



BRIEFING PAPER

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Bus Services Act 2017

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Summary

This paper explains the policy background to and contents and purpose of the [Bus Services Act 2017](#). It will be updated as the Act is brought into force and implemented over coming years.

The Act has been a long time coming. In the mid-1980s the Conservative Government deregulated the bus industry across Great Britain, except in London. From almost the moment deregulation was introduced in October 1986 there have been calls to reregulate it, particularly from the local authorities and Passenger Transport Executives in the metropolitan areas outside London.

These calls have been based on concerns about the decline in passenger numbers; requirements for local authorities to step in and subsidise 'socially necessary' services which are commercially unviable; uncertainty about services and timetables; and a lack of coordination particularly as regards fares.

The private bus industry has defended its record, arguing that since deregulation there has been massive investment and modernisation and that it has successfully navigated changes in passenger expectations based on accessibility, the environment and technology.

The Labour Government introduced a type of reregulation in 2000 in the form of a Quality Contract Scheme (QCS). However, no area has ever introduced such a scheme, largely due to concerns about the complexity of the process and a lack of protection from legal challenge on the part of incumbent private bus operators. The closest anyone has come to introducing a QCS is the North East, whose plans eventually fell by the wayside late in 2015.

Since 2010 Conservative-led governments have been moving slowly towards some sort of reregulation for those parts of the country that want it and which meet certain requirements (i.e. a combined authority with an elected mayor). This significant policy change has largely been driven by the 'devolution agenda' for England.

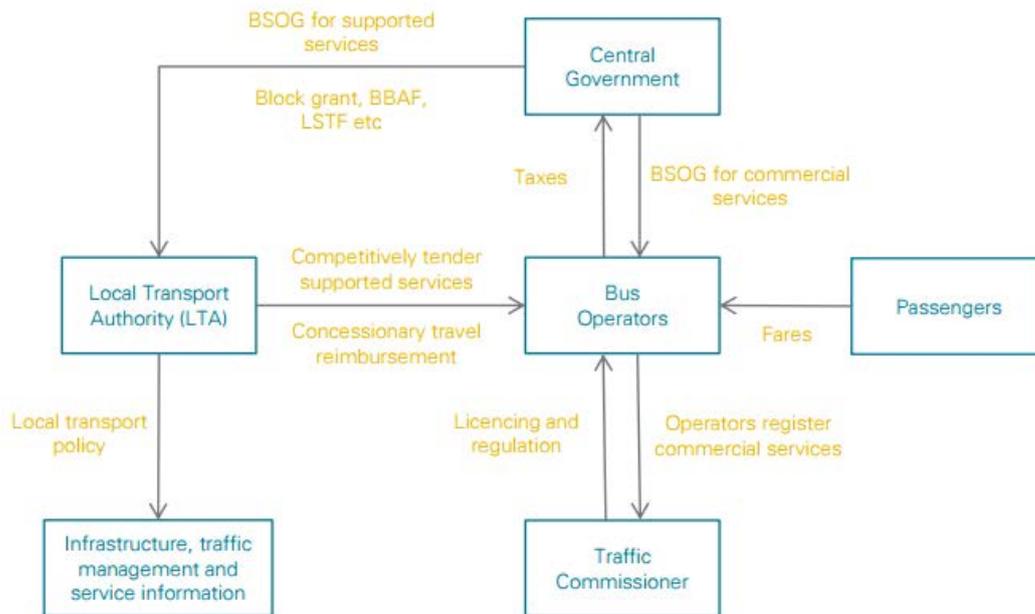
The 2017 Act is essentially an enabling Act, extending the ability of local transport authorities to introduce franchising or a new partnership arrangement called an Enhanced Partnership. It also made amendments to Quality Partnerships and renamed them Advanced Quality Partnerships in England and aims to make it easier to introduce multi-operator ticketing and improvements to enhance passenger accessibility and information. The Government has since brought forward new regulations and guidance under the Act.

In May 2017 six regions of England held elections for newly created combined authority mayors (Tees Valley; Greater Manchester; Liverpool City Region; West Midlands; Cambridgeshire & Peterborough and the West of England). A mayor was also elected in the Sheffield City Region in May 2018. These mayors have automatic access to the bus franchising powers contained in the Act. It remains to be seen who will take them up, how and when. Greater Manchester is most advanced at present in its plans.

Further information on bus policy can be found on the [bus briefings page](#) of the Parliament website.

1. The English bus market

Local bus services in England are delivered within a complex, deregulated arrangement, involving central government, local government, the Traffic Commissioners and bus operators. In its January 2016 analysis of the market accountants KPMG illustrated the interactions between these entities as follows:¹



Source: KPMG Analysis

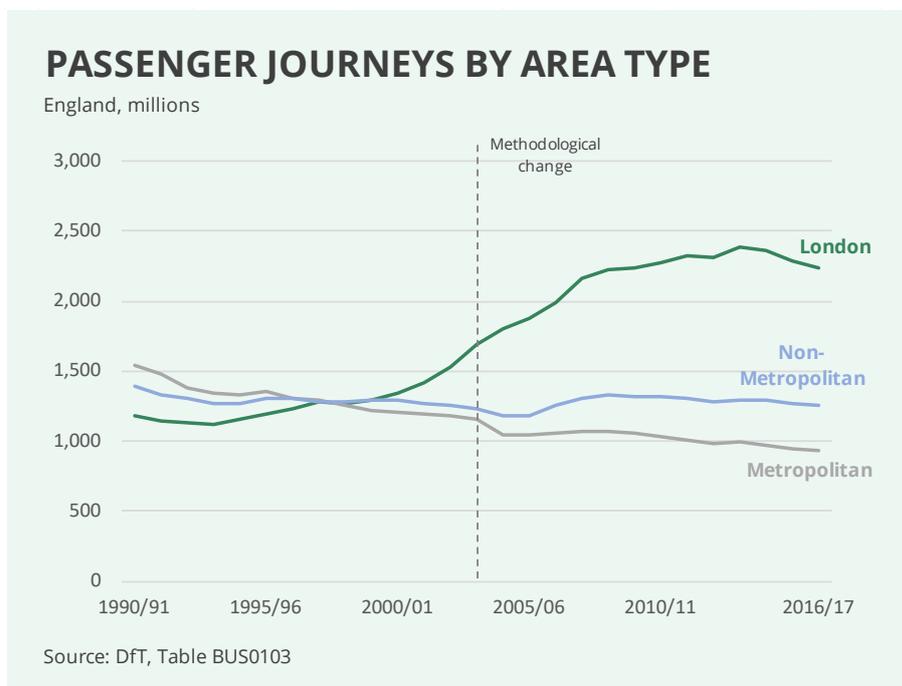
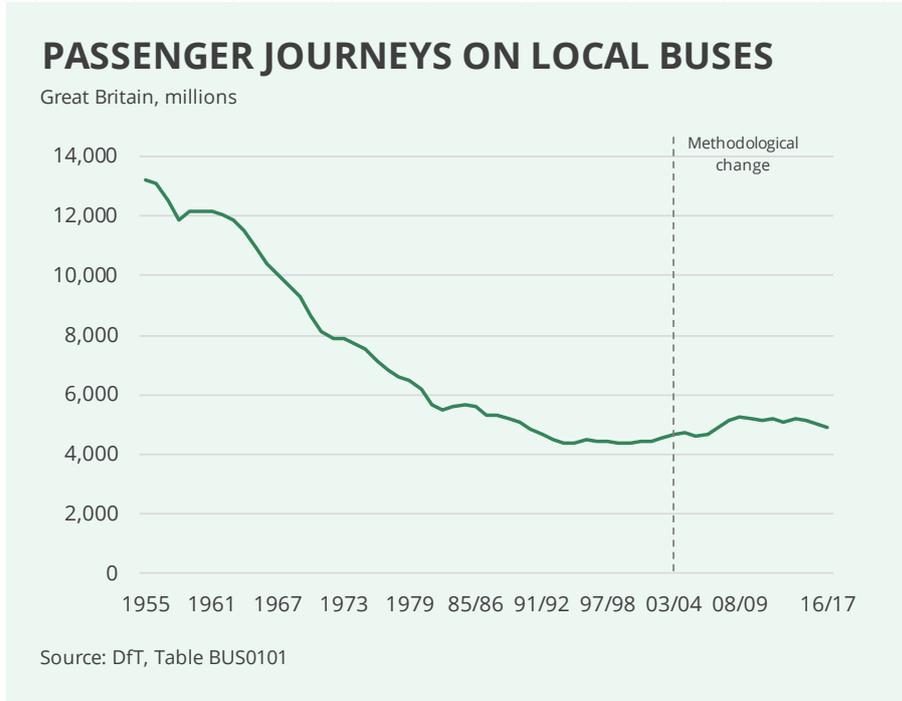
In effect, bus operators have almost total freedom as to whether, how, where and when they run their services, providing they meet certain requirements in terms of relevant notice etc. These are generally called 'commercial services'. Local authorities can fund non-commercial, 'socially necessary' services under a tender agreement. Government in the form of the Department for Transport provides some specific funding – Bus Service Operators' Grant (BSOG), Better Bus Area funding (BBA) – and the general, non-hypothecated grant, including concessionary fares. Operators are licensed and to some extent regulated by the Traffic Commissioners.

With some relatively minor changes, this has been the arrangement since bus services were deregulated by the Conservative Government in the mid-1980s.

¹ KPMG, [Local Bus Market Study](#), 26 January 2016, p17, fig. 1

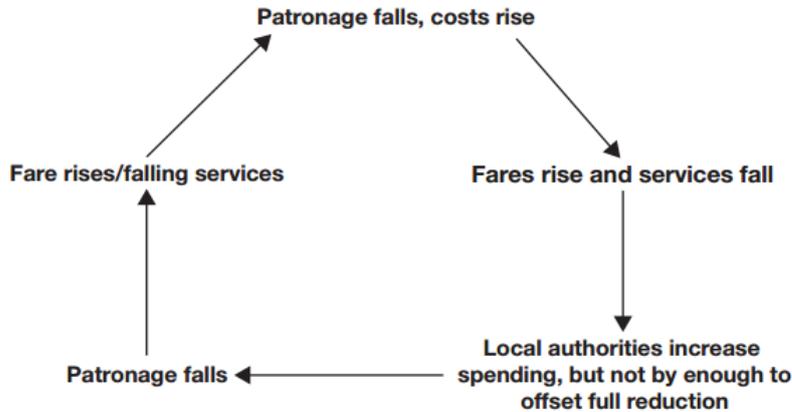
1.1 Patronage

Bus travel has been in long term decline since the 1950s: current levels of journeys are less than half of those seen in the immediate post-war years.²



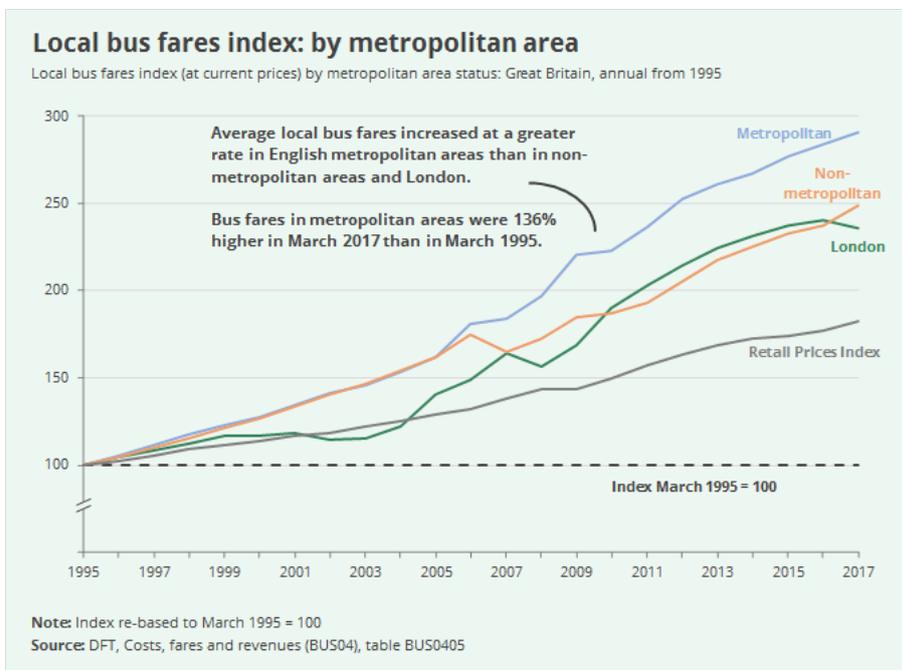
² DfT, [Local bus passenger journeys \(BUS0101\)](#), 12 June 2018

Declining patronage puts pressure on supported services and local authority expenditure, creating a risk of an on-going spiral of declining services and rising subsidies in more and more local communities:³



1.2 Fares

The average bus fare in England rose by 160% in between 1995 and 2017. However, this disguises significant regional variation: fares in London rose by 136% over the same period, compared to a rise of 191% in the other metropolitan areas outside London and 148% across English non-metropolitan areas. Fares in Scotland over the equivalent period rose by 132% and in Wales by 147%.



Since 2009 the [TAS Partnership](#)⁴ has published a bi-annual National Fares Survey, which seeks to benchmark bus fares within Great Britain.⁵

³ DfT, [Putting passengers first](#), December 2006, p32

⁴ a research and consultancy company; for more information visit the [TAS website](#) [accessed 16 August 2018]

For single fares, minimum and median fares have increased but maximum fares have fallen since 2013 after a significant increase between 2011 and 2013. The table below shows the mean average, minimum and maximum bus fares.

The mean day ticket was £4.92 – an increase of 72p compared to 2015. In comparison, the mean weekly ticket was £17.09 – this is around 7 times the average single fare.

