



# Bus Services Act 2017

## 2017 CHAPTER 21

### *Franchising schemes*

#### **4 Franchising schemes**

In Part 2 of the Transport Act 2000, after section 123 insert—

*“Bus services: franchising schemes*

#### **123A Franchising schemes**

- (1) A franchising authority, or two or more franchising authorities acting jointly, may make a franchising scheme covering the whole or any part of their area, or their combined area.
- (2) A franchising scheme may not be made unless the franchising authority or authorities have complied with the requirements in sections 123B to 123G.
- (3) A franchising scheme is a scheme—
  - (a) under which the authority or authorities identify the local services that they consider appropriate to be provided in an area under local service contracts,
  - (b) by virtue of which those local services may only be provided in that area in accordance with local service contracts (subject to section 123O),
  - (c) by virtue of which the authority or authorities may grant service permits for other local services which have a stopping place in that area (subject to section 123H(5)), and
  - (d) under which the authority or authorities identify additional facilities that they consider appropriate to provide in that area.
- (4) In this Part “franchising authority” means—
  - (a) a mayoral combined authority,

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- (b) a county council in England for an area for which there are district councils,
- (c) a county council in England for an area for which there is no district council,
- (d) a non-metropolitan district council for an area for which there is no county council,
- (e) an Integrated Transport Authority for an integrated transport area in England, or
- (f) a combined authority which is not a mayoral combined authority.

But each of paragraphs (b) to (f) has effect only if the Secretary of State by regulations so provides.

- (5) In this Part “local service contract”, in relation to a franchising scheme, means an agreement that complies with section 123K(1) to (3) under which—
- (a) the franchising authority or authorities grant to another person the exclusive right to operate the local services to which the contract relates, and
  - (b) the person undertakes to provide the local services on such terms (including in particular as to frequency, fares and standard of service) as may be specified in the agreement.
- (6) The terms as to standard of service that may be specified include terms about requirements which vehicles being used to provide the service must meet, including requirements about emissions or types of fuel or power.
- (7) A local service contract may be made on terms which include provision for the making of payments by the authority or authorities to the person undertaking to provide the local service.
- (8) Section 88(1) of the Transport Act 1985 (application to subsidy agreements of sections 89 to 92 of that Act) does not apply in relation to local service contracts.
- (9) A franchising scheme must include a description of the franchising authority's or authorities' plans for consulting such organisations appearing to the authority or authorities to be representative of users of local services as they think fit in order to seek their views on how well the scheme is working.
- (10) A franchising authority's functions under this Part in relation to a franchising scheme are excluded from the functions to which section 101(1)(b) of the Local Government Act 1972 applies, where the franchising authority is a local authority within the meaning of section 101 of the Local Government Act 1972.

### **123B Assessment of proposed scheme**

- (1) A franchising authority or authorities that propose to make a franchising scheme covering the whole or any part of their area, or combined area, must prepare an assessment of the proposed scheme.
- (2) The assessment must—
- (a) describe the effects that the proposed scheme is likely to produce, and
  - (b) compare making the proposed scheme to one or more other courses of action.
- (3) The assessment must also include consideration of—

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- (a) whether the proposed scheme would contribute to the implementation of—
    - (i) the authority's or authorities' policies under section 108(1)(a), and
    - (ii) other policies affecting local services that the authority or authorities have adopted and published,
  - (b) whether the proposed scheme would contribute to the implementation by neighbouring relevant local authorities of—
    - (i) those authorities' policies under section 108(1)(a), and
    - (ii) other policies affecting local services that those authorities have adopted and published,
  - (c) how the authority or authorities would make and operate the proposed scheme,
  - (d) whether the authority or authorities would be able to afford to make and operate the scheme,
  - (e) whether the proposed scheme would represent value for money, and
  - (f) the extent to which the authority or authorities are likely to be able to secure that local services are operated under local service contracts.
- (4) Subsections (2) and (3) do not prevent inclusion of other matters.
- (5) The Secretary of State must issue guidance concerning the preparation of an assessment under this section, and that guidance may, in particular, include guidance about methods to be used when assessing a proposed scheme.
- (6) Franchising authorities must have regard to any such guidance.
- (7) In this section “relevant local authority” means—
- (a) a local transport authority,
  - (b) a London transport authority, or
  - (c) a council in Scotland.

### **123C Consent of the Secretary of State and notice**

- (1) A franchising authority or authorities may not prepare an assessment of a proposed franchising scheme under section 123B unless the Secretary of State consents to their doing so.
- (2) The Secretary of State's consent is not required if the proposed scheme relates only to—
  - (a) the area of a mayoral combined authority, or
  - (b) the combined area of two or more mayoral combined authorities.
- (3) The Secretary of State must publish a notice of a consent given under this section.
- (4) Before preparing an assessment of a proposed franchising scheme under section 123B, the authority or authorities must publish, in such manner as they consider appropriate, a notice stating that they intend to prepare such an assessment.

