



# Library Note

## **Bus Services Bill [HL] (HL Bill 2 of 2016–17)**

The Bus Services Bill [HL] seeks to “expand the range of tools available” to directly elected mayors and local transport authorities (LTAs) in areas in England outside of London to improve local bus services. The Government has said that the Bill would:

- Give elected mayors and LTAs “the power to improve bus services for the people who use them”.
- Provide directly elected mayors with “London-style powers to franchise local services”.
- Make available to app developers data about routes, fares and times across the country to give “passengers better information about how to make the most of local bus services”.

The Bill makes provision in the following areas:

- Partnerships (clauses 1 to 3 and 9 to 15)
- Bus franchising (clauses 4 to 6)
- Ticketing improvements (clauses 7 to 8)
- Bus registration and open data (clauses 16 to 20)

The Bill is an enabling bill and extends to England and Wales, although it is intended to apply only to areas in England outside of London. The Explanatory Notes state that the “Government would not mandate which approach is to be taken, encouraging LTAs to pursue the most suitable solution for their area”. Several clauses in the Bill include provisions that would allow the Secretary of State to make regulations or guidance. The Government has confirmed that while the Bill is progressing through Parliament it will consult on, and aim to finalise, any such draft regulations and guidance.

The Bill was introduced in the House of Lords on 19 May 2016 and is scheduled to receive its second reading on 8 June 2016. This Library briefing provides an overview of the Bill and reaction to it, background to its introduction and a summary of the Bill’s clauses.

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## I. Overview of the Bill and Territorial Extent

The Queen’s Speech, delivered on 18 May 2016, announced that “in England, further powers will be devolved to directly elected mayors, including powers governing local bus services”.<sup>1</sup> The Bus Services Bill [HL] seeks to provide these powers. The Department for Transport has stated that the Bill’s objective is to:

[...] unlock the significant potential that exists for the bus industry to achieve more for passengers than it does today. Central government’s role is to provide local authorities and bus operators with the tools they need to improve local bus services and get more people on to buses. So the Bill will expand the range of tools available by introducing new powers and improving the approaches that are currently available.<sup>2</sup>

The Bill makes provision in the following areas:

- Partnerships (clauses 1 to 3 and 9 to 15)
- Bus franchising (clauses 4 to 6)
- Ticketing improvements (clauses 7 to 8)
- Bus registration and open data (clauses 16 to 20)

In terms of partnerships, the Bill would provide for Advanced Quality Partnerships (AQPs) and the introduction of Enhanced Partnerships (EPs) for local transport authorities (LTAs) in areas in England outside of London. An AQP would allow an LTA to include bus-improvement measures as their side of the “partnership bargain” with a bus operator, rather than only infrastructure improvements, which is currently the case.<sup>3</sup> In return, the categories of service standards that an LTA could require of an operator would be broadened. An EP would allow such partnership working to go further by allowing an LTA—jointly or collectively with other LTAs, and with the participation of operators—to specify facilities and measures needed and to set out requirements to improve bus services in its area.

New franchising powers would allow local authorities to take control of bus services. This would be made available to certain types of LTAs.<sup>4</sup> In the Bill as introduced, only a mayoral combined authority—‘directly elected mayors’—would automatically be designated as a “franchising authority” and be able to commence an assessment for a franchising scheme. Provisions for other LTAs to franchise would only take effect if provided for by the Secretary of State in regulations. The Bill sets out the process an LTA would follow before establishing a scheme, and how bus services would be provided once franchising was established.

The Bill also provides for advanced ticketing schemes and an increase in the information available to bus passengers. Local authorities would also be “prohibited from forming a company for the purposes of providing a local bus service”, although “existing municipal bus companies would not be affected”.<sup>5</sup>

The Bill would extend to England and Wales, with the intention it would only apply to areas in England outside of London. The Explanatory Notes state the Bill raises “no significant

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<sup>1</sup> [HL Hansard, 18 May 2016, col 2.](#)

<sup>2</sup> Department for Transport, [The Bus Services Bill: An Overview](#), May 2016, p 4.

<sup>3</sup> [Explanatory Notes](#), p 10, para 39.

<sup>4</sup> [Bus Services Bill \[HL\]](#), HL Bill 2 of 2016–17, clause 4.

<sup>5</sup> [Explanatory Notes](#), p 31, paras 230–1.

devolution issues”.<sup>6</sup> With regard to Wales, it notes that “at the moment the registration of local bus services is reserved in relation to Wales, but the Wales Bill envisages the National Assembly for Wales being given legislative competence in this area”.