Many operators have historically stated the link between increased bus fares and the rising cost of fuel. TAS has previously found that whilst fuel remains a higher proportion of operating costs than 5-10 years ago, fuel and insurance costs have decreased as a proportion of operating costs over recent years. Other operating costs (overheads), depreciation costs (potentially through the cost of new vehicles), and labour costs continue to increase year on year.

SINGLE BUS FARES

Current prices

	Average	Min	Max
2009	£1.75	£0.50	£3.50
2011	£1.91	£0.70	£3.85
2013	£2.11	£0.80	£5.00
2015	£2.21	£1.10	£4.00
2017	£2.33	£1.20	£4.20

Source: TAS, Nation Fares Survey 2017

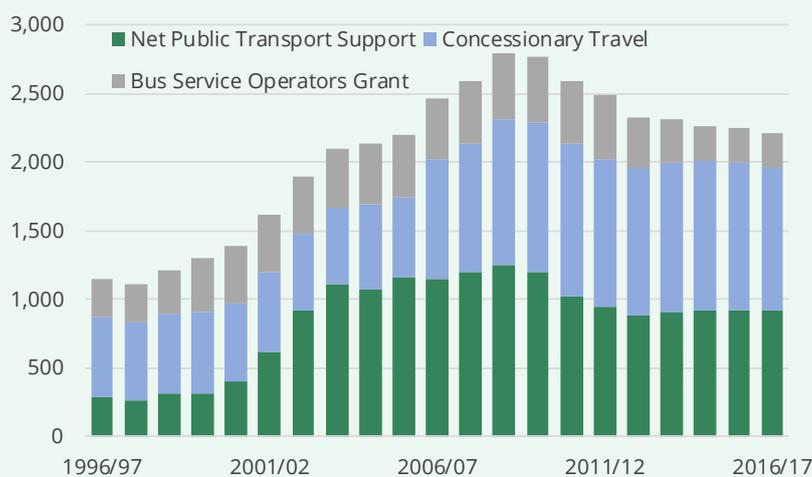
1.3 Funding

As mentioned above, the main components of bus funding are: Bus Service Operators’ Grant (BSOG), Better Bus Area funding and the general, non-hypothecated grant, including concessionary fares.

In 2016/17, estimated total net support paid in England was £2.21 billion, of which £1.03 billion or 47% was for concessionary travel.⁶

CENTRAL AND LOCAL GOVERNMENT SUPPORT

Estimated net support paid by central and local government (at 2016-17 prices) for local bus services and concessionary travel in England, £ millions



Source: DfT, Table BUS0502b

In 2016/17 English Travel Concessionary Areas are estimated to have spent around £1.113 billion to provide concessionary travel – around 81% of this figure was for the ENCTS scheme. The remaining 19% was

⁶ DfT, [Concessionary Travel Statistics, 2017](#)

on other concessionary fares. In 2016/17 there were around 9.8 million concessionary travel passes for the elderly and disabled.⁷

1.4 Satisfaction

Outside London, Transport Focus undertakes a survey of passengers each year and reports satisfaction levels. The DfT has summarised the findings from the most recent Transport Focus survey:

In 2016, 87% of passengers in England outside London were satisfied with their journey. This is virtually unchanged from 2015 when journey satisfaction was at 86%. On value for money, 65% of fare paying passengers were satisfied that their service provided value for money, up from 63% in 2015. On the punctuality of their service, 73% of passengers were satisfied, a small fall from 75% in 2015. Passenger satisfaction with the length of time taken for their journey remained the same in 2016 as in 2015 at 84%.⁸

Bus passenger satisfaction in London is ranked on a 0-100 scale in an ongoing survey by Transport for London (TfL). Overall Satisfaction rose each year from and 83 in 2013/14 to 86 in 2015/16. Since then overall satisfaction has remained stable.⁹

In terms of individual aspects of bus usage, customers satisfaction has declined a small amount (around 1%) on most measures. Customers were most satisfied with 'Personal safety & security' (score of 89), and 'State of repair of bus' (86). The lowest satisfaction score, by some distance, was for "Value for money (79) – although this has risen over the last couple of years.¹⁰

1.5 Operators

The main bus operators are Stagecoach; FirstGroup; Arriva; National Express; and Go-Ahead. In its 2011 investigation into the local bus market, the Competition Commission¹¹ calculated that this so-called 'big five' accounted for 70% of the market by number of services registered. Ten 'mid-sized' operators accounted for a further 11% - split roughly evenly between municipal and private companies.¹²

There are 12 municipal bus companies in the UK – two in Scotland, two in Wales and eight in England.¹³ All other municipal bus companies have been sold or merged over the past 30 years following the [Transport Act 1985](#).

⁷ DfT, [Concessionary Travel Statistics, 2017](#)

⁸ DfT, [Annual Bus Statistics 2017](#)

⁹ TfL, [London Buses Performance Summary](#), July 2016; TfL, [Annual Performance Summary 2017-18](#)

¹⁰ Ibid.

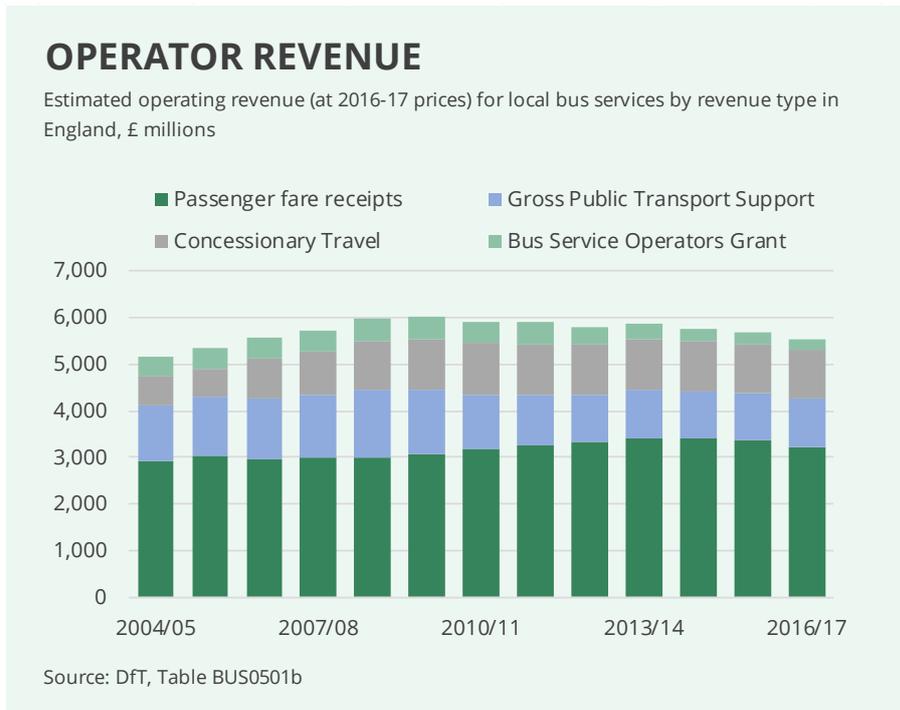
¹¹ now the [Competition and Markets Authority \(CMA\)](#)

¹² CC, [Local bus services market investigation](#), 20 December 2011, para 3.1

¹³ Blackpool Transport Services Ltd.; Cardiff Bus; Lothian Buses Ltd.; DGC Buses; Halton Borough Transport Ltd.; Ipswich Buses Ltd.; Newport Transport Ltd.; Nottingham City Transport Ltd.; Reading Buses; Rosso; Thamesdown Transport Ltd.; and Network Warrington

The DfT has stated that:

In 2016/17, the total estimated operating revenue for local bus services in England was £5.54 billion. Passenger fare receipts made up the largest proportion of operating revenue: £3.22 billion or 58% of operating revenue. Revenue from passenger receipts has increased on average each year by 0.8% in real terms between 2004/05 and 2016/17.



1.6 Local transport authorities

Since deregulation, local authorities' role in the provision of local bus services has been limited to:

- Tendering for supported services;
- Providing discretionary concessionary travel;
- Targeting capital funding (for e.g. integrated transport hubs);
- Planning, infrastructure investment and traffic management (e.g. bus lanes);
- Highway demand management (e.g. congestion charging); and
- Operating municipal bus services (as discussed above, in a small number of cases).¹⁴

Except where they are involved in partnerships (and then only by agreement with the bus operator), they have little control over the level and structure of fares, integrated ticketing, the stability of the network, branding and marketing, and the overall integration of the bus network into wider transport policy.¹⁵

¹⁴ op cit., [Local Bus Market Study](#), p8

¹⁵ ibid., pp8-9

1.7 Traffic Commissioners

The Traffic Commissioners licence operators, register commercial services and monitor operator service punctuality. They date back to the 1930s;¹⁶ their current powers are set out largely in the [Public Passenger Vehicles Act 1981](#) and the [Transport Act 1985](#), both as amended.

One Traffic Commissioner is the Senior Traffic Commissioner (STC), a statutory appointment. The STC provides statutory guidance to colleagues to help secure consistency in licensing decisions and procedures without comprising judicial independence.¹⁷

The seven Traffic Commissioners are appointed by the Secretary of State for Transport¹⁸ and have responsibility in their traffic area for:

- the licensing of the operators of heavy goods vehicles (HGVs) and of buses and coaches (Public Service Vehicles or PSVs) and consideration of regulatory action against non-compliant officers;
- the registration of local bus services outside London;
- issuing permits under sections 19 and 22 (voluntary and community buses) of the *Transport Act 1985*;
- regulating the conduct of vocational licence holders; and
- monitoring and regulation of operators' compliance with local bus service registrations.¹⁹

Commissioners are statutorily independent in all their licensing functions. When necessary, they hold regulatory public inquiries, and they consider the possibility of disciplinary action against PSV drivers at driver conduct hearings.

Each bus operator needs to apply for a PSV operator's licence from a Traffic Commissioner in the relevant area and must meet the statutory criteria for eligibility (good reputation, financial standing, and competence).

In England and Wales, a bus operator can launch a new local bus service after providing details of the service including the route and timetable and giving 56 days' notice to the Traffic Commissioner, although there is the discretion to accept shorter notice periods. Similar notice must be given for changes or withdrawals of services. In Scotland, an additional 14 days' prior notice must be given to the local authority. Frequent services (i.e. those with a frequency of 10 minutes or less) do not have to register a timetable.

Traffic Commissioners have the power to take action if an operator no longer meets the conditions of its licence or does not operate services in line with the registration that it made. They also set punctuality standards against which the reliability of local bus services is measured.

¹⁶ [Road Traffic Act 1930](#), succeeded by the [Road Traffic Act 1960](#)

¹⁷ STC, [Traffic commissioners: local bus services in England \(outside London\) and Wales](#), 14 December 2015; the STC cannot issue guidance on wholly-devolved issues in Scotland and under provisions in the [Wales Bill](#) will not be able to do so for Wales

¹⁸ in Scotland after consultation with Scottish Ministers

¹⁹ op cit., [Local bus services market investigation](#), para 2.59

1.8 London

Buses in London were not deregulated in the 1980s, as explained in section 2.2, below. Part IV of the [Greater London Authority Act 1999](#) transferred responsibility for London's bus services from London Transport to Transport for London (TfL). TfL decides which local services are required for the purpose of providing "safe, integrated, efficient and economic" transport services in Greater London and plans the detailed pattern of bus services, known as the London Bus Network. Only TfL, its subsidiary or someone with an agreement with TfL, may provide a service on the network. London Buses, as part of TfL, plans the bus network and controls fares. At present, London Buses uses a route-based tendering system which groups routes into discrete tranches. This allows neighbouring routes to be tendered together and hence for discounts to be achieved for letting a group of routes to one operator. This also allows review of the service structure of each small network prior to tendering.

The bus network is kept under continuous review with up to 20 per cent of the total 700 route contracts re-let each year. In the five years to 2013, TfL reported that real bus subsidy had been reduced by 40 per cent, with buses in London requiring a third less subsidy per passenger than other metropolitan areas.²⁰ This system also allows TfL to, for example, specify accessibility and environmental standards.

In terms of funding, TfL's financial plan for London Buses from 2014/15 to 2020/21 shows that when everything is taken into consideration, running the London bus network is not cheap and it is projected to run at an annual operating deficit of between £530 million and £630 million. In contrast London Rail is projected to be in the black by 2019/20; London Underground will have an annual deficit by the same date of about £360 million.²¹ However, if revenue foregone as a result of subsidised travel were included, the cost of operating the London bus network (excluding capital expenditure by bus operators) would be covered by income received.

²⁰ TfL, [Business Plan 2013](#), December 2013, p73

²¹ TfL, [Business Plan 2014](#), December 2014, table 9 (p79) and table 13 (p84)

2. How did we get here?

2.1 Brief history of the post-war bus market

The regulation of passenger-carrying motor vehicles was introduced by the [Road Traffic Act 1930](#). The Act established a system of road vehicle licensing controlled by regional Traffic Commissioners. This covered quality - regulation of the operators, vehicles and drivers – and quantity - regulation of the number and types of services operated.

It awarded licences to operators to run a service defined by route and timetable with a specified fare scale. Once granted, a licence in effect conferred local monopoly rights on the operator, particularly where local services in urban areas were concerned. Such services were developed on a comprehensive basis and provided a co-ordinated network, parts of which were usually dependent on cross-subsidy. Ownership of the local services was predominantly public.

The structure of the bus industry changed little over the 50 years to 1980, but the market in which it operated had altered dramatically with the increased use of the private car. Bus patronage halved between the 1960s and 1980s.²²

Concomitant with this, operating costs, fares and levels of subsidy increased. Almost all companies suffered from a shortfall between revenue from fares and their operating costs and local authorities played an increasing role in sustaining public transport through revenue support payments. To retain the network of services and maintain fares at acceptable levels, local authorities were asked to make good the losses by subsidy payments. The level of support provided varied considerably from area to area. Because of the extent of cross-subsidy between routes, it was often difficult to assess the value for money obtained. Bus services in large parts of rural Britain, together with many commuter-based rail and bus networks in the conurbations, continued in existence only because of public subsidy.

