

Annex B: Consultation on Bus Franchising Guidance Update

The Department of Transport (DfT) are consulting on proposed changes to the governments guidance for local transport authorities (LTA) on setting up a bus franchising¹ schemes to better reflect the new administrations ambitions as announced in the King's Speech this Speech includes a legislative program (a Bus Bill) to enhance the integration and effectiveness of bus networks. Crucially, this includes removing barriers which currently limit bus franchising powers and aims to empower local leaders to deliver better buses, faster.

As a first step DfT are revising the existing guidance on bus franchising; later in the Parliamentary session, the government will bring forward a Bus Bill to make bus franchising quicker and easier to deliver.

They will make further changes to this current guidance alongside (or shortly after) Royal Assent. This consultation reflects on changes which will likely be made within the existing legal framework.

Bus franchising powers for LTAs in England, outside of London, were created in the Bus Services Act 2017, which amended the Transport Act 2000. Currently, for LTAs other than mayoral combined authorities (MCAs) or mayoral combined county authorities (MCCAs) which wish to prepare a franchising scheme assessment, a 2-stage process is required:

1. Regulations must be made which 'turn on' access to the franchising powers in the Transport Act 2000 for a particular category or categories of LTA.
2. The Secretary of State for Transport must give their consent to any individual authority from within that category to prepare an assessment of their proposed franchising scheme.

Powers were automatically activated for MCAs and subsequently MCCAs to prepare a franchising scheme assessment if they chose to do so.

The consultation on revising guidance, sets out questions and statements (more detailed answers to those individual questions are included overleaf) which (if adopted) would give **all** LTA's the power to franchise, rather than just MCAs and MCCAs and make the process simpler, more cost effective to implement and supports driver welfare and passenger safety.

DfT have also indicated that they are building capacity to provide 'on-the-ground' support to LTAs, who wish to pursue franchising as an option.

Proposals

Bus franchising is a model for providing bus services where LTA grant private companies the right to operate in a specific area or route. The authorities retain control over vital aspects of the service, such as routes, timetables, and fares.

¹ Within a franchising scheme, local authorities determine the details of the services to be provided – where they run, when they run and the standards of the services. Typically bus operators provide their services under contract to the local authority. No other services can operate in the franchised area without the agreement of the franchising authority.

The bus franchising guidance sets out how the franchising legislation operates in practice and sets out the statutory duties that a franchising authority or auditor must have regard to in exercising relevant functions of the guidance.

DfT are consulting on proposals to clarify and streamline bus franchising guidance. The consultation also seeks views on updates to the guidance to support safer and more accessible bus services.

The proposed changes to bus franchising guidance are:

- section 4.1 - updating the section to reflect the laying of the statutory instrument (SI) to 'open up' bus franchising to all LTAs and lowering the threshold LTAs are required to meet to prepare a bus franchising scheme assessment
- section 6.3 - creating a new process for the development of the 'do nothing' option in franchising scheme assessments
- section 6.5 and 15 - reducing the content LTAs are required to include in a franchising assessment.
- section 7 - the insertion of a new chapter titled 'Putting people at the heart of franchising'

Q1: Do you agree or disagree with the proposal to lower the consent threshold that LTAs are required to meet to prepare a bus franchising scheme assessment?

Agree

Q2: Why?

We believe that all LTAs (or combinations of LTAs) that can nominate a responsible Cabinet Member should have the right to develop a bus franchising scheme should they choose. Qualification for bus franchising should not just be a lengthy process, whether the franchising route is suitable for all LTA members of England's Economic Heartland, there should be a wider, democratic right for councils to deploy bus franchising, not restricted to areas that have become Mayoral Combined Authorities. Establishing viable cross boundary models is essential.

Q3: Do you have any other comments on the consent threshold that LTAs are required to meet to prepare a bus franchising scheme assessment?

Yes

Q4: What comments do you have on how the threshold is described?

Alongside this change to consent threshold, government should ensure that qualification for bus franchising is much less open to the kind of legal challenges that were faced by the Greater Manchester Combined Authority (which was legally challenged several times in the courts by the bus operators through judicial reviews). This increased the costs of the franchising project extensively – such risk and legal costs will reduce appetite for franchising. The new consent threshold process should be 'legally watertight'.

Option identification

[Section 123B of the Transport Act 2000](#) requires franchising authorities to conduct an assessment of the proposed franchising scheme. The purpose of the assessment is to:

- set out what sort of franchise the authority will deliver

- explain how far it will make improvements to bus service outcomes
- confirm that it is affordable and deliverable
- allow an informed decision to be taken whether to proceed by comparing it the currently available Enhanced Partnership (EP) that has been tabled by operators

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

Currently, as part of bus franchising assessments, LTAs must compare their preferred franchising model to a package of improvements that local bus operators have tabled to an EP. The revised guidance updates this section to require LTAs to instead compare their preferred option to the existing EP.