As an enabling bill, the Bill does not “trigger immediate financial implications”.<sup>7</sup> However, it does contain clauses that would enable franchising authorities to charge fees to bus operators for considering their permit applications and changes in fee charging resultant from the provisions relating to the Traffic Commissioner functions. The Explanatory Notes explain that “[a]ll of these fees have been agreed with HMT and do not constitute ‘taxes’ for the purpose of needing a ways and means resolution”.<sup>8</sup>

Several clauses in the Bill would include provisions to allow the Secretary of State to make regulations or guidance. The Government has confirmed that “while the Bill is progressing through Parliament we will consult on and aim to finalise drafts of the regulations and guidance that will be issued after the Bill becomes law”.<sup>9</sup>

## 2. Reaction to the Bill

The Campaign for Better Transport (CBT), an independent charity, welcomed the Bus Services Bill, but stressed the importance of funding in making the new powers work. James MacColl, Head of Campaigns, stated that the Bill would:

[...] give local authorities and the new mayors more powers to plan and manage local bus services, bringing real benefit to local communities. This should allow integrated services with simple, smart ticketing to become the norm [...] the introduction of new requirements for operators and franchising authorities to release open data on routes, timetables, punctuality and fares, and the new powers for integrated ticketing schemes, will also make using the bus much easier for passengers and give car users a real and affordable alternative. However, it is critical that funding follows the Bill, and that councils and mayors have the funding needed to make these new powers work. We need to see a national strategy for buses and coaches with long term funding assured, as now happens with roads, railways, cycling and walking strategy.<sup>10</sup>

The Confederation of Passenger Transport UK, the national trade association representing bus and coach operators, supported the Government’s proposals for Advanced Quality Partnerships and Enhanced Partnerships and welcomed the “robust and fair public and financial tests” that franchising proposals would be subject to, noting “we are convinced that passengers outside London are best served by a commercial regime”.<sup>11</sup>

The Local Government Association (LGA) welcomed the franchising provisions and greater access to buses data contained in the Bill, but called for the franchising option to be accompanied by a devolution of bus subsidies. Councillor Peter Box, transport spokesman at the LGA, argued that “franchising should be available to all local authorities who wish to

<sup>6</sup> [Explanatory Notes](#), p 7, paras 16–17. The [territorial extent and application is set out in full in Annex A](#) (pp 36–38) with a description by clause of any “minor or consequential” effects outside of England.

<sup>7</sup> [Explanatory Notes](#), p 34, para 248.

<sup>8</sup> *ibid*, p 34, para 249.

<sup>9</sup> Department for Transport, [The Bus Services Bill: An Overview](#), May 2016, p 19.

<sup>10</sup> Campaign for Better Transport, [‘Campaigners Welcome Publication of the Bus Services Bill—‘A New Era for Buses, but Only if Funding Follows’](#), 20 May 2016.

<sup>11</sup> Confederation of Passenger Transport UK, [‘CPT News Release: Bus Services Bill’](#), 23 May 2016.

improve bus services in towns, villages and rural areas that are poorly served at present”, adding that “it should not depend on having a directly-elected mayor”.<sup>12</sup>

The Urban Transport Group, a British transport organisation created in 2016 that replaced the former Passenger Transport Executive Group, also welcomed the Bill, arguing that the legislation offered the prospect of a “fresh start” by providing “a range of more effective tools with which to improve bus services”, but noted “this will be the third piece of legislation on buses since 2000 so it’s vitally important that we get the detail right this time in giving us a legal framework with which to improve services which is fair, proportionate and straight forward”.<sup>13</sup>

The Go-Ahead Group, one of the largest bus operators in the UK, supported the emphasis in the Bill on the partnership model but commented “Go-Ahead notes the process by which new franchising powers granted to combined authorities can be exercised and remain to be convinced that their application will deliver better services for our customers”.<sup>14</sup> The *Times* reported that the Group was one of a number of operators concerned about the franchising powers in the Bill and wanted “to alter the legislation to ensure that there is an independent scrutiny body that will investigate the plans of any mayor”.<sup>15</sup>

The National Union of Rail, Maritime and Transport Workers (RMT) focused its attention on clause 21 of the Bill, which would prevent local authorities from forming a company to run its own bus services. RMT said that local authorities “successfully” own and run bus services in a number of cities including Reading, Edinburgh and Nottingham and that “other local authorities that want to own and operate bus services themselves should not be prevented from so doing”.<sup>16</sup> RMT General Secretary, Mick Cash, said that it was “incoherent” that the Bill would stop other local authorities from running bus services while “facilitating greater local authority oversight”.

### 3. Background to the Bill

The Department for Transport, in its overview of the Bill, provides the following background information about bus services in England:

Buses are England’s most used form of public transport accounting for over 60 percent of all public transport trips, and over 4.65 billion passenger journeys completed in 2014/15. Since 2004/05, bus use in England outside London has increased by 2 percent. But the picture is mixed. In metropolitan areas bus use has declined by 7 percent since 2004/05, whereas in non-metropolitan areas it has increased by 9 percent. There is a wide disparity in the performance of local bus services across England, with areas such as Brighton and Hove and Nottingham having the highest number of bus journeys per head, more than three times the England outside London average of 50 journeys.

Bus use has grown dramatically in London, rising by 31 percent since 2004/05. There are many characteristics which set London apart from other areas across the country, such as population density and growth, and policy choices such as the congestion charge. London, however, has demonstrated that where bus networks are extensive, services

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<sup>12</sup> Local Government Association, ‘[Queen’s Speech: Councils Respond to Bus Services Bill](#)’, 18 May 2016.

<sup>13</sup> Urban Transport Group, ‘[Urban Transport Group Welcomes Bus Services Bill](#)’, 23 May 2016.

<sup>14</sup> Go Ahead Group, ‘[Statement in Response to the Bus Services Bill](#)’, 24 May 2016.

<sup>15</sup> Robert Lea, ‘Do Not Give City Bus Plans the Go-ahead, says Transport Group’, *Times*, 25 May 2016.