By the early 1980s the bus industry was dominated by public sector companies. In the six English metropolitan counties and Greater Glasgow the vast majority of urban bus services were planned, funded and operated by Passenger Transport Authorities (PTAs). A number of other cities and towns had, by historical precedent, municipal bus companies under the control of the relevant district council in England and Wales, or the regional council in Scotland. Most of the remaining urban services and a high proportion of inter-urban and rural routes were operated by subsidiaries of the state owned National Bus Company (NBC) in England and Wales, and by the Scottish Bus Group (SBG) subsidiaries in Scotland.

²² DfT, [Transport Statistics Great Britain 2015 \(TSGB\)](#), December 2015, Table TSGB0102

2.2 Deregulation in the 1980s

The Conservative Government that took office in 1979 was strongly in favour of bringing private investment and management into public transport. It argued that this would improve the passenger experience by making buses and trains more efficient. It therefore developed policies to reduce subsidies to buses, limit the role of local government in planning and controlling bus systems and increase competition between bus companies. It decided that the way to deal with the decline in bus services, rising costs and increasing subsidies was to deregulate the industry and allow services to be subject to competition. The basic argument was set out in the 1984 buses White Paper:

For 50 years from 1930 to 1980 local bus services were subject to a highly restrictive licensing system. Within this system the belief grew up that the way to provide comprehensive public transport is to protect the existing operators so that their profits from popular routes can cross-subsidise services for which there is less demand. The result of these worthy intentions has been to maintain a pattern of services developed for a different age and to neglect the best parts of the market. There has been too little incentive to develop markets, to woo the customer. Operators have been hampered by a philosophy that is defensive and inward-looking.

[...] There is good evidence that services could be improved and costs reduced if we went about it in a different way. Without the dead hand of restrictive regulation fares could be reduced now on many bus routes and the operator would still make a profit. New and better services would be provided. More people would travel. This is not idle speculation. In 1980 the Government removed regulation from the long-distance coach services. As a result fares have come down, new services have been provided, the number of people travelling has gone up, new vehicles with greater comfort compete for custom. Competition has done all this – and the customer is the beneficiary.

If the customer has the final say, bus operators will look keenly to see where and when people want to travel. If one operator fails to provide a service that is wanted, another will.²³

Later analysis by the TAS partnership showed that between 1974 and 1986: “bus patronage in the PTE [Passenger Transport Executive] areas declined by 20%, as fleets were reduced by 29% and over 6,800 jobs were cut. Despite huge fares increases, revenue fell by 15% in real terms, but operating costs rose by 4%. Revenue support grew by 65% to reach £267.5m (£725m in today's money)”.²⁴

Legislation to deregulate the industry outside London was introduced in the *Transport Acts* of 1980 and 1985. The former dealt with express coach services and the latter with the traditional, ‘local’ bus service. The Secretary of State for Transport at the time, Nicholas Ridley, stated that

²³ DoT, *Buses*, Cmnd 9300, July 1984, paras 1.4-1.6

²⁴ TAS Partnership press notice, “[TAS analyses pre-deregulation PTE performance](#)”, 8 July 2016

the aim of deregulation was "to halt the decline that has afflicted the bus industry for more than 20 years".²⁵

Part I of the 1985 Act abolished road service licensing in Great Britain, except in London, from October 1986. It replaced the licensing system with a system of registration and removed the duties of local authorities to co-ordinate public passenger transport in their areas. Thus, a bus company could register any service that it chose to operate on a commercial, i.e. unsupported, basis.

The licensing authorities (the Traffic Commissioners) lost many of their former powers. Once the Act was implemented, any licensed bus operator merely needed to register its intention to set up a service with the Commissioner responsible for the area, giving at least 56 days' notice.²⁶ The operator was then obliged to run the service according to the specification in the registration.²⁷ Individual bus operators were responsible for the timetable and the introduction of new services depended on the operator's opinion of the demand for it and its commercial viability. There was no requirement in the 1985 Act or its consequent regulations for the commercial bus operator to consult before making changes to the timetable and the position of bus stops. The criteria for registration did not include any reference to public demand or to existing services and objections could no longer be made by other operators or local authorities.

Local authorities were given powers to secure, using subsidy, socially necessary services which were not provided by the commercial market and to specify fare levels, type of bus and so on for these services, on the condition that they went out to open tender.²⁸

London

Buses in London were not deregulated in the 1980s with those in the rest of Great Britain. The reasons for this are complex and highly political.

In the 1980s there was a fundamental disagreement between the then Labour-run Greater London Council (GLC) and the Conservative Government. The GLC was created in 1963 and took control of London transport in 1970 when a London Transport Executive (LTE) was set up. The GLC was responsible for the general policy of the LTE and part-funded it via grant (the rest coming from fares). The Conservative Government in the early 1980s had concerns about two aspects of transport in London: the GLC's 'fare's fair' policy (which was in direct conflict with the Government's policies to contain the size of the public

²⁵ [HC Deb 12 February 1985, c192](#); information on the changes to coach services under the 1980 Act can be found in section 2.1 of HC Library briefing paper [SN1534](#)

²⁶ originally 42

²⁷ *Public Service Vehicles (Registration of Local Services) Regulations 1986* (SI 1986/1671), as amended

²⁸ this latter requirement is contained in [section 89 of the 1985 Act](#); this effectively prohibits local authorities from awarding contracts directly to an operator (municipally-owned or otherwise) – a competitive tendering process must always be undertaken

sector and local authority spending) and the general decrepit nature of the public transport and roads systems in London.²⁹ The GLC was ultimately abolished in 1986.

In July 1983 the Government published a command paper on reform of public transport in London. This painted an excoriating picture of transport provision in the capital; highlighting poor organisation and services, see-sawing fares and a general 'shabbiness' that needed to be rectified. It announced the Government's intention to transfer control of the LTE from the GLC to the Secretary of State for Transport, where it would be reconstituted on the pattern of a small holding company, with its bus and Tube operations established as separate subsidiaries. The holding body would be renamed London Regional Transport (LRT).³⁰

The paper also outlined the Government's plans to reform buses in London. What it meant in effect was that LRT would plan and regulate bus services but that private operators could, if they wished, run additional services to provide on-road competition.³¹

The [London Regional Transport Act 1984](#) achieved these changes by transferring responsibility for the bus network from the GLC to LRT and requiring London Transport to set up subsidiary operating companies to run bus and Underground services. This was followed by the buses White Paper in July 1984 which announced that the Government did *not* intend to completely deregulate the London bus market 'for the time being':

The need to take a grip on subsidy has led the Government to take over responsibility for the London Transport Executive from the GLC and reconstitute it as London Regional Transport, with new powers and duties. The London Regional Transport Act 1984 requires changes in the way London's buses and tubes are run, requires LRT to contract out work whenever suitable and provides for greater involvement by the private sector in the provision of services both as contractors to LRT and in competition with them. In particular, LRT is required by the Act to invite tenders from private firms to carry on certain of their activities and to accept satisfactory tenders where this would save costs.

In addition, for the first time bus operators will be able to apply to the traffic commissioners for a road service licence to run local bus services in London rather than having to depend, as formerly, on obtaining an agreement from London Transport. These are major changes which will bring a measure of competition into the provision of London bus services. The Government has decided, in these special circumstances, to defer deregulation in London while the changes, so recently instituted, bear fruit.³²

²⁹ this paper does not go into detail about 'fare's fair', but the legal case and controversy about the scheme ultimately came down to how it was funded; for further information see the Commons debate that followed the legal judgement: [HC Deb 22 December 1981, cc889-929](#); and Philip S Bagwell, [The Transport Revolution 1770-1985](#) (1988), pp408-409

³⁰ DoT, *Public Transport in London*, Cmnd 9004, July 1983, para 16

³¹ *ibid.*, para 24

³² *op cit.*, *Buses*, para 4.18

In 1985 the Government formed the wholly-owned subsidiary London Buses Ltd.

It was not until late 1993 that the Government announced it would defer the previously intended deregulation of buses in London, although privatisation of the bus operating subsidiaries of London Transport would proceed.³³ This was achieved in 1994.

Bearing all the above in mind then, since 1985 the system in London has been and remains one of competitive tendering of bus operations, in effect 'regulated competition' – competition *for* the market rather than 'on the road' competition of deregulated operations.

2.3 Labour Government: Quality Partnerships and Contracts

During its 13 years in office between 1997 and 2010 Labour never seriously considered reregulating bus services across England as a whole. Instead it proffered some statutory schemes whereby local authorities who chose to, could exert more influence on, or control over, bus services in their local areas. Few local areas have considered using this legislation since it was introduced in 2001, for a number of reasons discussed below.

Labour's transport White Paper, published in July 1998, estimated that car traffic would grow by more than a third in the twenty years to 2018, and the success of the Government's integrated transport policy would rest largely on the increased use of buses. Without increased bus use, the paper argued, pollution and congestion would inevitably increase with a corresponding damage to both public health and the economy. In order to address this problem, more people should be persuaded to take more journeys by public transport and fewer by private car.³⁴

Further detail of how this could be achieved was given in the subsequent buses policy document, published in March 1999.³⁵ This set out Labour's overall bus policy and included proposals to give local authorities franchising-like powers to implement what became known as Quality Contract Schemes (QCS). The paper also proposed statutory Quality Partnership Schemes (QPS): an arrangement whereby local authorities and bus companies enter into mutual agreements to provide services and infrastructure. QCS and QPS formed the centrepiece of Labour's changes to bus policy, legislated for in Part II of the [Transport Act 2000](#).

In December 2006 the Government published a paper setting out proposals to reform bus services. They undertook this reform in the light of the failure of any local transport authority to implement a QCS. Its proposals included an enhanced QPS, and a reduction in the burden on

³³ DoT press notice, "Delivering the best bus services for London", 8 November 1993 [PN 93/437]

³⁴ DETR, [A new deal for transport: better for everyone](#), Cm 3950, July 1998, paras 3.13-3.25

³⁵ DETR, [From workhorse to thoroughbred: a better role for bus travel](#), March 1999

local authorities wishing to introduce a QCS.³⁶ These changes were legislated for in what became the [Local Transport Act 2008](#).³⁷

Quality Contract Schemes

Quality Contract Schemes (QCS) have often been referred to as franchising or 're-regulation' by another name. In practice however, in order to implement a QCS a local authority, Integrated Transport Authority (ITA) or Combined Authority (CA) has to jump through a number of hoops set out in the legislation. This has meant that since QCS was put on the statute books in 2000, not one has ever been implemented, despite the obvious desire of many authorities to have more control of their bus services.

The question of what a QCS is and whether it is franchising by another name, is a good one. In its 1999 consultation paper on bus reform the Labour Government stated that QCS are "on similar lines to what is sometimes known as 'franchising'" and "local authorities outside London would be given similar powers to grant exclusive operative rights on defined routes or within a defined area". It set out the benefits of a 'contracted' bus network (network stability, local authority control of fares, service quality and quantity, interoperability with other modes, and cross-subsidy) and the possible disadvantages (less responsiveness to the customer, reduced flexibility, less incentive to innovate, a squeeze on smaller operators, a 'race to the bottom' in terms of staff wages and conditions, and costs to local authorities).³⁸

In light of this, the Labour Government stated that it saw "a potential role for [QCS] in some areas, where a case can be made in the light of special local circumstances". To that end, the onus would be on local transport authorities "to demonstrate, as part of a local transport plan, that the benefits in terms of modal shift or environmental improvements would not be met by other means, and that any extra costs involved would be offset by other benefits".³⁹

QCS were legislated for under sections 124-134 of the [Transport Act 2000](#).⁴⁰ The legislation included the requirement that making a QCS must be "the only practicable way" of implementing the policies set out in the relevant authority's bus strategy and that a QCS would implement those policies in a way which was economic, efficient and effective. A QCS required approval from the Secretary of State in England.⁴¹

In the years following the implementation of the 2000 Act there was a debate about why no QCS was ever applied for, let alone implemented. This resulted in a December 2006 policy paper from the Labour Government proposing to make QCS a realistic option, while "ensuring

³⁶ DfT, [Putting Passengers First](#), December 2006, p7

³⁷ details can be found in HC Library briefing papers [RP 08/18](#) and [RP 08/49](#)

³⁸ op cit., [From Workhorse to Thoroughbred: A better role for bus travel](#), chapter 6

³⁹ ibid.

⁴⁰ introduced by the [Transport Act 2000 \(Commencement No. 7\) Order 2001 \(SI 2001/3342\)](#) on 26 October 2001

⁴¹ the Scottish Government in Scotland; the Welsh Government in Wales

that these schemes can only be brought forward where the benefits are sufficient to justify them, and safeguarding the legitimate interests of bus operators".⁴² Consequently, sections 19 to 45 of the [Local Transport Act 2008](#) made changes to the arrangements for QCS in England (with some changes also applying to Wales).⁴³ The main changes were the replacement of the requirement that a scheme must be the "only practicable way" of implementing the policies in the local authority's bus strategy with a new set of criteria; abolition of the requirement for schemes in England to be approved by the Secretary of State; a new right of appeal for bus operators; and employment protections for affected workers.

Partnership schemes

There are two sorts of partnership scheme: statutory Quality Partnership Schemes (QPS) and non-statutory voluntary partnership schemes (VPS).

A QPS is essentially a formal agreement between a local authority and one or more bus operators whereby the former provides particular facilities at specific locations along the routes used by local bus services, e.g. priority measures, bus stations and shelters, and the latter (who wish to use those facilities) agree to provide services of a particular standard through, e.g. new, green vehicles and staff training. There might also be joint measures for the benefit of passengers such as real-time passenger information.