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### **123D Audit**

- (1) If, after preparing an assessment of a proposed franchising scheme under section 123B, the authority or authorities wish to proceed with the proposed scheme, they must obtain a report from an independent auditor on that assessment.
- (2) The auditor's report must state whether, in the opinion of the auditor—
  - (a) the information relied on by the authority or authorities in considering the matters referred to in section 123B(3)(d) or (e) is of sufficient quality,
  - (b) the analysis of that information in the assessment is of sufficient quality, and
  - (c) the authority or authorities had due regard to guidance issued under section 123B in preparing the assessment.
- (3) The Secretary of State must issue guidance as to the matters to be taken into account by a franchising authority when selecting a person to act as an auditor.
- (4) Franchising authorities must have regard to any such guidance.
- (5) The Secretary of State must issue guidance concerning the matters to be taken into account by an auditor when forming an opinion as to whether the information relied on, and the analysis of that information, by an authority is of sufficient quality for the purposes of subsection (2).
- (6) Auditors must have regard to any such guidance.
- (7) For the purposes of this section an auditor is independent, in relation to an assessment of a proposed franchising scheme, if the person would not be disqualified from acting as local auditor of the accounts of the franchising authority, or any of the franchising authorities, under section 1214 of the Companies Act 2006 as substituted by paragraph 5 of Schedule 5 to the Local Audit and Accountability Act 2014.
- (8) In this section “auditor” means a person eligible for appointment as a local auditor by virtue of Chapter 2 of Part 42 of the Companies Act 2006 as modified by Schedule 5 to the Local Audit and Accountability Act 2014.

### **123E Consultation**

- (1) This section applies if, after obtaining an auditor's report under section 123D, the authority or authorities wish to proceed with the proposed franchising scheme.
- (2) The authority or authorities must—
  - (a) publish a consultation document relating to the proposed scheme (see section 123F),
  - (b) publish the assessment of the proposed scheme,
  - (c) publish the auditor's report on that assessment, and
  - (d) give notice of the proposed scheme in such manner as the authority or authorities consider appropriate for bringing it to the attention of persons in the area to which it relates.

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- (3) A notice under subsection (2)(d) must—
- (a) describe the proposed scheme, and
  - (b) state where copies of the proposed scheme and the documents mentioned in subsection (2)(a) to (c) may be inspected.
- (4) After giving notice under subsection (2)(d), the authority or authorities must consult—
- (a) all persons operating local services in the area or areas to which the proposed scheme relates,
  - (b) all other persons holding a PSV operator's licence or a community bus permit who would, in the opinion of the authority or authorities, be affected by the proposed scheme,
  - (c) such persons as appear to the authority or authorities to represent employees of persons falling within paragraph (a),
  - (d) such organisations appearing to the authority or authorities to be representative of users of local services as they think fit,
  - (e) any other relevant local authority any part of whose area would, in the opinion of the authority or authorities, be affected by the proposed scheme,
  - (f) a traffic commissioner,
  - (g) the chief officer of police for each police area covering the whole or part of an area to which the proposed scheme relates,
  - (h) the Passengers' Council, and
  - (i) the Competition and Markets Authority.
- (5) In subsection (4)(e) “relevant local authority” means—
- (a) a local transport authority,
  - (b) a district council,
  - (c) a National Park authority,
  - (d) the Broads Authority,
  - (e) a London transport authority, or
  - (f) a council in Scotland.
- (6) The authority or authorities may modify the proposed scheme after consulting those persons and organisations.

### **123F Consultation document**

- (1) A consultation document under section 123E(2)(a) relating to a proposed franchising scheme must include—
- (a) a description of the area to which the proposed scheme relates,
  - (b) a description of areas within that area for which different provision is proposed to be made, if such provision is proposed to be included in the proposed scheme,
  - (c) a description of the local services that are proposed to be provided under local service contracts,
  - (d) a description of the local services that are proposed to be excepted from regulation arising because of the proposed scheme,
  - (e) the date on which the scheme is proposed to be made,

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- (f) the date or dates by which it is proposed that local service contracts first be entered into,
  - (g) the period or periods it is proposed will expire between the making of local service contracts and the provision of local services under such contracts,
  - (h) a description of the authority's or authorities' proposed plans for consulting in order to seek views on how well the scheme is working,
  - (i) a statement about how, in conducting the procurement process for the provision of local services, the authority or authorities propose to facilitate the involvement of small and medium-sized operators in the provision of local services, and
  - (j) the date by which responses to the consultation must be received.
- (2) The consultation document must also include a summary of the assessment prepared under section 123B in relation to the proposed scheme.

### **123G Response to consultation**

- (1) A franchising authority or authorities that conduct a consultation under section 123E must publish a report setting out—
- (a) the authority's or authorities' response to the consultation;
  - (b) the authority's or authorities' decision on whether to make a franchising scheme covering the whole or any part of their area or combined area.
- (2) The authority or authorities must give notice of the report to a traffic commissioner.
- (3) If the authority or authorities decide to make a franchising scheme, the report must set out how, in conducting the procurement process for the provision of local services, the authority or authorities will facilitate the involvement of small and medium-sized operators in the provision of local services.
- (4) If a franchising authority are a mayoral combined authority, the function of deciding whether to make a proposed franchising scheme is a function of the combined authority exercisable only by the mayor acting on behalf of the combined authority (including in a case where the decision is to make a scheme jointly with one or more other franchising authorities).