<sup>16</sup> National Union of Rail, Maritime and Transport Workers, ‘[RMT Rejects Government Attempt to Prevent Local Authorities Running their Own Bus Services](#)’, 25 May 2016.

frequent, and passengers have easy access to information about fares and services, bus patronage can increase. This suggests that there is scope for improvement in the current legislative framework.<sup>17</sup>

A Buses Bill was first announced in the Queen’s Speech in 2015. The Cabinet Office’s briefing stated that the Government would publish a bill to “provide the option for combined authority areas with directly elected mayors to be responsible for the running of their local bus services”.<sup>18</sup>

The provisions and aims of the Bill evolved throughout the following year.<sup>19</sup> From September 2015 to October 2015, the Government ran “Bus Reform Workshops” in five locations across the country, which Andrew Jones, the Parliamentary Under Secretary of State for Transport and the minister responsible for bus policy, explained were to help shape the content of the Bill and “ensure that policy is developed with significant input from local authorities, the bus industry and passenger representatives”.<sup>20</sup> The Department for Transport produced a background document to assist those attending the workshops, which contained “some initial ideas and issues on the way franchising could work in practice, associated improvements that could be made to the existing legislative framework and an update on a number of wider bus policies”.<sup>21</sup> It included discussion on the themes of franchising, stronger partnerships, improving ticketing and making bus services more transparent. The Department for Transport published a summary of the discussion points that were raised at the workshops in November 2015.<sup>22</sup>

In addition, the Department for Transport asked KPMG to provide insight into the local bus market in England outside of London. The KPMG report, published in January 2016 noted:

Passenger demand for bus services in England outside of London fell almost continuously from the time of deregulation [in the mid-1980s] to the mid-2000s. Since then overall passenger demand has remained relatively stable albeit with considerable variation across local bus markets reflecting differences in socio-demographic factors, land use, the relative attractiveness of alternative modes of transport, wider transport policy and government expenditure, as well as the performance of local bus operators.

Key observations to note are that: approximately 20 percent of services are financially supported and tendered by local authorities; levels of passenger satisfaction are high; fares have increased at a faster rate than general inflation but reflect changes in operating costs; and service mileage has fallen largely as a result of a reduction in government funding for supported services. Operators have invested in vehicles and service quality but overall performance is heavily dependent on levels of road congestion and local traffic management policies.<sup>23</sup>

<sup>17</sup> Department for Transport, [The Bus Services Bill: An Overview](#), May 2016, p 2. For statistics about local bus services, see Department for Transport, [Annual Bus Statistics, England 2014/15](#) (updated December 2015).

<sup>18</sup> Cabinet Office, [The Queen’s Speech 2015](#), 27 May 2015, p 100.

<sup>19</sup> See: Cabinet Office, [The Queen’s Speech 2015](#), 27 May 2015, p 100; Department for Transport, [Bus Reform Workshops Summary: Moving Britain Ahead](#), November 2015, p 4; and Buses Bill Policy Team, [Buses Bill Update](#), December 2015.

<sup>20</sup> House of Commons Transport Committee, [Correspondence Between Andrew Jones MP and Louise Ellman MP Regarding the Buses Bill Dated 3 September and 2 October 2015](#), 13 October 2015.

<sup>21</sup> Department for Transport, [Bus Reform Workshops: Background Document](#), September 2015, p 4.

<sup>22</sup> Department for Transport, [Bus Reform Workshops Summary](#), November 2015.

<sup>23</sup> KPMG, [Local Bus Market Study](#), January 2016, p 2.

The report explained that while local authority and bus operator objectives were reasonably well aligned, differences sometimes existed amongst stakeholders about how to best achieve objectives and commented “the devolution agenda, together with financial pressures brought about by austerity, have stimulated discussion on the role of the government in the provision of local bus services”. While recognising that franchising offered a local transport authority the greatest influence over the bus market “this comes at a cost of imposing greater resource demands and financial and delivery risks on the authority”. The report concluded: “For many local authorities the best option may be to do nothing [...] each local bus market is unique and each requires a tailored approach to help it deliver local objectives”.

In February 2016, the Government stated that the “one clear aim” of the Bill was to increase bus passenger numbers.<sup>24</sup> At a reception at the All Party Parliamentary Group for Road Passenger Transport, Andrew Jones confirmed that the Bill would also provide for open data, new partnerships, and franchising.<sup>25</sup> Before the 2015–16 session ended, Mr Jones confirmed in response to a written question that the Bill was not yet ready:

Work continues on the drafting of the Bill. Its introduction will depend on the Parliamentary timetable, but we are working towards introducing the Bill in the next session.<sup>26</sup>

## 4. Provisions in the Bill

### 4.1 Partnerships (clauses 1 to 3 and 9 to 15)

The Bill includes provisions for Advanced Quality Partnerships (AQPs) and the introduction of new Enhanced Partnerships (EPs). Speaking in February 2016, Andrew Jones, the Parliamentary Under Secretary of State for Transport, stated that the Bill would provide:

[...] new arrangements for local authorities and bus operators to enter into partnership with one another; to agree their own standards for all services in their area; perhaps focusing on frequency and reliability along a particular route or transport corridor; or setting emissions standards to improve local air quality; or introducing common branding, marketing and ticketing rules over a wider geographical area.