In its 1999 consultation paper, the Labour Government was pretty clearly in favour of partnerships rather than QCS. Much of this enthusiasm was on the back of notable local partnership successes in the 1990s in e.g. Aberdeen, Birmingham, Brighton, Bristol, Ipswich, Edinburgh, Leeds, Nottingham and Oxford.⁴⁴

Sections 114-123 of the [Transport Act 2000](#) legislated to put QPS on a statutory footing.⁴⁵ This allows local authorities to set quality standards for the partnership facilities that they provide such as bus lanes, or access to high-quality shelters with real-time passenger information. Buses that do not meet the standards can be excluded. This gives local authorities extra scope for influencing bus quality, whilst providing operators with the confidence to invest and to decide about service provision and innovation. Compliance with the quality standards in a partnership scheme are enforced through the bus registration system,

⁴² op cit., [Putting Passengers First](#), p7

⁴³ they came into force in January 2010 under four statutory instruments: [SI 2009/3243](#), [SI 2009/3244](#), [SI 2009/3245](#) and [SI 2009/3246](#)

⁴⁴ op cit., [From Workhorse to Thoroughbred: A better role for bus travel](#), chapter 4; not everyone agreed with this rosy portrayal, see e.g. ETRA Committee, [Integrated transport white paper](#) (ninth report of session 1998-99), HC 32, 31 March 1999 and Audit Commission, *All aboard: a review of local transport and travel in urban areas outside London*, 1999

⁴⁵ introduced by the [Transport Act 2000 \(Commencement No. 7\) Order 2001 \(SI 2001/3342\)](#) on 26 October 2001

overseen by the Traffic Commissioners who have powers to impose financial penalties and restrictions on an operator's licence.⁴⁶

In its December 2006 paper on reforming bus services the Labour Government set out the criteria underpinning successful partnership working:

- political will at the local level to support bus transport;
- commitment from local bus company management to making improvements; and
- the right environment in which to prosper (i.e. bus priority measures, robust parking measures and effective enforcement).⁴⁷

It also noted that while a number of VPS existed, (although outcomes to date were mixed), the QPS provisions in the 2000 Act had not been used.⁴⁸ The reasons given for this were that frequencies, timing and fares could not be included in a QPS. Sections 13 to 18 of the [Local Transport Act 2008](#) made changes to remedy this – within limits.⁴⁹

One of the main considerations with partnership schemes is their compatibility with competition law. The competition authorities stated in 2003 and 2011 that there was no evidence of partnership schemes posing a threat to competition.⁵⁰

The Confederation of Passenger Transport (CPT) cited particular successes with partnership working in South Yorkshire.⁵¹ This was echoed by the Urban Transport Group (UTG) which stated that the most recent Sheffield Bus Partnership had grown the number of fare-paying passenger bus journeys by nearly 10 per cent.⁵² The Brighton & Hove Bus Company is also often cited as a successful example of a bus company that dominates a local market working in a constructive partnership with the local authority: it says that it has “successfully grown the market for local bus travel by an average 5% each year since 1993, something which is unique in the bus industry”.⁵³

2.4 Conservative-led governments: fiscal consolidation and devolution

The Conservative-led governments since 2010 have attempted to make transport more efficient and better value for money in a climate of public spending restraint. It is trying to do this in a more decentralisation way, to enable local government to initiate and fund transport projects and their day-to-day transport needs free of ring-fencing and ‘diktat

⁴⁶ further information on the bus-related powers of Traffic Commissioners can be found in HC Library briefing paper [SN1523](#)

⁴⁷ op cit., [Putting Passengers First](#), p30

⁴⁸ *ibid.*, p38

⁴⁹ set out in the *Quality Partnership Schemes (England) Regulations 2009* (SI 2009/445), which came into force on 6 April 2009

⁵⁰ OFT, [The Transport Act 2000 ...: Guidance on the Competition Test](#) (OFT 393), October 2003, p15; and op cit., [Local bus services market investigation](#), para 15.388

⁵¹ op cit., [Making buses better together](#), p4

⁵² pteg, [Bus regulation: myths and facts](#), February 2015, p8

⁵³ BHBC, [All About Us](#) [archived 19 April 2016]

from Whitehall'. This spirit of decentralisation has encompassed devolution of further transport powers to local areas across England as well as to Scotland and Wales.⁵⁴

Cuts to subsidised services

'Subsidised services' are those that are not deemed commercially viable by private operators and have to be supported by local authorities if they are to continue. The viability of these services depends on local authorities having the funds to support them.

The background to the provision of these services is, as the National Audit Office (NAO) estimate, there was a 37% real-terms reduction in central government funding to English local authorities between 2010/11 and 2014/15.⁵⁵

It has therefore been for local authorities to decide where spending cuts or savings must be made across the whole spectrum of their services: as indicated above, many local authorities have chosen to cut subsidised bus services. It has long been the case that for many rural and isolated communities the bus is the only form of public transport, but those services are often 'unprofitable' and have suffered the brunt of local authority cuts to subsidised services over the past six years. Linked to this is the fact that some routes are dependent on passengers who are also subsidised – through the concessionary bus pass for older and disabled people. Often there is a correlation between those rural and isolated communities and high numbers of subsidised passengers (particularly older people).⁵⁶

The Campaign for Better Transport (CBT) has run a high profile campaign since 2010 to highlight cuts to local subsidised bus services.⁵⁷ A CBT survey showed that 46 per cent of local authorities reduced their expenditure on subsidised bus services during 2013/14; the Urban Transport Group predicted a reduction in annual expenditure of £500 million over the four years from 2010, allowing for inflation.⁵⁸

While it is probably true that without overall central government cuts to local authority budgets most if not all of these services could have been saved, that is not necessarily the case. One can see this by looking at the question in reverse: if local authority budgets were to increase over the next five years, would that mean more subsidised bus services or would local authorities find other priorities on which to spend the new money?

The only *certain* way to improve and increase subsidised services would be for central government to allocate specific amounts of money for the purpose and to legally require that the money be spent on subsidised bus services. At a time when the Government is determined to devolve

⁵⁴ for further information on transport devolution, see HC Library briefing paper [SN5735](#)

⁵⁵ NAO, [The Impact of Funding Reductions on Local Authorities](#), 19 November 2014; due to differences in services and funding, direct comparison with the position of councils in each of the three nations is not possible (England, Scotland and Wales)

⁵⁶ for further information on the difficulties faced by those living in rural and isolated communities, see: Transport Committee, [Passenger transport in isolated communities](#) (fourth report of session 2014–15), HC 288, 22 July 2014

⁵⁷ CBT, [Save Our Buses](#) [accessed 28 November 2016]

⁵⁸ "[Cuts to tendered bus services – is there another way?](#)", *CBT blog*, 17 March 2015

more power to local authorities to take their own decisions, the trend has been away from this sort of 'hypothecation', or 'telling councils what to spend their money on' (see below).

The drive to devolution

English local government is divided in some areas into county councils (the upper tier) and district councils (the lower tier). The two tiers have distinct functions, though they overlap in some matters. In other areas, 'unitary authorities' carry out all local government functions. There are 353 local authorities in England, of which 27 are county councils, 201 are district councils, and 125 are unitary authorities, of which 32 are London boroughs and 36 are metropolitan boroughs.⁵⁹

The Greater London Authority (GLA) exercises a range of functions in transport, policing, planning, fire and rescue, housing and economic development. It is not a local authority for most purposes. In other parts of England, central government manages some of the functions that the GLA undertakes for London.⁶⁰

Nine Combined Authorities (CAs) have been established in England. These are not local authorities but joint legal bodies through which groups of authorities can work together. In 2014-16, the Government negotiated 'devolution deals' with several areas. Each of the existing CAs has negotiated a deal. Seven of the CAs are mayoral combined authorities, and elected mayors in May 2017 (Liverpool, Cambridgeshire & Peterborough, Manchester, Tees Valley, West of England and the West Midlands) and May 2018 (Sheffield).⁶¹

Overlaid on this structure are Local Enterprise Partnerships (LEPs). The first cohort of LEPs were announced in late 2010; they are non-statutory bodies which have assumed many of the responsibilities of Regional Development Agencies (RDAs) and have responsibility for Enterprise Zones.⁶²

There is also a patchwork of transport authorities, including county and unitary councils, Integrated Transport Authorities and city-wide entities like Transport for London (TfL) and Transport for Greater Manchester (TfGM). The Government has established a new sub-national transport body (STB) in the North (Transport for the North) and plans to designate a further STB in the Midlands, with others likely to follow.⁶³ These bodies all have different responsibilities for transport planning and funding.

There are a number of sources of funding for local transport, the main ones being central government grant; Local Growth Deals & the Single Local Growth Fund; the Local Majors Fund; the Regional Growth Fund;

⁵⁹ for further information on local authority structures and powers see HC Library briefing paper [CBP 7104](#)

⁶⁰ for further information on the GLA see HC Library briefing paper [CBP 5817](#)

⁶¹ for further information on Combined Authorities, see HC Library briefing paper [CBP 6649](#)

⁶² for further information on LEPs see HC Library briefing paper [CBP 5651](#)

⁶³ For further information on TfN and the Northern Powerhouse, see HC Library briefing paper [CBP 7676](#)

the Access Fund; local authority property taxes and localised charges; and local authority capital finance.

Local and regional authorities of one sort or another, supported by various commissions, pressure groups and think tanks, have been calling for more powers to plan, fund and manage transport in their areas for decades. Successive governments have legislated to reform local and regional transport delivery, sometimes through more general machinery changes but also via specific transport-related initiatives.

Over the past five years there have been a slew of reports looking at this issue.⁶⁴ In September 2014 the Urban Transport Group⁶⁵ argued that cities outside London should have more powers over their bus networks and 'meaningful' devolution of local rail services, which together would allow them to deliver 'Oyster-style' smart and simple ticketing;⁶⁶ single, integrated transport networks and a clearer interface with the public, local businesses and investors on service delivery and development.⁶⁷ In October 2014 CBT called for more powers for cities outside London to allow for the introduction of smartcards and integrated transport networks; the creation of new multi-authority 'transport consortia' outside the big cities to join up different councils and deliver smart tickets and other transport improvements; and regional groupings to manage strategic roads and local rail services.⁶⁸ In March 2015 IPPR North published a report on transport in the North of England, calling for further devolved and integrated transport powers.⁶⁹

A 'one size fits all' approach to devolution of transport powers seems both unlikely and undesirable. The 'London model', for example, is one approach and the proposals for Greater Manchester are different again. Outside of the main metropolitan areas, the 'directly elected mayor' model with attendant consolidated transport powers, may not be the best option for more rural or geographically diffuse areas where public transport is sporadic and the populace is largely car-dependant.⁷⁰

⁶⁴ e.g. the '[City Centred' campaign](#), launched by leaders of London and the UK's Core Cities (Birmingham, Bristol, Cardiff, Glasgow, Leeds, Liverpool, Manchester, Newcastle, Nottingham, and Sheffield) in September 2013 and Lord Adonis, [Mending the Fractured Economy](#), July 2014

⁶⁵ formerly the Passenger Transport Executive Group (pteg)

⁶⁶ when people say 'Oyster-style' they mean an integrated, contactless payment system or similar which enables users to easily switch between modes of transport across a region (as in the [London Oyster Card](#))

⁶⁷ pteg, [Policy Futures - Urban Transport outside London](#), September 2014; see also City Growth Commission, [Unleashing Metro Growth](#), October 2014

⁶⁸ CBT, [Making Transport Local: devolution for transport in England outside London](#), October 2014

⁶⁹ IPPR North, [Transport for the North: A blueprint for devolving and integrating transport powers in England](#), March 2015, summary

⁷⁰ information on difficulties experienced in these areas can be found in op cit., [Passenger transport in isolated communities](#)

3. Deregulation: the debate

3.1 Successes

The bus industry believes that deregulation has generally been a success and has delivered significant investment and service improvements since 1986. In its September 2014 manifesto for buses the Confederation of Passenger Transport UK (CPT) set out what it believed to be the industry's successes:

The commercial market has stemmed the decline in bus patronage and provided passengers with greater choice. Passengers in the biggest towns and cities outside London are benefitting from frequent, good value bus networks, with smart and integrated ticketing options, new ways of purchasing tickets, high investment by commercial operators in bus fleets, all giving passengers more choice. Where bus services are under the control of cash-strapped local authorities, fares are higher, the market is less stable, services are being lost, and passenger satisfaction rates are lower.⁷¹

In terms of particular achievements it cited the following: improved passenger information and assistance; smart ticketing using a variety of platforms; and contributing to the economy through employment and investment.⁷²

In terms of subsidy, Confederation of Passenger Transport (CPT) stated that in 2012/13 almost 90 per cent of the bus network outside London was run commercially with no subsidy from public funds, an increase of 4.6 per cent over the previous five years, and that while mileage on subsidised services fell by 16.5 per cent between 2006/7 and 2012/13, commercial mileage fell by only 1.7 per cent over the same period.⁷³

Deregulation has also been supported by a number of think tanks such as the Adam Smith Institute and the Institute for Economic Affairs. The case was perhaps put most forcefully by the late Prof. John Hibbs, one of the architects of deregulation, in a November 2005 pamphlet for the IEA. He argued that "after twenty years of comparative freedom the bus industry today has become a commercial success":

Despite failings in some sectors there are many examples of proactive response to the market, with increased investment and some remarkable developments in man-management and consumer sensitivity. The central importance of costing and pricing for the market has been better understood than ever before and the provision of real-time information is making a new breakthrough in marketing. Some of the small firms snapping at the heels of the larger companies provide poor-quality vehicles which give a poor impression to the public, but the value of open access is recognised by some of the leading figures in the industry, while many small operators offer a high standard of customer care along with lower prices. While the overall proportion of bus travel continues to fall, there are many examples of substantial

⁷¹ CPT, [Making buses better together](#), September 2014, p1

⁷² at the time of publication in 2014 the bus industry provided 124,000 direct jobs in the UK

⁷³ Op cit., [Making buses better together](#), p4

growth; restructuring of services in Cambridge has led to an increase in patronage of 45 per cent over three years.