### **123H Making and publication of scheme**

- (1) If the authority or authorities publishing a report under section 123G have decided to make a franchising scheme covering the whole or any part of their area or combined area, they must make the scheme, and publish it, at the same time as the report under section 123G.
- (2) The scheme must specify—
- (a) the area to which the scheme relates,
  - (b) the local services intended to be provided under local service contracts,
  - (c) the date on which local service contracts relating to local services may first be entered into (subject to subsection (3)(b)), and

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- (d) the minimum period that is to expire between the making of a local service contract and the provision of a local service under the contract (subject to subsection (3)(c)).
- (3) The scheme may specify—
  - (a) areas within the area to which the scheme relates (“scheme sub-areas”),
  - (b) for each scheme sub-area, the date on which a local service contract to provide a local service in that scheme sub-area may first be entered into, and
  - (c) for each scheme sub-area, the minimum period that is to expire between the making of a local service contract to provide such a service and the provision of such a service under the contract.
- (4) A scheme may not specify under subsection (2)(d) or (3)(c) a period of less than six months.
- (5) Subject to regulations under section 123U, the scheme may except from regulation arising because of the scheme—
  - (a) local services specified in the scheme, and
  - (b) local services of a class specified in the scheme.
- (6) If the franchising scheme relates to an area to which a relevant scheme or plan also relates, the franchising scheme must include—
  - (a) in a case where the relevant scheme or plan relates only to the area to which the franchising scheme relates or a part of that area, provision revoking the relevant scheme or plan, or
  - (b) in any other case, provision varying the relevant scheme or plan so that it ceases to relate to any part of the area to which the franchising scheme relates.
- (7) A franchising scheme may not otherwise vary a relevant scheme or plan.
- (8) In subsections (6) and (7)—
  - “relevant plan” means an enhanced partnership plan, and
  - “relevant scheme” means an advanced quality partnership scheme or an enhanced partnership scheme.
- (9) If provision is made under subsection (6)(b) to vary an enhanced partnership plan or scheme so that it ceases to relate to an area, the local transport authority or authorities to whose area or combined area the plan or, in the case of a scheme, the related plan continues to relate may vary the plan or, as the case may be, the scheme in such manner as they consider appropriate in consequence of the provision made under subsection (6)(b).
- (10) Section 138K(3) applies, and section 138K(4), (5) and (8) do not apply, to a variation under subsection (9).

### **123I Postponement of local service contracts**

- (1) If it appears to the authority or authorities that have made a franchising scheme appropriate to do so, they may decide that—
  - (a) the date specified under section 123H(2)(c), or
  - (b) a date specified under section 123H(3)(b),

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is to be postponed (or further postponed).

- (2) Before making such a decision they must (if possible) consult—
  - (a) persons operating local services who would, in their opinion, be affected by the decision;
  - (b) other persons whom, in their opinion, it would be appropriate to consult.
- (3) Within a period of 14 days beginning with the date on which any such decision is made they must give notice of the decision—
  - (a) in such manner as they consider appropriate for drawing it to the attention of persons in the area to which it relates,
  - (b) to all persons operating local services who would, in their opinion, be affected by the decision, and
  - (c) to a traffic commissioner.
- (4) The notice must include a statement of the reasons for making the decision.

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

- (1) Where a franchising scheme has been made, subsections (2) and (3) apply as soon as the effective time of any local service contract to which the franchising scheme relates is reached, subject to subsection (4).
- (2) Sections 6 to 9 of the Transport Act 1985 (registration of local services) do not have effect in relation to the area to which the franchising scheme relates.
- (3) No local service may be provided in the area to which the franchising scheme relates (if there is a stopping place for the service in that area) unless—
  - (a) it is provided under a local service contract,
  - (b) it is an interim service (see section 123O), or
  - (c) it is provided under a service permit (see section 123P).
- (4) If the scheme provides for scheme sub-areas, subsections (2) and (3) apply in relation to each scheme sub-area as soon as the effective time of any local service contract for the provision of a local service in that scheme sub-area is reached, as if references in subsections (2) and (3) to the area to which the scheme relates were references to the scheme sub-area.
- (5) Subsections (2) and (3) do not apply in relation to—
  - (a) a local service which is excepted from regulation arising because of the proposed scheme by any provision of the scheme that is made under section 123H(5), or
  - (b) the use of a vehicle under a permit granted under section 22 of the Transport Act 1985.
- (6) If it appears to a franchising authority that—
  - (a) a person is operating or has operated a local service in contravention of subsection (3), and
  - (b) in operating that local service, the person is failing or has failed to take all reasonable precautions and to exercise all due diligence to avoid contravening subsection (3),



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the authority must inform a traffic commissioner.