This new partnership approach won’t be right for every area. And sometimes, there will be a case for more radical change. For example, some of the things that some local areas want can be difficult to deliver in a fully de-regulated bus market—such as a single fare structure across different operators and transport modes.<sup>27</sup>

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<sup>24</sup> Department for Transport, ‘[The Buses Bill](#)’, 11 February 2016.

<sup>25</sup> Speech by Andrew Jones MP on ‘[The Case for the Buses Bill](#)’, All Party Parliamentary Group for Road Passenger Transport Reception, 23 February 2016.

<sup>26</sup> House of Commons, [Written Question: Bus Services](#), 8 April 2016, 32814.

<sup>27</sup> Speech by Andrew Jones MP on ‘[The Case for the Buses Bill](#)’, All Party Parliamentary Group for Road Passenger Transport Reception, 23 February 2016.

## Advanced Quality Partnerships (AQPs)

At present an LTA can enter into partnership with local bus operators in order to improve bus services. As outlined in the Explanatory Notes:

Existing legislation enables LTAs and local bus operators to enter into voluntary partnerships, which are not legally enforceable, and Quality Partnership schemes (QP schemes), which are legally enforceable and require LTAs to provide new infrastructure as their contribution to the scheme. The Advanced Quality Partnership scheme (AQP scheme) provisions in the Bill build on the existing QP scheme arrangements.<sup>28</sup>

Existing legislation regarding QP schemes, set out in the Transport Act 2000 as amended by the Local Transport Act 2008, provides that an LTA must commit to provide new infrastructure, (“particular facilities”), whilst bus operators commit to provide services of a particular standard. Facilities might include bus lanes, or access to high-quality bus shelters with real-time passenger information. Buses that do not meet the standards can be excluded. Compliance with the agreed quality standards in a partnership scheme are enforced by the Traffic Commissioners through the bus registration scheme; sanctions can include financial penalties or restrictions on an operator’s licence.<sup>29</sup>

Clauses 1 to 3 would make provision for AQPs. Clause 1 would insert new sections 113C to 113O into part 2 of the Transport Act 2000 to provide for AQPs in England. An LTA would be able to set up an AQP based on bus-improvement measures as well as, or instead of, infrastructure facilities. Many of the sections which the clause would insert replicate the setting up of QP schemes in the Transport Act 2000. New section 113E would provide the detail about what measures and facilities (infrastructure) could be included in an AQP, and would allow for the Secretary of State to make regulations regarding what measures could be included. The Department for Transport has suggested that these might include parking or traffic enforcement.<sup>30</sup>

New section 113E would also detail the standards of service which could be specified in an AQP. While some of the service standards replicate what is available for a QP, new service standards, such as requirements about ticketing structures, methods of payment and how information to passengers should be provided, could also apply.<sup>31</sup> Certain standards of service, such as requirements to the frequency and timing of services and requirements as to the maximum fares that may be charged for particular journeys, or journeys of a particular description, would only be included in a scheme if there were “no admissible objections” to the requirement from relevant operators.

Additional restrictions on setting standards of service would also apply where the LTA is providing measures, in addition to facilities; these are outlined in new section 113E subsection (8). New section 113J would place obligations on authorities and operators arising from an AQP, whilst new section 113K would give the Secretary of State the power to make regulations involving existing (as opposed to new) facilities or measures. The Explanatory Notes state “this power is to avoid an LTA requiring operators to provide services to a certain

<sup>28</sup> [Explanatory Notes](#), p 5, para 5.

<sup>29</sup> House of Commons Library, [Transport 2015](#), May 2015, p 59.

<sup>30</sup> Department for Transport, [The Bus Services Bill: An Overview](#), 20 May 2016, p 10.

<sup>31</sup> [Explanatory Notes](#), p 9, para 26.



standard without keeping its ‘side of the partnership bargain’ by providing new facilities or taking new measures”.<sup>32</sup>

An AQP would only be made by an LTA or LTAs in England. The existing QP scheme provisions would continue to apply in Wales and to QP schemes made by an English LTA in conjunction with a Welsh LTA (as provided for in clause 2 schedule 1).<sup>33</sup>

Clause 2 would enact schedule 1, which includes further technical amendments relating to AQPs. Clause 3 would make provision for an existing QP scheme made under section 114 of the Transport Act 2000 to be treated as if it were an AQP scheme made under the new section 113C inserted into that Act by the Bill. This would only occur if it related to LTAs in England at, or after, the date on which the new AQP provisions were commenced.<sup>34</sup>

### Enhanced Partnerships (EPs)

Clauses 9 to 15 would provide for Enhanced Partnerships (EP). The Department for Transport has stated that “new Enhanced Partnership powers will enable local authorities to work with bus operators to set a vision for bus services in their area and plan to help achieve those improvements”.<sup>35</sup> It has summarised the benefits which it thought an EP would provide as follows:

- The enhanced partnership scheme made by the local authority can set standards for local business services—including vehicle specifications, branding, ticketing and service frequencies.
- Ticketing requirements will apply to all scheme operators, and may include smart ticketing, discounts (such as child fares) and marketing requirements.
- The local authority and operators will produce the scheme in partnership. The authority can only adopt the scheme if they have sufficient support from operators.
- The local authority will be able to take on responsibility for bus registration from the Traffic Commissioners—enabling them to manage and enforce the new standards.<sup>36</sup>

The Department for Transport has explained that “the bus market in the partnership area remains commercial [...] partnership proposals cannot dictate the price of an operators’ own tickets or compel them to run services that they do not wish to operate”,<sup>37</sup> but noted that EPs might “allow the price of multi-operator tickets to be set so that they can be used on different operators’ service and modes of transport”.<sup>38</sup>

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<sup>32</sup> [Explanatory Notes](#), p 10, para 39.