The revised guidance would provide for a time-limited window ahead of an assessment to develop the 'do nothing' option (the assessment of bus operator proposals to improve the existing EP), including incorporating improvements put forward by bus operators to an EP. This seeks to prevent delays arising under the current guidance due to LTAs being obliged to consider proposals from operators to amend EPs which arrive late during the assessment process itself.

Q5: Do you agree or disagree with the proposal to revise the approach to the 'do nothing' option?

Agree

Q6: Why?

Although the option identification measures are welcomed, consideration should also be given to implementing a binding arbitration regime, agreed between LTAs and operators that would limit recourse to time consuming and expensive legal challenges.

This would especially apply to disagreements about the relative merits associated with the franchising and the operator-tabled EP assessment process (as detailed in section 6) which have been the cause of lengthy disagreement and dispute in the past.

As the proposed draft guidance states, it should be re-emphasised to LTAs that a proposed franchising scheme can take many forms in order to establish effective cross boundary connectivity (including schemes to improve the quality and reliability of rural services, to improve a particular 'stand-alone' route corridor, through to schemes intending to transform the bus services in major towns and cities).

Q7: Do you have any other comments on the proposal to revise the approach to the 'do nothing' option?

Yes

Q8: What other comments do you have on proposed approach to revise the approach to the 'do nothing' option of the guidance?

The 'do nothing' option in England is clearly now the Enhanced Partnership, although these are of various levels of detail and have attracted different levels of attention from the DfT in terms of LTA funding streams.

The new 'do nothing' option will likely become the approach for the many LTAs that will not wish to pursue franchising, either because they are largely satisfied with their existing Enhanced Partnership or because they do not have the resources required to

develop and manage franchising and the new democratic accountability that this would put on the LTA.

The critical factors in bus operation are achieving an inexpensive, secure and reliable service, whether franchised or not. 'Do nothing' should review whether the plans for measures such as bus priority, faster integrated ticketing and improvements to passenger information and security under the existing Enhanced Partnership, once enacted, are sufficient to create a bus service network that delivers the key outcomes sought through franchising.

During the three-month period following publication of a notice of intention to prepare the franchise assessment, operators should be asked to review their current operation and bring forward an assessment of what their operations are compared to the published timetable, and state what cost and resource would be required for them to operate viable services at the advertised frequency and standards under the Enhanced Partnership.

Under a franchising system, expectations and responsibility for performance of a cross-boundary network (particularly service reliability and quality) will transfer from operators to the LTA. Political pressure will fall on the LTA intensely to provide services to advertised standards: councillors will have real influence to enable LTAs to act, unlike the level of influence they have over operators under Enhanced Partnerships. A 'real' do nothing from operators is thus necessary to make the comparison between franchising and an Enhanced Partnership.

Franchising assessment

References to alignment with [Bus Services Improvement Plans \(BSIP\)](#) objectives have been largely removed because it can be difficult to match its timescales with a franchising assessment which considers a much longer timeframe. Instead, the revised guidance advises LTAs to consider any relevant documents which set a long-term vision for transport, potentially including the BSIP or the Local Transport Plan.

Q9: Do you agree or disagree with the proposed changes to reduce the content LTAs need to provide in the franchise assessment?

Agree

Q10: Why?

These measures reduce the time and potential expenditure required by LTA staff or consultants to prepare the franchising assessment and save valuable LTA resource. They allow the strategic focus of the franchising assessment to address the LTA's transport plan policies more widely, as is relevant with a strategic measure such as bus franchising, rather than simply focus on BSIP medium-term goals.

Q11: Do you have any other comments on the franchise assessment?

Yes

Q12: What comments do you have on the guidance on the franchise assessment?

The list of measures that authorities are asked to consider under each option (on page 13) should include what measures an LTA will take to manage operator performance. For

example, under franchising, whether a LTA will use quality incentive contracts, and what recourse an LTA will have if an operator does not perform to required standards.

The LTA should also set out their proposed approach to contract management and the commissioning and contracting of services. For example, are they proposing to have a dedicated 'in-house' team (as in London's bus contracting) or are they proposing to rely on the existing LTA procurement process and procurement regulations and, in which case, how are they going to ensure there is sufficient dedicated resource, expertise and confidence to deal with franchising to commercial bus operators.

Putting people at the heart of franchising

This chapter covers considerations LTAs should make around the [Public Sector Equality Duty](#), bus driver welfare and passenger safety, including anti-social behaviour and violence against women and girls.

Q13: Do you agree or disagree with the addition of the section entitled putting people at the heart of franchising?

Agree

Q14: Why?

We support the Public Sector Equality Duty and the other objectives in this section. The research and effort undertaken by Transport for London and Brighton & Hove Buses in this matter should be considered, as these are commonly seen as the standard-setters in many of the objectives in this section.