- (7) The effective time, in relation to a local service contract, is the beginning of the day on which a local service may first be provided under the contract (see sections 123K(4) and 123L).

### **123K Local service contracts**

- (1) If a franchising scheme covers the whole or part of the combined area of two or more franchising authorities, a local service contract for a local service specified in the scheme is to be entered by the authorities acting jointly.
- (2) A franchising authority or authorities may only enter into a local service contract with a person who is the holder of either—
- (a) a PSV operator's licence, or
  - (b) a community bus permit.
- (3) But subsection (2)(a) does not include a licence to which a condition is attached under section 26 of the Transport Act 1985 (power of traffic commissioner to attach conditions to licences) prohibiting the holder from using vehicles under the licence to provide local services of all descriptions or of any description to which the condition relates.
- (4) A person may not provide a local service under a local service contract until—
- (a) the expiry of the period that, under the scheme, must expire between the making of the contract and the provision of the local service under the contract (see section 123H(2)(d) and (3)(c)), or
  - (b) such later time as may be specified in the contract.
- (5) Subsection (4) is subject to section 123L.
- (6) If—
- (a) a franchising authority or authorities enter into a local service contract, and
  - (b) the contract is—
    - (i) the first contract for the provision of a local service specified in the scheme that is entered into, or
    - (ii) for any scheme sub-area, the first contract for the provision of a local service specified in relation to that scheme sub-area that is entered into,
- they must give notice of the contract to a traffic commissioner.
- (7) A notice under subsection (6) must be given within a period of 14 days beginning with the date on which the local service contract in question is entered into.

### **123L Exceptions to section 123K**

- (1) A local service contract may specify as the time when a local service may first be provided under the contract a time before the expiry of such period as is described in section 123K(4)(a), and that service may be provided from that time, if the authority or authorities determine that action is urgently required for the purpose of—

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- (a) maintaining an existing service,
  - (b) securing the provision of a service in place of a service which has ceased to operate, or
  - (c) securing the provision of a service to meet any public transport requirement which has arisen unexpectedly and ought in the opinion of the authority to be met without delay.
- (2) A determination under subsection (1) must be made at or before the time that the authority or authorities enter into the contract.

### **123M Variation of scheme**

- (1) The franchising authority or authorities operating a franchising scheme may vary, or acting jointly may vary, the scheme.
- (2) If the authority or authorities decide to vary a franchising scheme, the authority or authorities must—
  - (a) publish a notice of the decision, and
  - (b) give notice of the decision to a traffic commissioner.
- (3) The notice of the decision must state the date on which the variations of the scheme are to have effect.
- (4) The date must fall after a period of six months beginning with the date on which notice of the decision is published.
- (5) The notice must be published, and notice must be given to a traffic commissioner, within a period of 14 days beginning with the date on which the decision was made.
- (6) If a franchising authority are a mayoral combined authority, the function of deciding whether to make a proposed variation is a function of the combined authority exercisable only by the mayor acting on behalf of the combined authority (including in a case where the decision is to act jointly to vary a scheme).
- (7) The references in subsections (1) to (6) to the franchising authority or authorities in relation to a franchising scheme include a reference to a franchising authority who are not operating the scheme but would do so under a proposed variation.
- (8) The variation of a franchising scheme is subject to the same procedure as the making of a franchising scheme, except that—
  - (a) the procedure may be modified or excluded in its application to the variation of a scheme by regulations under section 123U,
  - (b) sections 123B, 123C, 123D and 123F(2) do not apply, and
  - (c) section 123G(3) does not apply.
- (9) If the variation of a franchising scheme would involve adding an area to the area to which the scheme relates, subsection (8) has effect in relation to the variation but without subsection (8)(b).

### **123N Revocation of scheme**

- (1) The franchising authority or authorities operating a franchising scheme may revoke, or acting jointly may revoke, the franchising scheme.
- (2) The authority or authorities may revoke the scheme only if they are satisfied that—
  - (a) local services in the area to which the scheme relates are likely to be better if the scheme did not apply,
  - (b) the continued operation of the scheme is likely to cause financial difficulties for the authority or any of the authorities, or
  - (c) the burdens of continuing with the scheme are likely to outweigh the benefits of doing so.
- (3) If the authority or authorities decide to revoke a franchising scheme, the authority or authorities must—
  - (a) publish a notice of the decision, and
  - (b) give notice of the decision to a traffic commissioner.
- (4) The notice of the decision must state the date on which the revocation is to have effect.
- (5) The date of revocation must fall after a period of six months beginning with the date on which notice of the decision is published.
- (6) The notice must be published, and notice must be given to a traffic commissioner, within a period of 14 days beginning with the date on which the decision was made.
- (7) If a franchising authority are a mayoral combined authority, the function of deciding whether to make a proposed revocation is a function of the combined authority exercisable only by the mayor acting on behalf of the combined authority (including in a case where the decision is to act jointly to revoke a scheme).
- (8) The revocation of a franchising scheme is subject to the same procedure as the making of a franchising scheme, except that—
  - (a) the procedure may be modified or excluded in its application to the revocation of a scheme by regulations under section 123U, and
  - (b) section 123G(3) does not apply.

