Whether the proposed scheme would represent value for money.

This is required under section 123B(3)(e) of the 2000 Act and is the equivalent of the economic case.

### **Start of statutory guidance wording**

The authority should consider the options in terms of impacts on wider society. Authorities should assess the economic, social and environmental costs and benefits, rather than solely focussing on the transport impacts of the different options.

This section of the authority's assessment should explain the impacts of the options on different groups in society. This should include new and existing 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.

An authority should include in this section an assessment of local operators that they consider to be small and medium sized. An authority 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.

In addition, the authority should also assess the likely impacts of the transition period of both options, particularly on the speed at which bus service improvements can be delivered for passengers.

In considering the impacts of the options, the authority should think about the distribution of benefits, costs and risks between different groups in using a franchising model . With respect to franchising proposals, the authority should ensure they have considered:

- impact on bus users – and the speed at which they will receive benefits from the measure
- fare-box revenue – whether a gross cost or net cost franchising model is being proposed – this would need to take into account as far as possible any remaining impacts of the COVID-19 pandemic on farebox revenue

### **End of statutory guidance wording**

Responsibility for payment of the Bus Service Operators Grant (BSOG) will be devolved to any authority at the point the authorities decide to make a franchising area. It will be devolved through a devolution order or other statutory instrument before the authority starts paying operators for franchised services.

Operators will claim their BSOG for services inside the authority boundary from the authority rather than from DfT.

If BSOG is devolved before the national reform of BSOG, the same amount of commercial BSOG and local authority BSOG funding will continue to flow to the authority as would have done were franchising not pursued, which will be based on certified claims within the authority boundary, calculated by DfT with the assistance of the local authority and operators. This amount may change following BSOG reform and/or if government's wider bus funding policy changes, with consideration that franchised regions should not be adversely impacted compared to non-franchised.

DfT will provide sufficient notice of changes to authorities to calculate the funding impacts in their area. Franchising authorities must continue to pay commercial BSOG to eligible operators operating under a service permit within a franchising area. Any BSOG allocation not spent on BSOG due to operators moving into franchise contracts should be used to support the bus sector, including through franchising.

### **Start of statutory guidance wording**

- operating costs – such as costs for leasing assets, staff, training, marketing and branding
- capital costs – such as investments in depots or buses

- 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. This would need to take into account any remaining effects from the COVID-19 pandemic (e.g. on the farebox) and whether margins are likely to change for other reasons e.g. between the first and subsequent franchise periods
- environmental impacts – such as changes in air quality due to changes in congestion, service levels or zero emission buses

With respect to the EP proposal in particular, the authority should ensure that it has considered:

- the costs of administering bus registrations – under an EP with ‘route’ level requirements, LTAs are required to take on responsibility for registering bus services. LTAs can, even without route requirements, choose to take on the registration function if they wish
- ongoing management costs for the authority and for local bus operators

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 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.

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.

Since franchising is intended to be a long-term intervention, the authority 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 assessment should focus on a chosen appraisal period, but should also indicate clearly whether there is anticipated to be any substantive change in outcomes in the years immediately following the end of that chosen appraisal period.

The authority 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 should also perform appropriate sensitivity tests, to provide a range of results around the options, to account for uncertainty and optimism.

## End of statutory guidance wording

The cross-government guidance on appraisal and evaluation – the Green Book<sup>13</sup> – 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.

Similarly, cross-government guidance on producing robust analysis – the Aqua Book<sup>14</sup> – provides useful advice for an authority to help ensure that the outputs from any analysis, as well as the supporting models, data and assumptions used, are fit for purpose.

## Start of statutory guidance wording

The Green and Aqua Books should only be used where they cover issues that are relevant to topics covered by the assessment. They should only be used as a reference source.

## End of statutory guidance wording

### 16.3 The commercial case

The extent to which the authority is likely to be able to secure that local services are operated under local service contracts.

This is required under Section 123B(3)(f) of the 2000 Act and is the commercial case. The purpose of this section is to demonstrate that the authority has a commercially viable approach to franchising will be able to secure the franchised services in an affordable and cost-effective manner.