<sup>33</sup> *ibid*, p 8, para 22.

<sup>34</sup> *ibid*, p 11, para 48.

<sup>35</sup> Department for Transport, [The Bus Services Bill: An Overview](#), 20 May 2016, p 4.

<sup>36</sup> *ibid*, p 4.

<sup>37</sup> *ibid*, p 11.

<sup>38</sup> *ibid*, p 8.

The Explanatory Notes provide further detail stating:

An EP is intended to be easier to apply to a wide geographical area than a Quality Partnership (QP) or Advanced Quality Partnership (AQP) scheme. Also, unlike QP and AQP schemes, an EP scheme does not include the concept of admissible objections from specific operators which need to be resolved individually. Instead, operators can object to the scheme at several key stages. If a sufficient number of operators do so, the LTA would then have the opportunity to revise its proposals for consideration.<sup>39</sup>

As outlined in the Explanatory Notes, ‘sufficient number’ “means such number of persons as together provide certain proportion of qualifying local services (by number of operators and/or market share). These percentages will be defined in secondary legislation. These restrictions would also apply to varying or revoking an EP.”<sup>40</sup>

### EP Plans and Schemes

Clause 9 would insert new sections 138A to 138S into the Transport Act 2000 to establish EPs for LTAs in England. New section 138A would allow LTAs the power to make an Enhanced Partnership plan in relation to the whole or part of their area, or combined area. In addition, the section would allow the LTAs to make one or more EP schemes relating to the whole or part of the area to which the EP plan relates.<sup>41</sup> Further details about what should be included in the plan and schemes are set out in the new section.

Broadly, an EP plan would include an analysis of local bus services in an area, set out policies relating to services in that area and provide objectives for quality and effectiveness of services. An EP scheme would outline the facilities or measures which the authority would provide and imposes requirements in relation to local services provided in the area of the EP scheme.<sup>42</sup>

New section 138F would prescribe the process which an LTA would be required to follow when producing EP plans and schemes, and includes information about the notice and consultation which should occur when plan or scheme is being produced.<sup>43</sup> Further steps in making the plan or scheme are provided for in new section 138G.<sup>44</sup> New section 138H would specify what a scheme must contain, section 138I would give the LTA the power to postpone the scheme, or part of the scheme by no more than twelve months.

New sections 138L to 138N relate to the process of making a variation to an EP plan or scheme. As outlined in the Explanatory Notes “the default position is that before making a variation, the LTA must again seek the support of the operators”.<sup>45</sup> Section 138O would provide for the LTA to revoke an EP plan and all the associated schemes or an EP scheme or schemes, although “the LTA cannot make a revocation if a sufficient number of the operators of qualifying local services disagree with the proposed plan and scheme”.<sup>46</sup>

<sup>39</sup> [Explanatory Notes](#), p 21, para 146.

<sup>40</sup> *ibid*, p 22, para 156.

<sup>41</sup> *ibid*, p 21, para 150.

<sup>42</sup> *ibid*, p 22, para 152.

<sup>43</sup> *ibid*, p 24, para 167.

<sup>44</sup> A flowchart outlining the process in greater detail is available in the Department for Transport, [The Bus Services Bill: An Overview](#) (20 May 2016, p 13).

<sup>45</sup> [Explanatory Notes](#), p 26, para 179.

<sup>46</sup> *ibid*, p 27, para 186.

## Requirements, Facilities and Measures

New section 138C, as set out in clause 9, would provide for a range of requirements to be part of the local services provided for through the EP scheme.<sup>47</sup> Subsection 5 would allow the inclusion of “requirements about providing information to passengers by placing particular electronic equipment, or electronic equipment of particular descriptions, in vehicles”.

Clause 11 would allow for two types of requirement: the “route requirements”, such as the frequency and timing of services, and “operation requirements”, which include all other requirements that a scheme could impose. As outlined in section 138C, the operation requirements might include vehicle requirements, common ticketing arrangements, prices of multi-operator tickets, the way in which information is provided to the public and common dates for changing timetables.<sup>48</sup>

New section 138D would provide information on facilities and measures which could be specified in an EP scheme and would allow the Secretary of State to make regulations for further provision about the measures which may or may not be specified in an EP scheme.<sup>49</sup> New section 138E would allow an EP to specify cases in which the scheme may be varied or revoked.<sup>50</sup>

New section 138P would allow the Secretary of State to make regulations about EP plans and schemes, for example the procedure to follow when making, varying or revoking schemes or plans and the content or operation of those plans or schemes. Section 138Q would allow the Secretary of State the power to make regulations about transitional provisions for plans and schemes. Section 138R would allow the Secretary of State the power to issue guidance LTAs and metropolitan district councils about carrying out their functions in relation to Enhanced Partnership schemes or plans. Section 138S allows provides for the Transfer of Undertakings (Protection of Employment) Regulations 2006 to apply if staff were to be transferred as a result of an EP scheme and for those staff to be provided with certain pension provision.<sup>51</sup>

Clause 10 would amend part 2 of the Transport Act 2000 by inserting new section 143B, which would provide LTAs in England the power to obtain information from bus operators in order to assist them with the preparing, reviewing varying or revoking an EP plan or scheme.<sup>52</sup> It would also allow the LTA to inform the Traffic Commissioner of any non-compliance and would amend section 155 of the Transport Act 1985 in relation to sanctions imposed by the Traffic Commissioner.