### **123O Interim services and replacement services**

- (1) This section applies if—
  - (a) a franchising authority or authorities have entered into a local service contract with another person (“the operator”) about providing a local service (“the original service”) for a period, and
  - (b) the operator fails to provide the original service or ceases to provide the original service before the end of the period.
- (2) The authority, or any one of the authorities, may provide a local service (an “interim service”) in the place of the original service or a part of it.

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- (3) Subsection (2) has effect notwithstanding any prohibition, restriction or limitation on the power of the authority to provide local services contained in any other enactment, apart from the restriction in section 22 of the Bus Services Act 2017.
- (4) A franchising authority providing an interim service must have a PSV operator's licence to which no condition is attached under section 26 of the Transport Act 1985 (power of traffic commissioner to attach conditions to licence) prohibiting the authority from using vehicles under the licence to provide services of that description.
- (5) A franchising authority may not provide an interim service after the end of the period of six months beginning with the day on which the authority begins to provide the service, subject to subsection (7).
- (6) If—
  - (a) an interim service is provided, and
  - (b) the authority or authorities decide to enter into a local service contract with another person for the provision of a local service (a “replacement service”) that would replace the original service or a part of it,
 section 123K(4) does not apply in relation to the provision of the replacement service.
- (7) If the authority or authorities enter into a local service contract for the provision of a replacement service, the authority or the authority providing the interim service may continue to provide it until the replacement service begins to be provided.
- (8) An interim service or replacement service need not be identical to the original service, or the part of the original service, that is replaced by the interim service or the replacement service (and such a change is not to be regarded as a variation of the scheme for the purposes of section 123M).
- (9) In this section “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978).

### **123P Service permits**

- (1) This section applies where a franchising scheme covers the whole or part of the area or combined area of a franchising authority or authorities.
- (2) The authority or authorities, acting jointly, may grant a permit (a “service permit”) authorising a person to provide a local service in the area to which the scheme relates.

### **123Q Application for service permit**

- (1) An application for a service permit authorising a person to provide a particular local service in an area to which a franchising scheme relates must be made in such manner as the authority or authorities operating the scheme may determine.
- (2) An application must be accompanied by such information as the authority or authorities operating the scheme may specify.

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- (3) If the authority or authorities so require, an application for a service permit must be accompanied by a fee for processing the application of an amount that is determined in accordance with regulations made by the Secretary of State.
- (4) Regulations under subsection (3) may specify the maximum amount of the fee.
- (5) The authority or authorities must grant the service permit applied for if they are satisfied that—
  - (a) the proposed service will benefit persons making journeys on local services in the area to which the scheme relates, and
  - (b) the proposed service will not have an adverse effect on any local service that is provided under a local service contract in the area to which the scheme relates.
- (6) The authority or authorities may not grant the service permit applied for if they are not satisfied as to the matters in subsection (5)(a) and (b).
- (7) If the authority or authorities do not grant a service permit, they must give notice of their reasons to the applicant within a period of ten days beginning with the date on which they decide not to grant the service permit.

### **123R Conditions**

- (1) A franchising authority or authorities may publish a notice specifying the conditions, or descriptions of conditions, that they may attach to a service permit.
- (2) A franchising authority or authorities may—
  - (a) withdraw a notice under subsection (1), and
  - (b) if an earlier notice under subsection (1) is withdrawn, publish another notice under subsection (1).
- (3) A franchising authority or authorities may only specify in a notice under subsection (1) conditions that are specified, or are of a description specified, in regulations made by the Secretary of State.
- (4) Regulations under subsection (3) may in particular provide for conditions requiring holders of service permits to participate in ticketing arrangements.
- (5) Before the authority or authorities publish a notice under subsection (1) (or withdraw such a notice), they must consult—
  - (a) persons operating local services in the area to which the scheme relates, and
  - (b) other persons whom, in their opinion, it would be appropriate to consult.
- (6) If a notice under subsection (1) is published, the franchising authority or authorities may attach to—
  - (a) a service permit granted by them after the notice is published, or
  - (b) a service permit already granted by them,conditions, or conditions of a description, specified in the notice.
- (7) If a notice under subsection (1) is withdrawn, conditions attached to service permits granted by the franchising authority or authorities before it was

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withdrawn cease to have effect (subject to being attached again under subsection (6)(b)).

- (8) If the authority or authorities grant a service permit with conditions, they must give notice of their reasons for doing so to the applicant within a period of 14 days beginning with the date on which they grant the service permit with those conditions.
- (9) If the authority or authorities attach conditions to a service permit after it is granted, they must give notice of their reasons for doing so to the holder of the service permit within a period of 14 days beginning with the date on which they attach those conditions.