## Start of statutory guidance wording

This exercise does not need to be done for the currently available EP option. This section of the assessment only needs to cover the franchising option(s) being considered. In it the authority should describe:

- how the local service contracts will be structured commercially and work in practice to deliver the outcomes and outputs that the strategic case says that the franchising option(s) will achieve the approach planned to procuring the local service contracts
- the key commercial risks, their potential impacts and how they would be mitigated and managed
- In particular, the authority should explain in this section of the assessment:
- the geographical area or areas the franchise will cover including whether sub-areas are proposed and how they will be phased in over time and whether the franchising scheme will exist alongside an EP or cover all of the authority's geographical area

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<sup>13</sup> [The Green Book \(2022\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/106222/green-book-2022.pdf)

<sup>14</sup> [The Aqua Book: guidance on producing quality analysis - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/106222/aqua-book-2022.pdf)



- whether any services or types of service will be exempted from the scheme
- how local service contracts and service permits will be implemented
- how the authority will 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. This could be achieved through the structure of local service contracts such letting of some smaller tenders consisting of small numbers of PVR alongside larger contracts or other models such as sub-contracting. the number and scale of local service contracts planned (including whether they will be route by route, by sub-areas or one contract for all the services)
- the intended length of local service contracts
- how the authority will facilitate cross-boundary services to deliver relevant outcomes and targets in both authorities' areas
- how the service permit system will be used to enabled cross-boundary (and if relevant other) services to operate, including the conditions expected to be attached to permits
- how services will be integrated with other modes
- the financial and staffing provisions of local service contracts including
- how any operational cost savings from measures to improve bus reliability/ journey times are reflected in the contract and reinvested in the network
- how revenue risk will be handled in local service contracts
- what standards, outputs and outcomes (if any) will be incentivised through penalties or additional payments in local service contracts. Authorities should consider any approach to incentivisation across a wide range of outcomes including customer service, vehicle cleanliness, proportion of services operated, information, redress and punctuality. They should also consider the potential for their approach to create perverse incentives if they decide to focus heavily on one specific issue
- how staff transfer arrangements and the provision of a broadly comparable pension scheme will be addressed, and any other significant staff-related provisions intended to be included – see also this section of this guidance on staff transfers
- how contractual mechanisms will allow for enhancement of services and other improvements for passengers over time in a cost effective manner
- how vehicle provision will work including:
- the commercial arrangements for the provision of vehicles and respective roles or the authority and service provider, including any arrangements for transfer of vehicles at the end of local service contracts

- any vehicle standards that will be set in local service contracts for some or all services both initially and over time (including for type and size of vehicle, emissions and on-board facilities)
- any other key contractual arrangements that the authority envisages including in local service contracts
- any commercial or other considerations relevant to the transition period (including existing or planned arrangements under an EP and before franchising is introduced) will seek to ensure that services to passengers are protected during that period
- how the LTA intends to ensure sufficient depots are available, including (if relevant) how they will be transferred at the end of local service contracts.
- the approach to staff pay and conditions. As part of developing this, LTAs should engage with employer representatives, including the trade unions
- a summary of the extent to which existing local operators and/or new entrants are expected to bid for local services contracts;
- any actions (such as the provisions of permanent or temporary depot facilities) that the authority is taking or intends to take to increase market appetite
- the approach to procuring the initial service contracts, including the procurement route to be used and timescales involved and how, the involvement of SMEs will be facilitated
- what market testing has been undertaken and the conclusions drawn from it - particularly in relation to the competitiveness of the procurement process
- the overall confidence the authority has in being able to secure initial local service contracts which deliver the outcomes and outputs intended within the financial and commercial terms envisaged in the assessment and why it has reached this conclusion
- how the authority will ensure that there is strong competition for the second and subsequent procurement of local service contracts

The authority should set out what its strategy is for procuring new contracts and in particular should give careful consideration to the balance between cost and quality in franchise assessment.

### **End of statutory guidance wording**

#### **16.4 The management case**

How the authority would make and operate the proposed scheme. This is required under Section 123B(3)(c) of the 2000 Act and is the management case.

### **Start of statutory guidance wording**

If, following the production of the other elements of a proportionate business case, franchising is still a credible option, the authority should now consider how it would successfully deliver franchising and manage and mitigate risk. This exercise does not need to be done for the currently available EP option,

Firstly, this case focusses on the practicalities of moving from a deregulated to a franchised network and how the LTA will deliver on the responsibilities that come with being a franchising authority with full control of the bus 'offer to passengers. These include:

- the approach to staff pay and conditions. As part of developing this, LTAs should engage with employer representatives, including the trade unions
- how fares and ticketing will operate including anticipated changes to fares over the life of the contract
- what ticketing or fares systems are required and whether they will be procured or delivered through local service contracts and if not how they will be secured and provided
- whether, when and how multi-modal fares will be incorporated into contractual arrangements
- whether operators are currently compliant with the Bus Open Data Digital Service (BODDS) and if not, how the LTA will ensure that they become compliant
- how bus service improvements will be achieved commercially including:
- how network identity and branding requirements will be delivered consistently
- the respective roles of operator(s) and the authority in information provision including the requirements (on and off-bus) to be included in local service contracts
- the respective roles of operator(s) and the authority in customer service (including redress arrangements)
- any facilities that the holders of local service contracts are expected to provide or operate (such as depots or bus stations) and the terms
- how timetables will be set and changed
- what data operators of local service contracts will be expected to provide to the authority, including to monitor progress against BSIP and longer term objectives
- what training bus drivers would be expected to complete including in relation to safety and disability awareness and how this will be implemented through local service contracts

The authority should also set out how it intends to manage the transition process from the current system to a franchised one. The authority should ensure they develop 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.