## Registration of Local Bus Services

Clause 11 relates to registration of local bus services in areas where an EP scheme is in operation.<sup>53</sup> The clause would amend section 6 of the Transport Act 1985 to insert provisions to enforce requirements in EP schemes through bus registration. Clause 12 would provide for the cancellation of a registered service under an EP. Clause 13 would provide for an appeals

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<sup>47</sup> [Explanatory Notes](#), p 22, para 158.

<sup>48</sup> *ibid*, p 22, para 160.

<sup>49</sup> *ibid*, p 23, para 165.

<sup>50</sup> *ibid*, p 23, para 166.

<sup>51</sup> *ibid*, p 27, paras 192–3.

<sup>52</sup> *ibid*, p 27, para 194.

<sup>53</sup> *ibid*, p 28, para 199.

process for bus operators who wished to challenge the decision of a responsible registration authority.<sup>54</sup>

The Department for Transport provides the following summary:

The Bill provides for bus registration powers to transfer from the Traffic Commissioner to the lead local authority for the Enhanced Partnership. All decisions and responsibility will rest with the local authority and not the Traffic Commissioner. Where the scheme includes route requirement the lead authority must take on the registration function. Where the scheme only includes operation requirements, the authority may choose to take on the powers. Responsibility for bus registration would transfer to the entirety of the area affected by the scheme or not at all.

Route requirements will be enforced through acceptance or rejection of registrations. Operation requirements will be attached to registrations. A registration could be refused or cancelled if route or operation requirements are not met. Operators will have the right to appeal a decision to the Traffic Commissioner (if a local authority has taken the decision) or to the Upper Tribunal (if a Traffic Commissioner has taken the decision).<sup>55</sup>

Clause 14 would provide for further amendments regarding Traffic Commissioner functions where an EP scheme is in place, for example in relation to the delegating of certain functions to an LTA. Clause 15 would provide for schedule 4, which includes consequential amendments in relation to the EP scheme.<sup>56</sup>

## 4.2 Bus Franchising (clauses 4 to 6)

Andrew Jones, Parliamentary Under Secretary of State for Transport, has said the Bill's franchising powers:

[...] honour our devolution deal commitments to give local authorities the choice to use new powers to franchise bus services in their areas. I want to keep the good parts of the quality contract scheme process, which at least forces people to think things through properly. But I want to lose the parts which don't work, such as the excessive cost and the bureaucracy. The decision to take up these new powers will be for local areas to take. Ministers might have a role in granting the powers in the first place—as they presently do through the devolution deal process. But once a local area has these powers, the decision to use them will be theirs and theirs alone.

As you would expect, local areas will need clear arrangements for ensuring the powers are used accountably, the capability to meet their promises to passengers, and a system that does not disadvantage bus services that cross local or national boundaries. Yet we certainly do not foresee a one-size-fits-all approach in every area. Some local authorities may want to introduce newly-integrated, uniformly branded networks of services, much like you see in London. Others will just want to build and improve on what's already there. Whatever approach is chosen—and that will be a local decision—we want to

<sup>54</sup> [Explanatory Notes](#), pp 28–9, paras 204–9.

<sup>55</sup> Department for Transport, [The Bus Services Bill: An Overview](#), 20 May 2016, p 13.

<sup>56</sup> [Explanatory Notes](#), p 29, para 210.

ensure that bus operators and the wider supply chain have as much notice of change as possible, and that the effects on small operators are considered properly.<sup>57</sup>

Clauses 4, 5 and 6 relate to bus franchising. As detailed in the Explanatory Notes, a franchising scheme is one in which the franchising authority (or authorities) “identifies which local bus services should be provided in an area and what additional facilities should be provided, rather than bus operators determining the vast majority of services on a commercial basis”.<sup>58</sup> The franchising authority would then enter into a “local service contract” with a bus operator to provide the bus services specified in the contract.

The Department for Transport has identified several ways in which franchising could help achieve “better journeys”, “better places” and “better value”.<sup>59</sup> These can be summarised as allowing franchising authorities the power to decide:

- What bus services run, where and when.
- The types of ticket available, including discounts.
- What types of payment must be accepted, including smart and contactless.
- What information is available to passengers.
- Whether additional accessibility features are needed in their area—such as talking buses.
- Giving local government the power to decide what sorts of buses must be used—including their emissions targets and technologies.

Whilst bus franchising provides LTAs with the greatest independence to identify which local bus services to provide and to what standard, this option is limited to those LTAs designated as “franchising authorities”. The Explanatory Notes explain these powers will only be available to “combined authorities with directly elected mayors”.<sup>60</sup>

### **Establishing a Franchising Scheme**

Clause 4 of the proposed Bill would insert new sections 123A to 123X into part 2 of the Transport Act 2000.<sup>61</sup> The new sections of the Transport Act would set out details of which LTAs could make a bus franchising scheme, the process the LTA should follow before establishing a scheme, and how bus services would be provided once franchising was established.