### **123S Revocation and suspension**

- (1) A franchising authority or authorities may revoke or suspend a service permit granted by them.
- (2) The grounds on which a franchising authority or authorities may revoke or suspend a service permit are—
  - (a) that a matter in section 123Q(5)(a) or (b) is not satisfied as regards the service to which the service permit relates,
  - (b) that the holder of the service permit has failed to comply with a condition attached to the service permit, and
  - (c) that the public would be endangered if the service continued to operate.
- (3) The Secretary of State may by regulations make provision about the period of notice that must expire before a revocation or suspension takes effect.
- (4) The regulations may, in particular, enable a franchising authority or authorities to revoke or suspend a service permit with immediate effect if the permit is revoked or suspended on the ground mentioned in subsection (2)(c).
- (5) A service permit is of no effect during a period of suspension.

### **123T Appeals**

- (1) A person whose application for a service permit is refused may appeal against the refusal.
- (2) A person who is granted a service permit with conditions may appeal against the attaching of the conditions or any of them.
- (3) A person to whose service permit conditions are attached after the service permit is granted may appeal against the attaching of the conditions or any of them.
- (4) A person whose service permit is revoked or suspended may appeal against the revocation or suspension.
- (5) An appeal under subsection (1), (2), (3) or (4) is to be made to a traffic commissioner.
- (6) On an appeal under subsection (1), (2), (3) or (4), a traffic commissioner may—
  - (a) uphold the decision,

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- (b) quash the decision, or
  - (c) substitute a decision for the decision made.
- (7) The Secretary of State may by regulations make provision about appeals under this section including, in particular, provision—
- (a) as to the time within which an appeal to a traffic commissioner must be brought,
  - (b) enabling a traffic commissioner to hold a hearing,
  - (c) requiring a traffic commissioner to hold a hearing if requested by the appellant,
  - (d) as to the time within which a hearing must be held, and
  - (e) as to the time within which an appeal must be determined.
- (8) A person may appeal to the Upper Tribunal against a decision of a traffic commissioner under subsection (6).
- (9) For the purposes of section 13(2) of the Tribunals, Courts and Enforcement Act 2007 (appeals to Court of Appeal etc against decisions of the Upper Tribunal) the following persons are to be treated as parties to a case—
- (a) the person who appealed under subsection (1), (2), (3) or (4),
  - (b) the franchising authority or authorities whose decision was appealed, and
  - (c) a traffic commissioner.

### **123U Regulations about schemes**

- (1) The Secretary of State may by regulations make further provision with respect to—
- (a) the procedure to be followed when making, varying or revoking franchising schemes,
  - (b) the local services or classes of local services which are to be, or may be, excepted from regulation arising because of the scheme, and
  - (c) such other incidental matters in connection with franchising schemes as the Secretary of State thinks fit.
- (2) The regulations may in particular make provision with respect to—
- (a) giving notice of proposed schemes or the proposed variation or revocation of schemes,
  - (b) modifications of such proposals,
  - (c) the form of schemes or variations, and
  - (d) giving notice of schemes which have been made or of the variation or revocation of schemes.
- (3) The Secretary of State may by regulations make further provision with respect to service permits.
- (4) The Secretary of State may also make regulations modifying or excluding the application of provisions of this Part, so far as relating to franchising schemes, in cases where a franchising authority, or two or more franchising authorities acting jointly—
- (a) propose or decide to vary or revoke a scheme under section 123M or 123N, or

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- (b) having varied a scheme under section 123M, propose or decide to postpone a date on which a local service contract to provide a local service specified in the scheme may first be entered into.

### **123V Transitional provision about schemes**

- (1) The Secretary of State may by regulations make such transitional provision as the Secretary of State considers appropriate in connection with—
  - (a) the making of franchising schemes,
  - (b) the application of section 123J in relation to an area (effect of local service contracts: sections 6 to 9 of the Transport Act 1985 and provision of services),
  - (c) the variation of franchising schemes, and
  - (d) the revocation of franchising schemes.
- (2) The regulations may in particular provide that in prescribed circumstances—
  - (a) any provision of sections 6 to 9 of the Transport Act 1985 (registration of local services), or of sections 89 to 92 of that Act (obligation to invite tenders etc), which would otherwise have effect is not to have effect or is to have effect with such modifications as may be prescribed, or
  - (b) any such provision which would not otherwise have effect is to have effect or is to have effect with such modifications as may be prescribed, in relation to the whole or any part of the area to which the scheme relates.
- (3) Regulations made by virtue of subsection (2) may in particular provide for the period in section 6(8)(a) of the Transport Act 1985 to be, for applications to vary or cancel the registration of services that have one or more stopping places in the area to which a franchising scheme relates, the period specified in a notice issued by the authority or authorities that made the franchising scheme.
- (4) The regulations may impose requirements in relation to notices issued as mentioned in subsection (3) that include (but are not limited to) requirements—
  - (a) as to the time when the notice may be issued,
  - (b) as to the publication of the notice,
  - (c) as to sending a copy of the notice to a traffic commissioner, and
  - (d) as to the period, not exceeding 112 days, that may be specified in the notice.
- (5) Regulations made by virtue of subsection (2) may in particular provide for cases where local services continue to be provided in an area under local service contracts after a franchising scheme—
  - (a) is revoked, or
  - (b) is varied so as no longer to relate to that area.
- (6) The regulations may—
  - (a) prohibit the registration of a service, or a variation of the registration of a service, under section 6 of the Transport Act 1985 so far as the service, or the service as varied, would be provided in that area, except in a case where the service, or the service as varied, would be a service that, under the scheme as it had effect before it was revoked or varied, could have been provided in that area under a local service contract, and