What has been sadly lacking ever since 1985 has been a positive attitude on the part of highway authorities. To provide services buses need their own track, like trains. This has to be shared with cars and goods vehicles, but cars are singularly inefficient users of road space and in the absence of road pricing it should be the responsibility of local government to deal with the problem. [...]

The real problem facing the passenger and freight transport industry, whether by bus, car or train, is the prospect of falling overall motoring costs and rising fuel prices forecast over the coming decade. Subsidy, which is an inevitable consequence of franchise, can be no answer to this. Only an industry made up of professional, profit-seeking businesses can hope to meet the challenge, supported and respected by local government planners.⁷⁴

3.2 Failures

Almost since the moment it was introduced in October 1986 there has been a sizeable number of people and organisations consistently asserting that deregulation has been a failure leading to cuts in services, higher fares and profiteering by bus companies. Deregulation, they say, has led to a 'free for all'.

Critics of deregulation argue that the introduction of commercial operators into local bus markets has failed to substantially improve competition and has caused a diminution in levels of service. There is a general acceptance that commercial operators cannot now be forced out of the market and that there can be no return to the comprehensive municipal bus model that existed before the mid-1980s.⁷⁵ However, critics argue that commercial operators should be compelled to deliver a better service than is currently the case and that there should be some democratic accountability via control by local authorities or other locally elected transport bodies.

The twentieth anniversary of bus deregulation in October 2006 prompted several reviews of how the industry stood and whether it was fit for purpose.⁷⁶ In particular, the Transport Select Committee published a report heavily criticising the commercial deregulated system and calling for the Government to make it easier for local transport authorities to take control of bus services in their areas.⁷⁷ There are a number of reasons why some local transport authorities and passenger groups take issue with the deregulated system and many of them come down to the same basic issue – deregulation has not benefitted the

⁷⁴ John Hibbs for the IEA, *The Dangers of Bus Re-regulation*, November 2005, pp65-66; see also: John Hibbs and Matthew Bradley for the ASI, *Deregulated decade: ten years of bus deregulation*, 1997

⁷⁵ though widespread this view is by no means universal, see, e.g. Transport for Quality of Life, *Building a world-class bus system for Britain*, May 2016

⁷⁶ for example: Public Accounts Committee, *Delivery chain analysis for bus services in England* (Forty-third report of session 2005-06), HC 851, 23 May 2006; and NERA, *The Decline in Bus Services in the English PTE areas*, August 2006

⁷⁷ Transport Committee, *Bus services across the UK* (eleventh report of session 2005-06), HC 1317, 26 October 2006

passenger. The industry is dominated by the ‘big five’ operators – Arriva, First, Go-Ahead, National Express and Stagecoach – who effectively run monopolies in many areas. Even where two or more of the ‘big five’ operate in the same area, this has not always (or often) led to streamlined, co-ordinated services and cheaper fares.

More recently, in January 2016, Dr John Disney from Nottingham Business School argued that the benefits of deregulation had been exhausted, and that while it was “moderately successful for its first 15 years” when local authorities had sufficient funding to support tendered services to fill the gaps in the commercial network, and newly privatised operators generated efficiency savings compared with their National Bus Company and municipal predecessors, this was no longer the case.⁷⁸

The three main areas deemed to characterise the failure of the deregulated system are: the QCS system; a lack of on-road competition, and subsidies:

- **QCS not fit for purpose:** campaigners have long called for QCS to be modified or replaced, e.g. by removing the QCS Board and the right of bus operators to appeal to the Transport Tribunal from the process; and modifying the Public Interest Test.⁷⁹ These criticisms crystallised in November 2015 when the QCS Board for the proposed Tyne and Wear QCS published its report – the first of its kind.⁸⁰ The Board concluded that Nexus⁸¹ had failed to comply with the statutory requirements on consultation; that it was not affordable; the effectiveness of the QCS had been significantly overstated due to errors within the modelling; and that the negative impacts on the three existing operators were “wholly disproportionate to the benefits accruing both to the travelling public in Tyne & Wear and the well-being of the wider citizens”.⁸² Nexus was naturally disappointed. It was particularly concerned that the Board took a “highly pessimistic and surprising view of financial risks”, and had suggested that the incumbent bus companies should be compensated for missing out on future profits.⁸³
- **Lack of on-the-road competition:** in December 2011 the Competition Commission published a report on local bus competition which found that head-to-head competition in the supply of local bus services was uncommon, despite delivering significant benefits to customers where it was found. It raised concerns that some operators were in effect dividing areas up between them to avoid competition and that this might be more widespread than the Commission had been able to determine. On

⁷⁸ “We’ve exhausted the benefits of bus deregulation”, *Local Transport Today*, 8 January 2016

⁷⁹ UTC, *Policy Futures paper – Buses*, July 2014; for more information on the role of the QCS Board, see: DfT, *Local Transport Act 2008 - Quality contracts schemes: statutory guidance*, December 2009

⁸⁰ full details of the proposed QCS can be found via the archived [Nexus bus strategy website](#)

⁸¹ the Tyne and Wear Integrated Transport Authority

⁸² Traffic Commissioner, *Quality contract scheme (QCS) board report on the proposed Tyne and Wear QCS*, 3 November 2016

⁸³ Nexus press notice, “[Nexus response as QCS Board publishes its opinion of Tyne and Wear's plan for better buses](#)”, 3 November 2015

local authority tendered services, it found that in some cases the process of competition was impaired by the way local transport authorities designed tenders and the limited number of potential bidders in some local areas. Overall, the Commission found that the detriment to consumers and taxpayers as a result of the adverse effects of competition (AECs) in the operation of local bus services (both commercial and tendered services) and the tendering of supported services was considerably in excess of £70 million a year and was likely to be between £115 million and £305 million a year. The Commission made a number of recommendations to remedy these problems, such as market-opening measures to reduce barriers to entry and expansion; measures to promote competition in relation to the tendering of contracts for supported services; and changes to the wider policy and regulatory environment, including emphasising compliance with and effective enforcement of competition law.⁸⁴

- **Required subsidy too high:** grants and subsidies perform a variety of functions in the bus industry and in the provision of services. Subsidies account for around 45 per cent of all bus operators' revenues. The overall net level of Government subsidy (i.e. public transport support, BSOG and concessionary fare reimbursement) for bus services increased dramatically after 1997, rising from approximately £1.1 billion in 1997/98 to approximately £2.2 billion in 2016/17.⁸⁵ Total expenditure excluding concessionary fares on bus services in England in 2016/17 was £1.17 billion. Of this, £659 million was spent in London, and a further £201 million in the metropolitan areas.⁸⁶ DfT estimates that BSOG helps to keep fares 4% lower, allows operators to run a network 7% larger, and allows passenger numbers to be 4% higher than they would otherwise have been if BSOG was not provided.⁸⁷

3.3 Would regulation improve services and cut costs?

As indicated above, those in favour of regulation argue that it would enable local authorities to plan proper bus networks and thus improve services and to provide things like smart and integrated ticketing, which would cut costs for passengers.

The Government clearly believes that franchising could help improve bus services, though this would depend on local circumstances:

... the combination of falling bus patronage, reductions in the levels of Government subsidy provided to the bus industry and a legislative framework that has not been utilised as expected has led us to conclude that action is needed to ensure effective bus services continue to be provided to the public and that LTAs have access to the range of tools needed to bring about change.⁸⁸

⁸⁴ CC, [Local bus services market investigation](#), December 2011, summary

⁸⁵ op cit., [Subsidies and concessions \(BUS0502\)](#). All figures in 2016/17 prices

⁸⁶ ibid.

⁸⁷ DfT, [Bus Services Bill: Impact Assessments](#), 27 June 2016, p49

⁸⁸ ibid., p51

Many also hope that reregulation can address the ‘market failures’ identified by the Competition Commission in 2011 and KPMG in 2016. For example, it could provide solutions in the areas of:

- Network economies – allowing for service coordination, ticket integration and joint marketing;
- Incentives – better aligning these between operators and the infrastructure provider/manager;
- Contestability of markets – for tendering out routes and/or networks, this could give better value for money and enable new entrants to enter the market; and
- Economic, social and environmental benefits – these by-products of bus travel are not captured fully by private bus operators.⁸⁹

However, some have argued that these benefits could be achieved by more and better partnership working and that re-regulation is not necessary.⁹⁰

In terms of costs, in its 2013 consultation on the proposed QCS Nexus the Tyne and Wear Passenger Transport Executive stated that it would *reduce* public expenditure on bus services by £7 million per annum from the commencement of the QCS, “by both growing commercial fare box income and by achieving better value through competitive tendering of all bus services”.⁹¹ Recent evidence from the re-regulated system in Jersey shows that levels of subsidy have reduced by £800,000 per year while passenger usage has increased by almost a third.⁹²

Others argue that it is more debatable as to whether regulated bus services would be cheaper for local authorities than the current deregulated model. For example, on the London bus network (which saw passenger numbers increase by more than a million between 1997/98 and 2016/17)⁹³ the total amount of subsidy increased from £219 million in 1997/98 to £894 million in 2016/17 (2016/17 prices).⁹⁴

In 2011 the TAS Partnership looked at the subsidy figures for London in some detail. In particular it stated that the one year in recent history when there was no subsidy (1997/98) was only achieved by reductions in drivers’ wages and reduced depreciation charges.⁹⁵ In a further report, published in July 2015, TAS argued that the costs of implementing franchising (or a bus service equivalent to that in London) across the whole of England could cost up to £3.2 billion per year.⁹⁶ The Urban Transport Group (UTC) contested the credibility of the report.⁹⁷

⁸⁹ KPMG, [Local bus market study](#), January 2016

⁹⁰ see, e.g. TAS Partnership, [Making Buses Better](#), 17 June 2015

⁹¹ Nexus, [Proposal for a Quality Contracts Scheme in Tyne and Wear](#), July 2013, p8

⁹² HCT Group, [Practical bus franchising: the Jersey model](#), May 2016, p3

⁹³ op cit., [Local bus passenger journeys \(BUS0103\)](#)

⁹⁴ op cit., [Subsidies and concessions \(BUS0502\)](#)

⁹⁵ “[Franchising and the cost of buses in London: some facts](#)”, *TAS blog*, 29 July 2011

⁹⁶ TAS Partnership press notice, “[Bus tendering regime "could cost up to £3.2 billion a year" says TAS report](#)”, 7 July 2015 [PTEG response to TAS cost of tendering report](#), 28 July 2015

⁹⁷ UTC, [PTEG response to TAS cost of tendering report](#), 28 July 2015

In 2016 the Government stated that an analysis by Bristol City Council suggested that implementing franchising would cost between £1 million and £2 million (doubled for PTE areas on the grounds that implementing a franchising model in these areas would be “significantly more complicated”).⁹⁸

As discussed above, at present the only form of regulation available is a Quality Contract Scheme (QCS). In its December 2011 report the Competition Commission put the cost of implementing a QCS at up to £1 million with annual running costs of approximately the same amount.⁹⁹

⁹⁸ Op cit., [Bus Services Bill: Impact Assessments](#), p72

⁹⁹ op cit., [Local bus services market investigation](#), paras 15.450-51

4. The Act

4.1 Background and workshops, 2015

In the 2015 Queen’s Speech the Government announced a *Buses Bill* to “provide the option for combined authority areas with directly elected Mayors to be responsible for the running of their local bus services”.¹⁰⁰ However, a Bill never materialised.

Instead, during September and October 2015 the Department for Transport arranged a series of seven Bus Reform Workshops in five locations across the country. The intention was to help the DfT shape the content of the Bill and “ensure that the policy is developed by those involved in the delivery of bus services, including local authorities, the bus industry and passenger representatives”.¹⁰¹ As well as suggesting how franchising might work, it also looked at developing partnership arrangements, improving ticketing and open data.¹⁰² In November 2015 the Government published a summary of the Workshops.¹⁰³

In the 2016 Queen’s Speech the Government announced a *Bus Services Bill* to:

- give elected mayors and local transport authorities the power to improve bus services for the people who use them;
- give mayoral combined authorities London-style powers to franchise local services; and
- make data about routes, fares and times available across the country to app developers to give passengers better information about how to make the most of local bus services.¹⁰⁴

The [Bus Services Bill \[HL\] 2016-17](#) was introduced in the House of Lords on 19 May 2016. It completed its Parliamentary stages and received Royal Assent on 27 April 2017. It is now the [Bus Services Act 2017](#).

On 8 February 2017 the Government published draft regulations and guidance on a number of issues covered by the Act. Where these relate to specific parts of the Act they are included in the relevant sections, below. It also included draft general guidance on improving bus services. This covers areas such as rural services, the environment, and disability awareness training.¹⁰⁵ See section 5, below, for further information.

¹⁰⁰ HMG, [Queen’s Speech 2015: background briefing notes](#), 27 May 2015, p100

¹⁰¹ DfT, [Bus Reform Workshops: background document](#), 21 September 2015, para 1.4

¹⁰² all summarised in: DfT, [Presentations from the Bus Reform Workshops](#), October 2015

¹⁰³ DfT, [Bus Reform Workshops Summary](#), November 2015

¹⁰⁴ HMG, [Queen’s Speech 2016: background briefing notes](#), 18 May 2016, p26

¹⁰⁵ DfT, [Bus Services Bill: draft regulations and guidance](#), 8 February 2017, Annex M

4.2 Reaction

Reaction to the Act was mixed, reflecting to a great extent the long-standing divisions and debates described in previous sections of this paper. Those parts of the Act which elicited the most reaction were about the **ban on new municipal bus companies, accessibility and extending franchising to all authorities**.