In developing the management case of the assessment, an authority should ensure they have engaged with DfT to explore and set out for franchising:

How LTA staff will obtain, with DfT's help y, the skills to implement and then manage the franchised network – this is separate to the resources needed to deliver the transition, as set out below.

The resources needed for transition – this includes whether additional specialist staff or advice will be required. If additional staff are required, this should include the numbers and costs. The cost of procurement and contract management processes, if any, that are required for the successfully introduction and ongoing management of franchising.

How the franchised network will be managed – this should include how the network will be reviewed and the strategy for implementing the outcomes set out in the LTA's BSIP – with particular emphasis on traffic management and delivering reliability and journey time improvements for buses. This is separate to the skillset question raised in the first bullet above.

How success will be measured – mostly covered in the franchising scheme, but here should also include bus passenger surveys either commissioned by the LTA or by other bodies such as Transport Focus.

### **End of statutory guidance wording**

The above bullets also closely link the management case with the commercial case and the delivery of outcomes 'on the ground'.

Moving to an LTA controlled franchised network will also have impacts on LTA resources. This part of the assessment will also need to set out what administrative (e.g. in FTE terms – whether from LTA staff or through outside help such as consultants) it will need to deliver and maintain a successful franchised bus network – e.g. letting and managing contracts, performance monitoring, network planning. This should include, but is not limited to delivering:

- the deliverables of the 'made' franchising scheme
- the transition arrangements, including consideration and issuing of service permits
- other measures that contribute to a successful franchised bus network. For example, developing and delivering packages of reliability and journey time improvements on specific corridors
- developing and delivering multi-operator ticketing and how fare structures and levels will be determined and reviewed
- that bus services are perceived by local people in a positive way. This includes, for example, how the LTA will resource marketing strategies to encourage bus use (particularly modal shift from cars). This might include ensuring that comprehensive

information is available, in one place, that gives motorists wishing to use the bus for the first time all the information they need – for example, the nearest stop to them to catch it, what the route is and how long it will take, the nearest stop to their final destination, what the fare will be and how to pay it etc – backed up with real-time information that tells them how far away their bus is when they are at the stop. This is a key requirement of a successful franchised bus network

- how all the above bullets will be informed by other ongoing strategies, BSIP and LTA objectives, such as wider action on modal shift from car and collection and analysis of monitoring data set out in the BSIP

## 17. Potential types of franchise

The Department is keen to see franchising powers used in a wide variety of contexts. The powers in the 2000 Act are very flexible and the best way to apply them will depend on individual circumstances. The Department is keen to work with LTAs develop their thinking. A franchising scheme does need to identify the local bus services that the franchising authority believes should be provided under local service contracts (and all such services must then be provided under local service contracts). However, franchised bus services do not have to be used exclusively across the whole of an authority's geography.

Commercial services can continue to operate alongside franchised services if the authority wishes and operators are prepared to provide them. (Provided these are not local services which are part of the franchising scheme.) Such services can stop in the area covered by the franchising scheme through the use of the Act's provisions for service permits.

This section sets out some of the different ways in which franchising powers could be used, beyond the usual approach of one or more contract covering all services within an authority's area.

### 17.1 Franchising from tendered services

A potentially strong option for an area with significant tendered services might be to franchise only their existing tendered network, to prevent any profitable routes that emerge later on (for example as a result of new bus priorities, improved marketing or other LTA investment) from being 'cherry picked' by bus operators who then operate them on a commercial basis in a way that may not contribute to LTA outcomes. This protection would also allow, for example, cross-subsidy from any future profitable tendered routes to the non-profitable ones to deliver overall published BSIP outcomes for the tendered bus network as a whole.

To achieve this, the authority could propose a franchising scheme which covers some or all of its geography only but which specifies as the services to be provided under it, only those services which the authority would otherwise expect to tender.

Alongside this, the authority could establish a service permit regime which awards individual permits to commercial services that the authority believes will not have an adverse effect on the local services in its franchised network. Service permits could not be issued in respect of local services to which the franchising scheme applies. See also section 123Q of the 2000 Act for the conditions that apply to the issuing of service permits.