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- (b) require a traffic commissioner to register a service on an application by a person who, immediately before the scheme was revoked or varied, provided the same service under a service permit.
- (7) Any regulations made by virtue of subsection (1)(a) are not to have effect in the case of any franchising scheme as respects any time before the making of the scheme.

### **123W Guidance about schemes**

- (1) The Secretary of State may issue guidance concerning the exercise by franchising authorities of their functions under this Part in relation to franchising schemes.
- (2) Franchising authorities must have regard to any such guidance.

### **123X Local service contracts: application of TUPE**

- (1) Subsection (3) applies to a situation in which—
  - (a) at the effective time of a local service contract, local services cease to be provided by a person (the “former operator”) in—
    - (i) the area to which the relevant franchising scheme relates, or
    - (ii) in the case of a franchising scheme which provides for scheme sub-areas, the relevant scheme sub-area,in accordance with section 123J(3), and
  - (b) at the same time, a person (the “new operator”) begins to provide local services in that area under that local service contract.
- (2) Subsection (3) also applies to a situation in which—
  - (a) local services which, at the effective time of a local service contract, a person (the “former operator”) would be required by section 123J(3) to cease providing in—
    - (i) the area mentioned in subsection (1)(a)(i), or
    - (ii) the area mentioned in subsection (1)(a)(ii) (as the case may be),cease to be provided by the former operator before the effective time of that local service contract, and
  - (b) at the same time as those local services cease to be provided by the former operator, a person (the “new operator”) begins to provide local services in that area under an agreement which the authority or authorities operating the relevant franchising scheme entered into by reason of the cessation of the local services referred to in paragraph (a).
- (3) Any situation to which this subsection applies is to be treated as a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) (whether or not TUPE would apply apart from this subsection).
- (4) For the purposes of TUPE, the organised grouping of employees that is subject to the relevant transfer consists of those employees of the former operator whose employment is principally connected with the provision of the local services referred to in subsection (1)(a) or (as the case may be) the local services referred to in subsection (2)(a).

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- (5) Any situation which by virtue of this section is treated as a relevant transfer for the purposes of TUPE is also to be treated as a relevant transfer within the meaning of TUPE for the purposes of—
- (a) sections 257 and 258 of the Pensions Act 2004, and
  - (b) any regulations made under section 258 of that Act.
- (6) The Secretary of State may make regulations supplementing the provision made by this section.
- (7) The provision that may be made by regulations under subsection (6) includes—
- (a) provision for determining, for the purposes of subsection (4), whether a person's employment is principally connected with the provision of any particular local services (including provision for or in connection with the appointment of a person to make such determination);
  - (b) provision for determining, in the case of any particular organised grouping of employees, the particular new operator who is to be the transferee for the purposes of TUPE (including provision for or in connection with the appointment of a person to make such determination);
  - (c) provision requiring any person operating local services in the area to which a franchising scheme relates to provide the authority or authorities operating the scheme with such information as may be prescribed, at such time as may be prescribed, about such of that person's employees as would fall within subsection (4) if the person ceased to provide those services in the circumstances described in subsection (1)(a);
  - (d) provision requiring the authority or authorities operating a franchising scheme to provide all persons operating local services in the area to which the scheme relates with such information as may be prescribed, at such time as may be prescribed, so as to enable such persons to comply with any requirement imposed by virtue of paragraph (c) of this subsection;
  - (e) provision requiring the authority or authorities operating a franchising scheme to ensure that any local service contract entered into with a person under the scheme, or any other agreement made with a person for the provision of local services in the area to which the scheme relates, is made on terms—
    - (i) that require the person, in the event of there being any transferring employees, to secure pension protection for every transferring employee, or every transferring employee of a prescribed description, who as an employee of the former operator had rights to acquire pension benefits, and
    - (ii) that, so far as relating to the securing of pension protection for a transferring employee, are enforceable by the employee.
- (8) For the purposes of this section—
- (a) “transferring employee” means an employee of a former operator whose contract of employment becomes, either by virtue of TUPE or by virtue of this section, a contract of employment with a new operator;
  - (b) “pension protection” is secured for a transferring employee if after the change of employer referred to in paragraph (a)—