Bus operators tended to support the bulk of the Act as regards partnerships and data sharing, but not franchising.¹⁰⁶ Others were slightly more positive or made no comment.¹⁰⁷ Some small- and medium-sized operators (SMEs) expressed concerns about the impact on their businesses of the sort of local franchising arrangements contained in the Act.¹⁰⁸

Transport for Quality of Life¹⁰⁹ published a report in May 2016 calling for more radical reform, allowing all local authorities to franchise their bus systems and to run services with their own municipally-owned bus companies.¹¹⁰ The Campaign for Better Transport warned that funding was 'critical' and that "councils and mayors have the funding needed to make these new powers work".¹¹¹ The Urban Transport Group welcomed "the prospect of a 'fresh start' for the bus by giving cities a range of more effective tools with which to improve bus services".¹¹²

The Competition and Markets Authority¹¹³ said that "on-road competition should only be abandoned in favour of competition for the market where it's clear that this is the only way to secure better outcomes for the travelling public".¹¹⁴ It went on to make a number of recommendations, including that the CMA should be a statutory consultee for franchising schemes.¹¹⁵ The Government accepted all the CMA's recommendations and made amendments to the Bill where appropriate.¹¹⁶

A selection of responses can be found in written evidence to the Public Bill Committee in March 2017, [available on the website](#).

¹⁰⁶ see, e.g. CPT press notice, "[Bus Services Bill - CPT Comment](#)", 23 May 2016; "Big city operators blast bus reforms", *Financial Times*, 12 June 2016; "There is no room for one more on top, say bus companies", *The Times*, 6 June 2016

¹⁰⁷ FirstGroup press notice, "[FirstGroup reaction to the announcement of the Bus Services Bill in today's Queens Speech](#)", 18 May 2016

¹⁰⁸ "[Bus companies 'under threat' from devolution plans](#)", *Politics Home*, 29 June 2015; the Competition Commission gave detailed consideration to this phenomenon in Appendix 15.6 of its 2011 report on competition in local bus markets, see: op cit., [Local bus services market investigation](#), A15(6)-6 and (6)-7

¹⁰⁹ A community interest company

¹¹⁰ Transport for Quality of Life, [Building a world-class bus system for Britain](#), 26 May 2016

¹¹¹ CBT press notice, "[Campaigners welcome publication of the Bus Services Bill - "a new era for buses, but only if funding follows"](#)", 20 May 2016

¹¹² UTG press notice, "[Urban Transport Group welcomes Bus Services Bill](#)", 23 May 2016

¹¹³ there is no provision in bus legislation for the CMA to investigate franchising (see [para 1](#) of Schedule 10 to the *Transport Act 2000*, as amended); any action on the CMA's part would come under its general competition powers; the best guide to how competition law applies in the bus sector remains the OFT's 2003 publication [The OFT and the bus industry](#)

¹¹⁴ CMA blog, "[Bus Services Bill: retaining the benefits of competition](#)", 5 July 2016

¹¹⁵ CMA, [CMA Recommendations on the Bus Services Bill](#), 29 June 2016

¹¹⁶ DfT, [Bus Services Bill: Competition and Markets Authority response](#), 12 October 2016

The Transport Select Committee published a report on 25 November 2016, welcoming the Government's approach in giving local authorities the option of implementing new forms of partnership or franchising, based on their local needs. However, it also made a number of criticisms and recommendations.¹¹⁷

4.3 Advanced Quality Partnerships (AQPs)

Sections 1-3 of and Schedule 1 to the Act are concerned with improving existing partnership working (see section 2.3 above for background). It creates new 'Advanced Quality Partnerships' (AQP), which extend the measures local authorities can offer as part of a partnership from purely infrastructure facilities such as bus lanes, to service-based initiatives such as parking restrictions and traffic management policies. It also broadens the requirements that can be placed on operators under an AQP to include the marketing of services, tickets and fares.

The bulk of the legislative changes relating to the introduction of AQP are provided in section 1. It amends the *Transport Act 2000* and largely replicates and builds on the existing provisions in that Act for Quality Partnership Schemes (QPS). The most significant change provides that local transport authorities (LTAs) may set up a scheme based on bus improvement measures as well as, or instead of, infrastructure facilities. These new standards may relate to:

- The marketing and promotion of bus services, ticketing and fares;
- How passenger information is provided; or
- Operators' participation in ticketing and smartcard schemes.

Authorities must set out, as part of their plan or scheme, arrangements for consulting organisations that are representative of users of local services, including parks authorities.¹¹⁸ There were debates about requiring consultation with employee representatives; this was in the end not included in the final Act.¹¹⁹

Amendments which would have the effect of bringing Part 6 of the *Traffic Management Act 2004*, related to moving traffic offences,¹²⁰ into force for those areas with an AQP were also subject to much debate but were not in the end included in the final Act.¹²¹

4.4 Franchising

Sections 4-6 of and Schedule 2 to the Act are concerned with providing franchising powers (see section 2.3 above for background) to local transport authorities.

Only Mayoral Combined Authorities have automatic access to these powers. Franchising will only be made available via regulations to other

¹¹⁷ Transport Committee, *Bus Services Bill* (eighth report of session 2016–17), HC 611, 25 November 2016, summary

¹¹⁸ [HL Deb 12 October 2016, c1899](#); see also [Division 4, cc1926-7](#), these requirements also apply to EPs and franchising

¹¹⁹ see, e.g. [PBC Deb 14 March 2017, cc10-14](#) and Division 1

¹²⁰ for more information, see section 9 of HC Library briefing paper [SN1097](#)

¹²¹ [HL Deb 12 October 2016, c1902-08](#); and [PBC Deb 14 March 2017, cc4-5](#)

local authorities where the Government judges that the capability and track-record of the authority concerned is sufficiently strong and where there is an appropriate economic geography. Plans to implement franchising must take account of the needs of small and medium sized operators. Non-commercial community transport operators are not affected by franchising.

Franchising solicited by far the most interest in the Act. As set out in earlier parts of this paper, many LTAs and public transport campaign groups have been calling for it for many years. In particular there were ongoing debates during the passage of the Act about extending the automatic right to access franchising to all local authorities. In the end the Government succeeded in passing an Act with its preferred, original wording.¹²²

Any other LTA which would like to introduce franchising must obtain the explicit consent of the Secretary of State for Transport before doing so. This consent would be given under Regulations, made under the Affirmative procedure (i.e. requiring the consent of both Houses of Parliament).¹²³ The Government set out its anticipated 'two stage process' in draft guidance published on 12 October 2016: "Firstly, regulations must be made to provide a particular category of authority with access, and then the Secretary of State must give his or her consent to any individual authority from within that category". This made clear that in practice the Government expects these two processes to be pursued in parallel for any early adopters of franchising. Further, the Government:

... does not intend to "turn on" a particular category of local authority unless or until it is satisfied that there is one or more local authority in that category that is likely to satisfy the criteria and to whom the Secretary of State is minded to grant franchising powers. One route for such a conversation is through the devolution deal process.¹²⁴

Cornwall will remain a largely rural unitary authority, but as part of its devolution deal secured it powers for bus franchising.¹²⁵ The Government has previously indicated that if Cornwall decides that it wishes to pursue franchising, it would bring forward regulations to allow it to do that.¹²⁶

The bulk of the legislative changes relating to the introduction of franchising are set out in section 4 of the Act. It amends the *Transport Act 2000* to provide for bus franchising schemes in England. It sets out:

- what an LTA must include in an assessment of a franchising scheme. This includes issues such as how it would contribute to the implementation of the authority's transport and other policies; cost and value for money. It must also compare making the

¹²² [HL Deb 4 July 2016, cc1750-53GC](#); [HL Deb 12 October 2016, cc1932-3](#) and [Division 5, cc1941-2](#); [PBC Deb 14 March 2017, cc18-38](#) and Division 2

¹²³ DfT, [The Bus Services Bill: policy scoping notes](#), June 2016, pp7-9

¹²⁴ DfT, [Draft Guidance and Policy Statement on Key Issues raised during Lords Committee Debates](#), 12 October 2016, para 69

¹²⁵ CLG, [Cornwall Devolution Deal](#), 22 July 2015

¹²⁶ [HL Deb 4 July 2016, c1752GC](#)

- proposed scheme to one or more other courses of action (e.g. making an AQP or Enhanced Partnership);
- the requirement for a franchising scheme proposal to be properly audited before it goes out to public consultation;
 - that the LTA must specifically consult relevant bus operators, bus users, the Traffic Commissioner, local police and the Competition and Markets Authority (CMA);¹²⁷
 - what must be in the consultation document; this includes a statement about how, in conducting the procurement process for the provision of local services, the LTA proposes to facilitate the involvement of small- and medium-sized operators in the provision of local services; and
 - that the Secretary of State may make regulations regarding those services that may be exempted from any franchising scheme. There is no current intention to stipulate any mandatory categories that *must* be exempted.¹²⁸

The employee protection rights (TUPE etc.) in the Act replicate those in the *Transport Act 2000* for QCS, introduced by the Labour Government.¹²⁹

Variation or revocation of a franchising scheme requires six months' notice. In order to revoke a scheme an LTA has to be satisfied of one of three things:

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

LTAs can in effect be 'operators of last resort'. This means that where an operator fails to provide an agreed service or ceases to provide a service before the end of the specified period the LTA may provide an 'interim service' for a period of no more than six months. It is not clear how this would work in practice; in the rail sector this role is held by the Secretary of State for Transport.¹³⁰

Some non-franchised commercial services may be provided in a franchise area. This would require a service permit, issued by the relevant LTA.

¹²⁷ [HL Deb 23 November 2016, cc1968-71](#); for concerns about the role of the CMA in franchising, see: [Written Evidence Submitted by the West Midlands Combined Authority](#) (BSB0017), August 2016, para 8.6

¹²⁸ services operating under a section 22 permit are already excluded by way of provisions in new section 123J(5); for more information on section 22 permits, see: HC Library briefing paper [CBP7426](#)

¹²⁹ [PBC Deb 14 March 2017, c52](#)

¹³⁰ Section 30 of the [Railways Act 1993](#), as amended, provides that if a franchise is terminated or there are no acceptable private bids, the Secretary of State for Transport (in the case of England and Wales) can take over the franchise as an operator of last resort; for more information see: DfT, [A guide to the railway franchise procurement process](#), May 2011, paras 29-31

Section 5 gives LTAs the power to obtain information from operators in order to prepare a franchising scheme. The sort of information that may be requested includes number of journeys; structure of fares; revenue; distance covered; persons employed; and journey forecasts.

Where an authority implements franchising, the Government has said that it will devolve the bus service operators grant (BSOG – see section 3.2, above) that would have been paid to commercial bus operators in the area to the LTA. By pooling these subsidies in a franchised system, “they can be used more effectively, and authorities will be able to get the most out of the funding already provided”.¹³¹ This is not dissimilar to existing arrangements as regards Better Bus Areas.¹³²

4.5 Ticketing

Sections 7-8 of and Schedule 3 to the Act are concerned with improving ticketing and increasing the take up of multi-modal tickets and contactless payment. This part of the Act gives local authorities a range of new tools to make buying a ticket and paying for bus services easier for passengers. It updates existing powers to establish multi-operator and multi-modal ticketing schemes and ensures that anybody developing new ticketing arrangements considers what other schemes exist or are being prepared nearby.

The main changes relating to advanced ticketing schemes are set out in section 7. This amends the *Transport Act 2000* to strengthen the powers that LTAs (including LTAs acting together) have in England to make joint and through ticketing schemes. It largely replicates and slightly amends the existing legislation in order to achieve a more joined-up approach to ticketing issues across LTA boundaries and clarify the scope of the powers to accommodate future technological change.

Rail and tram services may be included in ticketing schemes by agreement with the relevant operators.

The Transport Select Committee welcomed these provisions but took a view that “more must be done to ensure that innovation in ticketing technologies is encouraged and not hampered”. To that end it recommended that within six months of Royal Assent, the Department for Transport should produce, in consultation with industry partners, guidance to support LTAs in developing ticketing schemes “that do not impede newer technologies, are not a disproportionate burden on operators, and which pay due regard to the accessibility needs of different groups”. It also recommended that the Government co-ordinate the development of back office ticketing functions “to limit unnecessary complexity or duplication”.¹³³

¹³¹ [HL Deb 29 June 2016, c1602GC](#)

¹³² for more information see section 4 of HC Library briefing paper [CBP 1522](#)

¹³³ op cit., [Bus Services Bill](#), para 77

4.6 Enhanced Partnerships

Sections 9-15 of and Schedule 4 to the Act are concerned with introducing a new form of partnership working called an 'Enhanced Partnership' (EP) (see section 2.3 above for background). An EP would enable partnership working to go further than under a QP or AQP scheme and requires collaboration between LTAs and operators. At the core of the process is the collaborative development of an EP plan and scheme:

- An **EP plan** may cover all, or parts of, the area of an LTA. It should analyse performance of the local bus market; set bus improvements objectives; the geographical area or areas of application; and explain how long the proposal would last.
- An **EP scheme** should set out the detailed actions to be taken by the authority and bus operators. It would set out the route requirements for services in the area, which could include frequency and timetables. It would also set out operational requirements, which could include branding, payment methods, ticketing structure and real-time information. However LTAs would not be able to set fares.

EPs expand the types of standards that partnership schemes can cover, provide for more joined-up network planning and allowing local implementation and enforcement of the scheme's requirements. The Government's intention is that an EP should allow LTAs and operators to deliver some of the outcomes that would otherwise only be possible under a franchising model.

EPs are intended to be easier to apply to a wide geographic area than other forms of partnership working. They allow for operators to object to a proposed scheme at several key stages though, in practice, Government expects them to be developed collaboratively between LTAs and operators.

The main changes relating to EPs are set out in section 9. It amends the *Transport Act 2000* to establish EPs for LTAs in England. It sets out what EP plans and schemes are. A plan may lead to one or more schemes – a number of schemes may be made under a single plan. An EP scheme may not be made unless it would improve the quality or effectiveness of services *or* reduce or limit traffic congestion, noise or air pollution.

No EP plan or scheme can be made unless the requirements as to preparation, notice and consultation are met. These provisions effectively mean that scheme requirements cannot be imposed on bus operators by the LTA, but have to have the support of 'sufficient operators' in the scheme area. There is no definition of what constitutes 'sufficient' in the Act; this is specified in regulations (see section 5, below).¹³⁴ The same applies to revoking or varying an EP.