New section 123A would establish the core principles of a franchising scheme. Where a franchising scheme applied, local bus services would only be provided in accordance with the terms of the local service contracts awarded by the LTA, except in certain specified

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<sup>57</sup> Speech by Andrew Jones MP on ‘[The Case for the Buses Bill](#)’, All Party Parliamentary Group for Road Passenger Transport Reception, 23 February 2016.

<sup>58</sup> [Explanatory Notes](#), p 11, para 50.

<sup>59</sup> Department for Transport, [The Bus Services Bill: An Overview](#), pp 8–9.

<sup>60</sup> [Explanatory Notes](#), p 5, para 2.

<sup>61</sup> *ibid*, p 11, para 49.

circumstances, for example where an operator had been granted a ‘service permit’ to provide an additional bus service, or where the operator is providing an interim service.

### **Local Transport Authorities Eligible to Become a Franchising Authority**

New section 123A would define which LTAs would be eligible to be a “franchising authority”, that is, to devise a franchising scheme. The section includes a list of franchising authorities in subsections 4(a) to 4(f).<sup>62</sup> The list includes, amongst others, (a) a mayoral combined authority and (f) a combined authority which is not a mayoral combined authority. Whilst a mayoral combined authority would automatically become a franchising authority, the other organisations listed, including a combined authority which is not a mayoral combined authority, would only become franchising authorities if the Secretary of State provides for this in affirmative regulations.

### **Stages in Establishing a Franchising Scheme: Assessment, Audit and Consultation**

New section 123A would also make provision for the process that a franchising authority would follow in order to produce a franchising scheme.<sup>63</sup>

The process is out in new sections 123B to 123G.

- New section 123B would require a franchising authority to prepare an assessment of the proposed franchising scheme.<sup>64</sup> The section details a range of issues that an assessment would have to consider, although, under 123B subsection (4) “subsections (2) and (3) do not prevent inclusion of other matters”. In addition, subsection (5) would require the Secretary of State to issue guidance about the preparation of an assessment of a franchising scheme, which may include guidance about methods to be used when assessing a proposed scheme. Franchising authorities must have regard to any such guidance.
- New section 123C would require the Secretary of State to give his or her consent to certain franchising authorities before an authority could prepare an assessment of a proposed franchise scheme.<sup>65</sup> Whilst Mayoral Combined Authorities, or a combination of Mayoral Combined Authorities, do not require consent, those LTAs listed in section 123A subsections 4(b) to 4(f) would. The Secretary of State would be required to publish a notice of a consent given under this section. Before the assessment of a franchising scheme could begin, section 123C subsection (4) would require authorities to publish their intention to prepare such an assessment.
- New section 123D would require a franchising authority to obtain a report from an auditor about its assessment of its proposed franchising scheme. The report would have to include details of whether the auditor considered the franchising authority had had “due regard” to the guidance issued by the Secretary of State regarding assessments.<sup>66</sup>

<sup>62</sup> [Explanatory Notes](#), p 12, para 57.

<sup>63</sup> *ibid*, p 12, para 56.

<sup>64</sup> *ibid*, p 12, paras 58–61.

<sup>65</sup> *ibid*, p 12, paras 58–61.

<sup>66</sup> *ibid*, pp 12–13, paras 64–65.

- New sections 123E to 123G would provide requirements about the consultation process which a franchising authority would have to follow before it could introduce its proposed franchise scheme.<sup>67</sup> The sections include details of what information should be published as part of the consultation, who should be consulted and what the consultation document should include. New section 123G would require a franchising authority to publish a report in response to its consultation and a decision as to whether or not to operate the proposed franchising scheme. The new section includes details on what should be included in this report. New section 123G subsection (4) would require that, in the case of a Mayoral Combined Authority, the decision as to whether or not to implement the franchising scheme rests with the Mayor, and is exercisable only by the Mayor.
- New section 123H would require a franchising authority to publish its franchising scheme, if it decided upon making one, at the same time as it publishes its response to the consultation.<sup>68</sup> The section includes details about what would be included in the scheme. It would also allow for a franchising scheme to make provision for varying or revoking any existing partnership arrangements.

### **How Bus Services Operate in a Franchising Scheme**

New sections 123I to 123N relate to the way in which a franchising authority would operate a scheme following its establishment, including the effect of local service contracts, the registration requirements of different providers of local bus services and requirements which would apply if a scheme were to be varied or revoked.<sup>69</sup> New section 123O would allow for interim and replacement local bus services to be provided in certain circumstances.<sup>70</sup>

New sections 123P to 123T would provide for service permits to allow commercial services to operate in a franchised area, for example in relation to cross-boundary services.<sup>71</sup> The new sections 123Q to 123T would allow the franchising authority to set up an application process for service permits, attach conditions to them and would provide for franchising authorities to revoke or suspend service permits in certain circumstances. Section 123T would set up an appeals process for where a permit application is not accepted, conditions are attached to such a permit, and where a service permit is suspended or revoked.

New section 123U would allow the Secretary of State to make regulations for further provision about franchising schemes, this could include, for example, regulations on the procedure to follow when making, varying or revoking schemes and regarding service permits. New section 123V would allow the Secretary of State to make regulations for such transitional provision as the Secretary of State thought appropriate.<sup>72</sup>

New section 123W would allow the Secretary of State to issue guidance to franchising authorities regarding the exercise of their functions in relation to franchising schemes. New section 123X would provide for Transfer of Undertakings (Protection of Employment)

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<sup>67</sup> [Explanatory Notes](#), p 13, paras 66–74.