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- (i) the employee has, as an employee of the new operator, rights to acquire pension benefits, and
  - (ii) those rights are of such description as is prescribed by regulations.
- (9) The Secretary of State must exercise the power conferred by this section to make regulations containing provision falling within subsection (7)(e) so as to ensure—
  - (a) that pension protection is required to be secured for every transferring original employee who, as an employee of the original operator, had rights to acquire pension benefits, and
  - (b) that the rights to acquire pension benefits which a transferring original employee has as an employee of the new operator by virtue of paragraph (a) are rights which—
    - (i) are the same as the rights the transferring original employee had as an employee of the original operator, or
    - (ii) under provision made by regulations, count as being broadly comparable to, or better than, those rights.
- (10) For the purposes of subsection (9)—

“transferring original employee” means a transferring employee—

  - (a) who immediately before the relevant date was employed by a person (the “original operator”) providing local services in the area to which the relevant franchising scheme relates, and
  - (b) whose contract of employment—
    - (i) was, from that date until the change of employer referred to in subsection (8)(a), a contract of employment with the original operator, or
    - (ii) on each occasion when the employee was subject to a relevant transfer became, either by virtue of TUPE or by virtue of this section, a contract of employment with a person providing local services in the area referred to in paragraph (a);

“relevant date”, in relation to a franchising scheme, means—

  - (a) the date on which the scheme was made, or
  - (b) where—
    - (i) the local services being provided by the original operator were not subject to the scheme when it was made, and
    - (ii) as a result of the variation of the scheme, those services became subject to the scheme,

the date on which that variation was made;

“relevant transfer” means anything that is, or is to be treated as, a relevant transfer for the purposes of TUPE.”

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**Commencement Information**

**II** S. 4 in force at Royal Assent for certain purposes, otherwise in force at 27.6.2017, see s. 26(3)

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## 5 Power to obtain information about local services

After section 143 of the Transport Act 2000 insert—

### “143A Power to obtain information: franchising schemes

- (1) A franchising authority may, in connection with their functions under this Part in relation to franchising schemes, require an operator of local services to provide them with such relevant information about local services operated by the operator in the authority's area, or any part of it, as the operator possesses or controls.
- (2) If two or more franchising authorities are exercising functions under this Part in relation to the same franchising scheme or proposed franchising scheme, each of them may, in connection with their functions under this Part in relation to franchising schemes, require an operator of local services to provide them with such relevant information about local services operated by the operator in the authorities' areas, or any part of those areas, as the operator possesses or controls.
- (3) For the purposes of this section, information about the local services operated by an operator in an area is relevant information if it is—
  - (a) information about the total number of journeys undertaken by passengers on the local services operated by the operator in the area;
  - (b) information about the structure of fares for journeys on those local services;
  - (c) 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;
  - (d) information about the total distance covered by vehicles used by the operator in operating those local services;
  - (e) information about persons employed by the operator in the provision of those local services;
  - (f) 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;
  - (g) information of such description as is specified in regulations made by the Secretary of State.
- (4) The powers in subsections (1) and (2) may not be used to require an operator to provide information relating to periods that fall more than five years before the date of the demand.
- (5) If a franchising authority or authorities require the consent of the Secretary of State under section 123C before preparing an assessment under section 123B, that consent must be given before the authority or any of them may exercise the powers in subsections (1) and (2).
- (6) The operator may be required—
  - (a) to provide the information in any form in which, having regard to the manner in which the information is kept, it is reasonable to expect the operator to provide it, and

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- (b) to provide the information before the end of such reasonable period as may be specified by the franchising authority.
- (7) If it appears to a franchising authority that an operator of a local service has failed to take all reasonable steps to comply with a requirement imposed under this section, the authority must inform a traffic commissioner.
- (8) A franchising authority that have obtained information under this section may—
- (a) use the information for the purposes of their functions under this Part in relation to franchising schemes, and
  - (b) supply the information to a person specified in subsection (9) for use in connection with the same franchising scheme or the same proposed franchising scheme.
- (9) The persons referred to in subsection (8) are—
- (a) a franchising authority;
  - (b) a person providing services to a franchising authority;
  - (c) a person carrying out functions under section 123D.
- (10) The requirements in sections 123E and 123G about publishing documents do not require a franchising authority to publish information obtained by the authority, or another franchising authority exercising functions under this Part in relation to the same franchising scheme or proposed franchising scheme, under this section if it is information that the authority could refuse to disclose in response to a request under—
- (a) the Freedom of Information Act 2000, or
  - (b) the Environmental Information Regulations 2004 (S.I. 2004/3391) or any regulations replacing those regulations.”

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**Commencement Information**

**I2** S. 5 in force at Royal Assent for certain purposes, otherwise in force at 27.6.2017, see s. 26(3)

## 6 Further amendments

Schedule 2 contains further amendments relating to franchising schemes.

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**Commencement Information**

**I3** S. 6 in force at Royal Assent for certain purposes, otherwise in force at 27.6.2017, see s. 26(3)

**Changes to legislation:**

There are currently no known outstanding effects for the Bus Services Act 2017, Cross Heading: Franchising schemes.