EPs may make service requirements in a number of areas, including types of vehicles; concessionary fares; information and publicity; branding and ticketing.

¹³⁴ op cit., [The Bus Services Bill: policy scoping notes](#), p27

4.7 Information for bus passengers

Section 17 sets out an accessible information requirement which would ultimately require bus operators to provide accessible information, using both audible and visible media, on board local bus services in England, Scotland and Wales.¹³⁵ A scoping note gives further information, specifically who would be obliged to comply, what information they would be obliged to provide and in what format. It also speculates that the order-making power which would bring this into force could also include exemptions for small operators.

The Government's initial timetable for introduction was to launch a consultation in spring 2017, with a view to publishing finalised secondary legislation in April 2018.¹³⁶ This has slipped. A consultation on the required regulations was finally published in July 2018 (see section 5, below).

The introduction of this provision followed an effective external lobbying campaign and extensive debate. It reflects the successful [Talking Buses](#) campaign, supported by Guide Dogs for the Blind and others, to persuade the Government to require bus operators to fit audio-visual equipment to all buses. The Government had long been reluctant to mandate this sort of thing, instead preferring to let the market provide a solution.¹³⁷

4.8 Information about English bus services

Section 18 gives the Secretary of State the power to make regulations regarding the release of open data on routes, timetables, punctuality and fares, including its format. The policy scoping notes to the Act stated that the intention of this section is to make it easier for passengers to access information about bus routes, timetables, fares, tickets and punctuality, enabling them to make more informed travel choices. Further, a comprehensive open data set for the bus industry, which includes accurate information about routes, fares and timings, would "allow application developers to innovate and develop products that passengers want".¹³⁸

All operators of local bus services will be required to release the requested information. In franchising areas the responsibility will lie with the franchising authority.¹³⁹ The Government's original intention was to phase in these requirements, with registration data being required in 2017, and fares and punctuality data being added in stages by 2020. It took the view that this transitional approach "should make the process of releasing data easier for operators to manage".¹⁴⁰ A consultation on the introduction of the requirements was published in July 2018. This

¹³⁵ [HL Deb 24 October 2016, c54](#)

¹³⁶ DfT, [Accessible information regulations – scoping note](#), 12 October 2016

¹³⁷ [HC Deb 11 June 2015, c1309](#)

¹³⁸ op cit., [The Bus Services Bill: policy scoping notes](#), p55

¹³⁹ the widening of the powers beyond franchising areas was as a result of Government amendments; see: [PBC Deb 16 March 2017, cc87-88](#)

¹⁴⁰ DfT, [The Bus Services Bill: An Overview](#), May 2016, p17

states that it wants to introduce the requirements in full by 2022 (see section 5, below).

The Transport Select Committee welcomed the provisions and commented that London showed “the potential of open data in empowering passengers and allowing local authorities and operators to better understand local needs and gaps in the service”.¹⁴¹ The Community Transport Association (CTA) commented on the potentially ‘transformational’ implications of these provisions for bus network planning and development.¹⁴²

4.9 Ban on new municipal bus companies

Section 22 provides that a relevant authority (county or district council, Combined Authority, Integrated Transport Authority or Passenger Transport Executive) “may not, in the exercise of any of its powers, form a company for the purposes of providing a local service”. In effect it forbids any local transport authority in England from forming a new municipal bus company.

As explained in section 1.5, above, there are eight municipal bus companies remaining in England. This provision does not affect them.

[We Own It](#), a not for profit company limited by guarantee, which campaigns for public ownership, collected signatures on a petition to get the Government to drop what was originally Clause 21 of the Bill. It gained over 21,000 signatures.¹⁴³ This was on the back of work by Transport for Quality of Life published in May 2016, which set out how a nationwide network of municipally owned bus companies could deliver planned, regulated bus services. It said that if all deregulated areas switched to municipal operation, there would be financial gains of the order of £412 million in England excluding London.¹⁴⁴

The Labour Party and the trade unions also called for Clause 21 to be dropped.¹⁴⁵ In August 2016 the Leader of the Labour Party, Jeremy Corbyn, announced a policy to give all councils in England the power to set up publicly run municipal bus companies.¹⁴⁶

During Parliamentary debates on the Act the ban was removed and then restored.¹⁴⁷

The Government’s view is that:

... passengers will see the most benefit where the commissioning and provision of bus services are kept separate. That purchaser-

¹⁴¹ op cit., [Bus Services Bill](#), para 73

¹⁴² “[The Bus Services Bill could help transform transport through better data](#)”, *City Metric*, 22 November 2016

¹⁴³ see also this article by We Own It campaigner Matthew Bramall: “[The bus bill could rob communities of high quality, affordable bus travel](#)”, *The Guardian*, 3 August 2016

¹⁴⁴ op cit., [Building a world-class bus system for Britain](#), p97

¹⁴⁵ see, e.g. “[Bus Bill threatens public routes](#)”, *Unite Live*, 4 August 2016

¹⁴⁶ [Jeremy Corbyn Transport Policy Launch](#), 16 August 2016

¹⁴⁷ [HL Deb 24 October 2016, cc69-77](#) [Division 1] and [PBC Deb 16 March 2017, c92, Division 5](#)

provider split is a frequent feature of our public services, and as such we do not think authorities should be able to set up new bus companies [...] We have no intention of having authorities setting up bus companies and awarding themselves contracts.¹⁴⁸

Labour MPs raised the spectre of a dominant bus company pulling out of a local area because it did not agree with plans for franchising. They queried whether local authorities would have the power to step in and form their own companies in that event. The minister argued that they would not and that other bus companies would ‘snap at the chance’ to enter a vacated market.¹⁴⁹ The then Labour Shadow Minister, Daniel Zeichner, argued:

We have made it absolutely clear that we completely disagree with this punitive measure, which also contradicts the Government’s supposed commitment to localism [...] The Minister has made it clear that the Government’s view is that the commissioning and provision of bus services should be kept separate from each other [...] I am not sure the purchaser-provider split will stand the test of time. That is the argument. With the Bill introducing extra powers and more local authority control of local services, we understand that the Government are nervous, and that they are trying to avoid a situation whereby, in their view, private bus operators might be blocked out of the bus market because a franchising authority could award contracts to its own company. They are trying to protect the investment that private bus operators have made.

That is the case they put forward, but as we examine it, we are not convinced that the evidence bears out those concerns. On the first case, there is no reason to believe that a combined authority introducing a franchise scheme would automatically award the franchise to its own bus company [...] It is already illegal under UK law for a local authority to award directly a contract to a company run by itself. The Government are assuming for some reason that franchising authorities would, after going through the process of inviting bids to tender, award the contract to their own municipal bus company.¹⁵⁰

4.10 Other sections

The remaining sections of the Act are uncontroversial.

Section 16 relates to powers to make Traffic Regulation Orders (TROs). It is a consequential provision to make the relevant changes to the *Road Traffic Regulation Act 1984* with regards to franchising, AQP and EP schemes so that TROs may be issued under that Act for these schemes.¹⁵¹

Sections 19, 20 & 21 relate to registration, fees and rail replacement bus services. Section 19 makes provision for regulations under which operators of local bus services would be required to provide the relevant LTA with certain information relating to patronage and revenue of the service when making an application to vary or cancel a bus service. Section 20 exempts temporary rail replacement bus services in England

¹⁴⁸ [PBC Deb 14 March 2017, cc57 & 59](#)

¹⁴⁹ *ibid.*, cc57-63

¹⁵⁰ *ibid.*, cc63-64

¹⁵¹ for further information on TROs, see HC Library briefing paper [CBP 6013](#)

from the need for registration. Finally, Section 21 enables any person authorised to accept applications to register, vary or cancel a local bus service instead of the Traffic Commissioner to recover the costs of their activities in carrying out this function. The fee amount would be set by the Secretary of State.

Sections 23 & 24 make consequential and transitional provisions.

Section 23 confers what are often referred to as '[Henry VIII powers](#)'.¹⁵² It gives the Secretary of State a power to make Regulations to provide for transitional provisions. This could be particularly important to English local authorities that may have set up a ticketing scheme under existing legislation but which wish to develop an advanced ticketing scheme under section 7 of the Act.¹⁵³

Section 25 deals with extent. The majority of the Act *extends* to England and Wales, but not to Scotland or Northern Ireland. It is intended that the majority of sections should *apply* to England (outside London).¹⁵⁴ Section 17 is the only substantive provision that extends to England and Wales, and Scotland because it amends the *Equality Act 2010*.

Section 26 deals with commencement. The regulation-making powers in the Act came into force at Royal Assent; the remaining powers took effect on 27 June 2017, with the exception of section 17, which came into force on 26 June 2018.¹⁵⁵

The Scottish Government has recently announced its own plans for local bus service reform in its [Transport \(Scotland\) Bill](#).

¹⁵² op cit., [Bus Services Bill \[HL\]](#), paras 27-31

¹⁵³ op cit., [The Bus Services Bill: policy scoping notes](#), p64

¹⁵⁴ the [Wales Act 2017](#) gave the National Assembly for Wales legislative competence for bus services

¹⁵⁵ Under the [Bus Services Act 2017 \(Commencement\) Regulations 2018 \(SI 2018/758\)](#)

5. Regulations and guidance

The Government's May 2016 policy scoping note stated that it intended to bring forward regulations, which would provide for:

- Definitions of measures that an LTA can include within a scheme;
- Whether facilities or measures that existed before the AQP came into effect can be included within the scheme;
- How admissible objections are addressed; and
- What the review mechanism is for requirements that include frequency; timings, maximum fares or ways in which passengers may pay a fare.¹⁵⁶

In February 2017 the Government published draft regulations and guidance on a number of issues covered by the Act.¹⁵⁷ It published the outcome of its consultation in September 2017¹⁵⁸ and the attendant regulations came into force in 2018.

5.1 AQP regulations

For AQPs, the draft regulations for consultation included the processes by which bus operators can object to elements of an authority's proposals for an AQP and place some limitations on the facilities that an authority can provide as part of the scheme. Specifically, they would allow the local authority to include in a scheme any facilities that are more than 5 years old if no operator objects.¹⁵⁹

The Government decided to proceed with its proposals as drafted.¹⁶⁰

The *Advanced Quality Partnership Schemes (England) Regulations 2018* ([SI 2018/21](#)) and the *Advanced Quality Partnership Schemes (Existing Facilities) (England) Regulations 2018* ([SI 2018/22](#)) came into force on 8 February 2018.

5.2 Franchising regulations

The draft regulations set out the following:

- *Service permits*: the detail regarding how service permits should work in practice, including fee levels, the conditions that authorities are able to attach to service permits and notice periods;¹⁶¹ and
- *Transitional provisions*: a number of practical and transparent arrangements and processes to assist in the transition from the current model of bus provision to franchising. This includes enabling authorities to extend the notice period which must elapse before a bus operator can cancel or vary a bus service in

¹⁵⁶ op cit., [The Bus Services Bill: policy scoping notes](#), p4

¹⁵⁷ op cit., [Bus Services Bill: draft regulations and guidance](#)

¹⁵⁸ DfT, [Bus Services Act 2017: Response to the Consultation on Draft Regulations and Guidance](#), 5 September 2017

¹⁵⁹ op cit., [Bus Services Bill: draft regulations and guidance](#), pp9-10

¹⁶⁰ Op cit., [Bus Services Act 2017: Response to the Consultation on Draft Regulations and Guidance](#), paras 2.8 & 2.14

¹⁶¹ op cit., [Bus Services Bill: draft regulations and guidance](#), p12

the area in which franchising is to be implemented; provisions to enable services to be registered at short notice in the event that the authority procures a service to replace a service that has been withdrawn; and provisions to deal with the registration of services if a franchising scheme is revoked, or varied so as to apply to a smaller area.¹⁶²

On service permits, the September 2017 outcome document stated that the Government wants “to ensure that authorities set out the details of their service permits schemes openly and transparently, and consult all relevant parties”. However, it also thought that the regulations “should be flexible enough to allow authorities to issue permits at short notice, for example to replace services which have been withdrawn”. To this end it decided to ensure that this flexibility was adequately provided for in the regulations.¹⁶³ It further decided to allow authorities to specify, as a condition that can be attached to a service permit, the notice period that operators must abide by before they can withdraw or vary a service. This was a change from the original proposal, which would have retained the standard 56 day notice period.¹⁶⁴ A final change requires that neighbouring authorities are consulted on the details of any service permit scheme.¹⁶⁵

For transitional periods the Government indicated its intention to allow services to be registered at short notice during the transition period where they replace aspects of services that have been varied. This would “help ensure that replacement arrangements can be put in place to deal with situations where the variation of a service has major impacts on local passengers”.¹⁶⁶ LTAs would have a range of powers to extend the notice periods operators must give for cancellation of variation of services up to 112 days.¹⁶⁷

The *Franchising Schemes (Service Permits) (England) Regulations 2018* ([SI 2018/423](#)) and the *Public Service Vehicles (Registration of Local Services) (Franchising Schemes Transitional Provisions and Amendments) (England) Regulations 2018* ([SI 2018/406](#)) came into force on 24 April 2018.