<sup>68</sup> *ibid*, pp 13–14, paras 75–80.

<sup>69</sup> *ibid*, pp 14–16, paras 81–97.

<sup>70</sup> *ibid*, p 16, paras 98–100.

<sup>71</sup> *ibid*, pp 16–18, paras 101–13.

<sup>72</sup> *ibid*, p 18, paras 115–17.

Regulations 2006 to apply when staff are transferred as a result of local service contracts, and for those staff to be provided with certain pension provision.<sup>73</sup>

### **Obtaining Information about Local Services to Inform Assessments**

Clause 5 would insert new section 143A after section 143 of the Transport Act 2000. This would provide a franchising authority, or authorities, with the ability to require operators of local bus services to provide it with relevant information for its assessment of the proposed franchising scheme, or when the authority is considering varying the scheme.<sup>74</sup>

This new section would detail what would be considered ‘relevant information’ and would allow for the Secretary of State to make further regulations regarding this. The section details in what format the information on local services would need to be provided, and also would place limits on what information a franchising authority could require. Where a franchising authority was not a mayoral combined authority, the new section would require that a franchising authority had gained consent from the Secretary of State for an assessment to be carried out before the franchising authority could require the provision of information from operators.

Clause 6 provides for schedule 2, which would make further amendments to Transport Act 1985 and the Transport Act 2000 in relation to franchising schemes.

### **4.3 Ticketing (clauses 7 to 8)**

Clauses 7 and 8 of the Bill relate to advanced ticketing schemes. As outlined in the Explanatory Notes:

The objective of this policy is to ‘future proof’ the LTAs’ power to make multi-operator ticketing schemes, by ensuring that the advanced ticketing schemes can cover new technologies, such as smart cards or contactless payment. It also places a requirement on LTAs to have regard to any ticketing, partnership or franchising scheme any other relevant LTA has developed, or is developing when preparing their own scheme. This is designed to benefit passengers travelling across the boundaries of different LTAs.<sup>75</sup>

The Department for Transport has argued that this will “help achieve better journeys by making it easier for passengers to pay for travel across their local area”.<sup>76</sup>

Clause 7 would insert new sections 134C to 134G into part 2 of the Transport Act 2000.<sup>77</sup> New section 134C would enable an LTA in England to establish an advanced ticketing scheme, if it considered the scheme would be in the interests of the public and would contribute to the implementation of its local transport policies. New section 134D would make provision for notice and consultation requirements before an LTA could make such a ticketing scheme. New section 134E would detail how a ticketing scheme would be made. New section 134F would make the scheme binding on local bus operators. New section 134G would allow the Secretary of State to issue guidance to LTAs regarding advanced ticketing schemes. Clause 8 would

<sup>73</sup> [Explanatory Notes](#), pp 18–19, paras 119–25.

<sup>74</sup> *ibid*, p 19, paras 126–31.

<sup>75</sup> *ibid*, p 6, para 10.

<sup>76</sup> Department for Transport, [The Bus Services Bill: An Overview](#), 20 May 2016, p 9.

<sup>77</sup> [Explanatory Notes](#), p 20, paras 133–5.



provide for schedule 3, which contains further amendments relating to advanced ticketing schemes.

#### **4.4 Bus Registration and Open Data (clauses 16 to 20)**

In addition to proposed changes to ticketing, the Bill seeks to make it “easier” for passengers “to access details of timetables, fares and routes, while streamlining the bus service registration service process”.<sup>78</sup> The expectation is that this would encourage third parties to use the information to develop journey planning websites and applications, enabling passengers to have access to better information.

Clause 17 would insert section 141A into the Transport Act 2000. This section would allow the Secretary of State to make regulations to require new applicants registering for bus services, existing operators, franchising authorities and in some cases the Traffic Commissioner to provide prescribed information. The regulations “will set out the detail of the information that will be required including when and how it is to be provided”.<sup>79</sup> This new section would only apply to services that run in England, outside of Greater London.

Clause 18 relates to the service information which would be required to be provided when a service is varied or cancelled.<sup>80</sup> The clause would insert new section 6C into the Transport Act 1985. The section would allow for regulations under which operators of local bus services were required to give the LTA certain information relating to patronage and revenue of the service when it was making an application to vary or cancel bus services.

Clause 19 would exempt temporary rail replacement services in England from the need for registration.

Clause 20 would provide for a person authorised by the Secretary of State to carry out certain registration functions in place of the Traffic Commissioner to recover the costs of their activities through registration fees payable by operators.<sup>81</sup>

#### **4.5 Bus Companies: Authorities in England**

Clause 21 would “prohibit a relevant local authority from forming a company for the purposes of providing a local bus service”, although existing municipal bus companies “would not be affected by the clause”.<sup>82</sup>

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<sup>78</sup> [Explanatory Notes](#), p 6, para 11.

<sup>79</sup> *ibid*, p 30, para 221.

<sup>80</sup> *ibid*, pp 30–1, paras 222–4.

<sup>81</sup> *ibid*, p 31, paras 228–9.

<sup>82</sup> *ibid*, p 31, paras 230–1.

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