The terms of those permits could be used to help achieve positive bus service outcomes – specifying service frequencies, vehicle standards, ticketing or branding requirements for example – ensuring that the services concerned remained commercially viable/attractive with them in place (with any services no longer viable coming into scope of the franchised local service contracts). Alternatively, it could exempt from the scope of the scheme any service which does not compete directly with the franchised network.

The franchised area or areas (there can be 2 or more, separately defined) could complement an enhanced partnership (EP) that covered the rest of the LTA’s geographical area. A franchised geographical area and an EP geographical area cannot overlap – see the section of this guidance for more on geographical areas<sup>15</sup>.

## **17.2 Jointly developing franchising with a local operator**

A variant on the above which has the potential to be deliverable with lower levels of LTA resource would be to take an approach based on that adopted in Jersey, where in the first phase, a model network, based on the existing network, is tendered for, but with operators invited to bring forward proposals for profit share with the LTA and other shared incentives. In a second phase of the process, the final bidders would be invited to propose variations on the model network which deliver against the LTA’s strategic objectives for bus.

In this model, financial risk is shared between the LTA and operator(s), with the operator keeping fare revenue to incentivise the growing of the market, but a profit-share arrangement which encourages the LTA to introduce pro-bus interventions. The LTA has full access to operator data and costs.

The LTA and the operator(s) work together on an action plan to grow patronage that might involve the LTA installing new bus priorities along the route to improve punctuality and journey times or subsidising lower fares, and the operator investing in newer vehicles or undertaking new marketing.

## **17.3 Franchising to introduce demand responsive services**

The same principles used for tendered services in the first example could be applied for any new demand responsive services to be operated. A franchising scheme could cover a part of the authority’s area and only its franchised DRT services would be able to operate within that area unless a service permit were granted. Bringing the few commercially viable routes (and associated revenue) within such an area within the scope of DRT could, in some circumstances, make a significant difference to the affordability and value for money of the authority’s DRT plans. It may also allow more frequent and tailored services to be provided to passengers.

## **17.4 Complementary franchising – working alongside an enhanced partnership**

In a similar manner to the above examples, franchising could be used over one or more smaller areas of an authority to address gaps in commercial provision – where new standard tendered services might otherwise be introduced. If a key market town or other location was poorly served by buses and it was not commercially viable to introduce them under an EP, a franchising scheme could cover that area only – allowing the authority to

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<sup>15</sup> [Setting up a bus franchising scheme - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

introduce new services with certainty that they would be delivered in line with the BSIP and longer term plans, with a reduced level of revenue risk. Any existing services that crossed the boundary of the franchised area which the authority wanted to see continue could be provided under a service permit.

The rest of the authority's area would still be subject to the EP if it was capable of delivering other BSIP and longer term outcomes. Under this approach, franchising may be a more deliverable and less resource intensive option for the authority than if it were introduced across the whole of their area.

### **17.5 Micro-franchising to tackle over-bussing or maximise bus priority/mass transit benefits**

Although an EP can include provisions to set maximum frequencies on corridors, it may not always be the most effective way to tackle this issue. Franchising could be used across a very tightly defined area (such as a specific corridor or a key route network) to manage the flow of buses through an area. Whilst we would expect some services to be provided under franchised local service contracts (perhaps at less commercially attractive times of day – such as evenings or weekends) these do not have to be all or the majority of services. Service permits could then be used to manage the flow of other buses through that network.

Similarly, franchising could be a mechanism to capture the operating cost savings that are available from the delivery of measures to improve bus reliability/ journey times, if it is proving difficult to do so through an EP. Local service contracts do not have to involve payments by the authority to an operator. They could have no financial aspect or involve payments by an operator to the authority. So the corridor on which bus priority is introduced could be included in a tightly defined franchising area where all services either have to operate under a local service contract or a service permit.

The same principle could be applied to a new guided busway corridor or other bus mass transit scheme (such as a Glider-style scheme) – bringing that network (and potentially parallel routes which the authority considered no longer needed to be served to the same extent) within the scope of a micro franchise. This would give the authority control over who used the infrastructure and for what services, either through local service contracts or service permits.

A micro-franchise would sit alongside the existing EP, which may require amending as a result of changes to operator profitability and ability to invest (with the franchised area excluded from the EP).

1. Ideally, taken from vehicle GPS or other real-time data.
2. For parking provision provided by the LTA. It is accepted that parking provision is also provided in some areas by private companies on private land.
3. Not services defined legally as 'local bus services' and required to be registered with the traffic commissioner under the Transport Act 1985.
4. A local transport authority, a London transport authority or a council in Scotland.
5. The Franchising Schemes (Service Permits) (England) Regulations 2018<sup>16</sup> set out what conditions can be imposed in relation to service permits.

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<sup>16</sup> <https://www.legislation.gov.uk/ukxi/2018/423/contents/made>