5.3 EP regulations

For EPs, the 2017 draft regulations dealt with the operator objection mechanism and proposed two tests by which operator objections should be measured, with those tests based on a combination of two principle factors – market share and number of operators. The tests would be used to determine whether objections to EP proposals are sufficient to stop it from progressing. If either test is satisfied then the

¹⁶² *ibid.*, p16

¹⁶³ *Op cit.*, [Bus Services Act 2017: Response to the Consultation on Draft Regulations and Guidance](#), paras 3.4-3.7

¹⁶⁴ *Ibid.*, paras 3.24-3.29

¹⁶⁵ *Ibid.*, para 3.35

¹⁶⁶ *Ibid.*, para 4.3

¹⁶⁷ *Ibid.*, paras 4.9-4.12

proposals cannot progress any further – unless the proposals are revised and bus operators are given an opportunity to object again.¹⁶⁸

In its September 2017 response document the Government indicated that it would amend the objection threshold to clarify that if there are three operators or fewer constituting the 25% of millage threshold, then they would *all* need to object for this element of the mechanism to be triggered.¹⁶⁹ It also indicated the Regulations would base the mileage data on registered mileage and clarify how ‘frequent’ services should be dealt with.¹⁷⁰

The *Enhanced Partnership Plans and Schemes (Objections) Regulations 2018* ([SI 2018/404](#)) came into force on 6 April 2018.

In May 2018 the DfT published a further consultation on the registration of local services in EP areas. This sought views on how local transport authorities would take over the registration function of bus services from the traffic commissioners under EP schemes. The consultation closed on 28 June. At time of publication the Government had yet to publish its response.¹⁷¹

5.4 Pensions and TUPE regulations for franchising and EPs

The draft regulations set out the following:

- *Transfer of staff (Application of TUPE)*: the processes that should be followed when determining whether a person’s employment is principally connected with the provision of particular services, and whether that person should therefore transfer under TUPE and which new operator employees should transfer to; and require operators of local services to provide the franchising authority with certain information in relation to their employees;¹⁷² and
- *Pension protection*: details regarding the protection of an employee’s pension rights when they are transferred under TUPE.¹⁷³

On TUPE, the Government said that the Regulations would clarify that roles and groupings of employees are one of the factors that can be taken into account when considering whether staff are ‘principally connected’; and make it clear that the authority may specify the timescales within which they are seeking agreement as part of the notice that they are required to publish.¹⁷⁴ It also said that it would

¹⁶⁸ op cit., [Bus Services Bill: draft regulations and guidance](#), p31

¹⁶⁹ Op cit., [Bus Services Act 2017: Response to the Consultation on Draft Regulations and Guidance](#), para 8.22

¹⁷⁰ Ibid., para 8.37

¹⁷¹ DfT, [Registration of local services in Enhanced Partnership Areas](#), 17 May 2018

¹⁷² op cit., [Bus Services Bill: draft regulations and guidance](#), p19

¹⁷³ ibid., p24; the proposals were similar to those already in existence under QCS provisions; for more information on TUPE and pensions, see: HC Library briefing paper [CBP 1665](#)

¹⁷⁴ Op cit., [Bus Services Act 2017: Response to the Consultation on Draft Regulations and Guidance](#), para 5.8

ensure that employees who spend at least 50% of their time assigned to the affected local services should be considered for TUPE.¹⁷⁵

On pension protection the Government said it would ensure that the Regulations reflect the latest relevant guidance on the issue of broad comparability.¹⁷⁶

The *Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) Regulations (SI 2017/1092)* and the *Franchising Schemes and Enhanced Partnership Schemes (Pension Protection) (England) Regulations 2017 (SI 2017/1093)* both came into force on 19 December 2017.

5.5 Information regulations

There are a number of new information duties and requirements under the Act, some on bus operators as a consequence of franchising and EP schemes; others under sections 17, 18 and 19 of the Act.

Firstly, on **information from operators under franchising and EP schemes**, the intention was that the regulations would set out the categories of information that can be requested by an authority in connection with their functions, including:

- information about the fixed and variable costs of operating services;
- the vehicles used to provide services;
- current and projected passenger usage;
- fare structures and ticketing;
- time taken for journeys and timetabling;
- distance covered; and
- the result of any activities undertaken with a view to promoting increased passenger use of the local service.¹⁷⁷

The *Franchising Schemes and Enhanced Partnership Plans and Schemes (Provision of Information) Regulations 2017 (SI 2017/1091)* came into force on 19 December 2017.

On 5 July 2018 the DfT published two consultations on the provision of accessible information under section 17 and of bus open data under section 18.¹⁷⁸ They both close on 16 September.

Firstly, on **accessible information under section 17** of the Act, the consultation sets out the DfT's plans to introduce regulations that require bus operators to provide audible and visible information on local bus services to help people identify:

- the route and direction of services;
- each upcoming stop; and

¹⁷⁵ Ibid., para 5.4

¹⁷⁶ Ibid., para 6.11; that being HMT, *Fair Deal for staff pensions: staff transfer from central government*, October 2013

¹⁷⁷ op cit., *Bus Services Bill: draft regulations and guidance*, pp26-8; categories apply to one or both types of scheme – details in the regulations

¹⁷⁸ DfT press notice, "[Real time information to transform bus travel in England](#)", 5 July 2018

- points at which diversions start or end.

It intends to specify when this information must be made available and to what standard, leaving it up to operators to select equipment or process that works for them. The intention is to introduce phased implementation between 2021 and 2025.¹⁷⁹

Secondly, on **bus open data under section 18** of the Act, the consultation sets out how the Government intends to require operators and local authorities to publish open data digitally for buses in England (outside London). This would make it easier for bus passengers to plan their journeys through access to routes and timetables data, fares and tickets data, and real time information. It states that the development of a comprehensive open data set for the bus industry which includes accurate information about routes, fares and timings “will allow application developers to innovate and develop products that passengers need and use”. The benefits for passengers “are evident in London where public transport users can easily plan journeys, secure best value tickets and travel with certainty due to regular updates about their bus service”.¹⁸⁰ The intention is to introduce phased implementation between the end of 2019 and 2022.¹⁸¹

On the provision of information under **section 19**, the 2017 consultation stated that regulations would:

- require bus operators to notify authorities at least 14 days in advance of their application to the Traffic Commissioner to vary, cancel or register a service;
- define the sorts of service variations for which an authority can request information;
- set out the time periods within which authorities must notify operators of their request for information, and the periods within which operators must respond to those requests;
- set out the types of information that can be requested; and
- set out the situations in which information can be disclosed.¹⁸²

In its September 2017 response document the DfT said that it would allow patronage data to be released for the purposes of discussing the provision of replacement services with alternative providers.¹⁸³ Authorities and operators would have 14 days to request and provide the relevant information respectively.¹⁸⁴ It also agreed to make a significant change by implementing a pre-notification period to “facilitate improved dialogue” between authorities and operators about changes to existing services and new proposed services, and provide authorities with more time in which to assess the potential impacts of changes and put in place any necessary plans.¹⁸⁵ It would also give

¹⁷⁹ DfT, [Bus Services Act 2017: accessible information](#), 5 July 2018, p35

¹⁸⁰ DfT, [Bus Services Act 2017: bus open data](#), 5 July 2018, p5

¹⁸¹ Ibid., p12

¹⁸² op cit., [Bus Services Bill: draft regulations and guidance](#), p37

¹⁸³ Op cit., [Bus Services Act 2017: Response to the Consultation on Draft Regulations and Guidance](#), para 9.29

¹⁸⁴ Ibid., para 9.54

¹⁸⁵ Ibid., para 9.34

operators discretion to progress their service change application to the Traffic Commissioner more quickly where they have the support of the relevant authorities.¹⁸⁶ The Regulations introduce a 28 day pre-notification period but at the same time they reduce the registration period by 14 days.¹⁸⁷

The *Public Service Vehicles (Registration of Local Services) (Amendment) Regulations 2018* ([SI 2018/439](#)) came into force on 24 April 2018.

5.6 Statutory guidance

In its February 2017 consultation document the DfT set out what it wanted to achieve with the statutory guidance for franchising and EPs.

It stated that the final franchising guidance should cover a number of issues, such as:

- How an authority should go about assessing its proposed franchising scheme;
- Requesting information from operators;
- The role of the auditor;
- The consultation process;
- Practical guidance for authorities when designing their franchising scheme;
- Practical guidance for authorities when procuring local service contracts; and
- Guidance for authorities in establishing their service permit scheme.¹⁸⁸

And for EPs, it should cover:

- The different partnership models available and what can be achieved through each;
- Further detail on how to establish both an advanced quality partnership scheme and an enhanced partnership scheme;
- How authorities should go about requesting information from operators to inform an enhanced partnership proposal;
- Competition considerations and the role of the Competition and Markets Authority; and
- Practical guidance for authorities when operating their partnership proposals.¹⁸⁹

The guidance was published in November 2017. It provides information on franchising, EPs and AQPs, including the requirements of each scheme and the differences between them.¹⁹⁰

¹⁸⁶ Ibid., para 9.38

¹⁸⁷ Ibid., paras 9.44-9.45

¹⁸⁸ op cit., [Bus Services Bill: draft regulations and guidance](#), p43

¹⁸⁹ Ibid., p45

¹⁹⁰ DfT, [Bus Services Act 2017: new powers and opportunities](#), 27 November 2017

6. Local implementation

On 4 May 2017 six regions of England held elections for newly created combined authority ('metro') mayors (Cambridgeshire & Peterborough; Greater Manchester; Liverpool City Region; Tees Valley; the West Midlands; and the West of England). On 4 May 2018 the Sheffield City region also elected a metro mayor.

These individuals automatically have access to the bus franchising powers contained in the Act. It remains to be seen who will take them up, how and when. Greater Manchester's plans are currently the most developed and are discussed separately, below.

Proposals in other mayoral combined authority areas are at varying stages of development:

- James Palmer, the Conservative Mayor for **Cambridgeshire & Peterborough**, is championing an Autonomous Metro proposal for Cambridgeshire.¹⁹¹ The Combined Authority is currently exploring how the powers in the 2017 Act could be used to support the planned metro proposal;¹⁹²
- Steve Rotheram, Labour Mayor of the **Liverpool City Region**, was elected on a platform to look at using the regulatory powers in the 2017 Act.¹⁹³ Recent reports indicate that Merseytravel is preparing an outline business case of the various options available;¹⁹⁴
- Dan Jarvis, the Labour Mayor for the **Sheffield City Region**, was elected in May 2018 on a platform to use bus franchising powers;¹⁹⁵
- Ben Houchen, the Conservative Mayor for the **Tees Valley**, has indicated his intention to look into the potential benefits of franchising and to simplify fares and ticketing;¹⁹⁶
- Andy Street, the Conservative Mayor for the **West Midlands**, has not made any pledge to use the franchising powers in the Act, though he was elected on a platform to improve bus quality, and accessibility and to roll out contactless and smart payments on West Midlands buses.¹⁹⁷ There is currently a West Midlands Bus Alliance;¹⁹⁸ and
- Tim Bowles, the Conservative Mayor for the **West of England**, has indicated an interest in using franchising powers.¹⁹⁹

¹⁹¹ C&PCA press notice, "[Cambridge autonomous metro moves one step further](#)", 31 January 2018

¹⁹² "[Cambridge £1.7bn metro plans 'could provide lifeline for buses'](#)", *Transport Network*, 8 August 2018

¹⁹³ Steve Rotheram, *Our Future Together*, April 2017, p22

¹⁹⁴ "Merseytravel begins next stage of bus regulation study", *Local Transport Today*, 13 April 2018, LTT 745

¹⁹⁵ Dan Jarvis, *The Sheffield City Region – a Co-operative Community*, April 2018, p24

¹⁹⁶ "[Regulated bus service could help elderly -MPs](#)", *The Northern Echo*, 29 June 2018

¹⁹⁷ Andy Street 4 WM Mayor, *My West Midlands Renewal Plan*, April 2017, p11

¹⁹⁸ TfWM, *Bus Alliance* [accessed 16 August 2018]

¹⁹⁹ "[This is what Tim Bowles' vision for the West of England is](#)", *Bath Chronicle*, 5 May 2017

6.1 Greater Manchester

Andy Burnham, Labour Mayor of Greater Manchester, was elected in May 2017 on a platform to use the powers in the Act. He pledged:

We will use new powers to make our bus services more affordable, more reliable and more accessible to disabled people and families with pushchairs. We will use the latest technology to introduce an integrated ticketing system on all forms of public transport, making travelling round the city-region more affordable and more convenient. We will require bus operators to provide accessible information on their services, including audio announcements and visible media.²⁰⁰

Information on bus reform in Greater Manchester can be found on the [TfGM website](#).

In December 2017 on BBC Radio Manchester Mayor Burnham confirmed his intention to introduce franchising.²⁰¹ He provided some details in a speech later that month:

The biggest changes of all will be to our bus system [...] Buses are the backbone of the public transport system – so it is right to start here [...] Unless we bring our bus services into the 21st century, our plans in Greater Manchester for a better public transport system cannot be fulfilled.

Today I can confirm that in Greater Manchester we will be using the powers granted to us by Parliament at the earliest opportunity to drive through some major improvements to our bus services – and we are starting straight away.

Regulations to allow requests for further data from operators come into effect next Tuesday, the 19th of December.

Today we give notice that, on the 20th of December, TfGM will be writing to operators to request that data.

Subject to TfGM receiving the information it needs, I expect public consultation on our plans for bus reform to be announced in the summer, with the aim of making a decision by the end of the 2018.

This could see improvements being delivered to bus services in GM sooner than in any other city-region with equivalent powers.

This will be a major focus for the Greater Manchester Combined Authority and TfGM in 2018. The work will proceed at pace and all options for change evaluated openly and fairly.²⁰²

There were reports in May 2018 that Mayor Burnham was considering a number of proposals for a future franchised bus system, which could see Greater Manchester's bus network split into five to ten large franchises, complemented by as many as 25 smaller ones.²⁰³

²⁰⁰ Burnham for Mayor, *Our Manifesto for Greater Manchester*, April 2017, p8

²⁰¹ "[Mayor wants 'London-style' bus system](#)", *BBC News*, 4 December 2017

²⁰² [Speech by Andy Burnham: A 21st Century Transport System for Greater Manchester](#), 13 December 2017; *The Greater Manchester 2040 Transport Strategy*, published in February 2017, sets out the area's broad ambitions for bus services

²⁰³ "Up to ten large contracts in TfGM's bus franchising model", *Local Transport Today*, 11 May 2018, LTT 747

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