Q15: Do you have any other comments on the section entitled putting people at the heart of franchising?

Yes

Q16: Why

A human-centred approach to transport and connectivity is essential, enabling the delivery of cross sector outcomes.

While welcoming the commitment to this (and noting the cost implications that franchising authorities will need to bear), the content of section 7 is lacking in detail especially in the areas of:

- Mandatory bus driver training – while accepting that it should be possible to implement a training regime aimed at recognising VAWG and ASB-related incidents it is unclear if there is an expectation that front line staff would be expected to physically intervene to prevent a VAWG or ASB from escalating and what the implications on existing Health and Safety Regulations would be if that expectation applied.
- If involvement is to be limited to signposting and reporting, then it would be reasonable to expect that a common sign posting and reporting regime be implemented across the whole of England if only to support inter region comparison and the allocation of remedial funding streams.

- There remains a need to introduce a binding arbitration process between the consulting LTA and the consultees where agreement about the franchising proposals cannot be reached. This would ease/speed the consultation process and reduce the likelihood of legal recourse.
- It is equally unclear as to how the funding to fund Community Safety Accreditation Scheme accredited officers specifically to work on the franchised network, if a need were identified as part of the assessment process, would be raised

With the roll-out of bus franchising, especially in an area where bus provision increases significantly, there is likely to be a rapid recruitment of bus drivers and other operational staff with contact with the public. There needs to be a robust system put in place by franchisees and LTAs to ensure checks are made on new recruits, who will often be in a position of being alone with children or other vulnerable parties.

Franchising

The 5 government missions are:

1. Kickstart economic growth to secure the highest sustained growth in the G7 – with good jobs and productivity growth in every part of the country making everyone, not just a few, better off.
2. Make Britain a clean energy superpower to cut bills, create jobs and deliver security with cheaper, zero-carbon electricity by 2030, accelerating to net zero.
3. Take back our streets by halving serious violent crime and raising confidence in the police and criminal justice system to its highest levels.
4. Break down barriers to opportunity by reforming our childcare and education systems, to make sure there is no class ceiling on the ambitions of young people in Britain.
5. Build an NHS fit for the future that is there when people need it; with fewer lives lost to the biggest killers; in a fairer Britain, where everyone lives well for longer.

Q17: What, if any, suggestions do you have on how the franchising guidance could better:

It is the case that franchising could better support all of the Government's missions if funding was unlocked to develop, implement and support the franchising programme, along with other key measures to make bus services more reliable and establish a sustainable and financially viable model for all stakeholders, including both LTAs and operators. The franchising proposal will place significant additional pressure on LTAs' resources at a time when LTAs are already challenged in delivering their wider statutory obligations. It is unclear if franchising can be progressed with any real vigour unless additional long-term funding is made available.

Q18: Do you have any comments on any other part of the guidance?

Yes

Q19: What comments?

We support the comment in 'the economic case' guidance (section 16.2) that states 'Particular consideration should be given to small and medium sized operators, and the

potential impacts of the options on that group.’ Experience in franchising in the UK outside London has indicated that large, multi-national firms have dominated in winning contracts. While this is appropriate if they have submitted the optimal bid, the potential impact on the local economy of the loss of SME operators, without experience in bus franchising, is notable, especially if there is no imperative for the effective utilisation of these SME operators, as part of the procurement and delivery requirements

In order to retain quality SME operators, allowing them time to gain experience in franchising, and to genuinely enable them to retain a viable and sustainable business when bidding against much larger firms, we suggest that offering the option of ‘shadow franchising’ be considered by the Government.

This is a proposal which may be considered as an option in the medium to longer term, potentially subject to legal change enabling it in England. A ‘shadow’ franchise would (in the first instance) significantly reduce franchising transitional costs by skipping a competitive procurement process, as it would automatically ‘convert’ existing commercial operators into franchise contractors. The network would continue to operate ‘as normal’ (albeit with the LTA assuming a regulatory enforcement role).

Although this experimental approach is not yet technically provided for, a key benefit would be that it offers existing commercial operators a ‘reprieve’: they would no longer risk losing their contracts and services to a rival bidder and would have time to become accustomed to working within a franchise framework and to demonstrate their suitability as a contractor going forward. This would be of particular benefit to small and medium enterprises (SMEs), which may not have the capacity or ability to have staff practiced in procurement at this scale. In Manchester, most of the route tenders went to international firms with staff experienced in tendering, despite an aspiration to engage local and regional SMEs in the heart of the Manchester Bee Network, and potentially a system such as this may have helped SMEs get used to franchising.

Once the initial term of the ‘shadow’ franchise is completed, all contracts would be subject to a normal competitive tendering process, wherein new entrants would have the opportunity to bid. It would also give the LTA time to assess its own commitments, ensuring that it has sufficient resources (and familiarity) to manage a full process in future.

Q20: Any other comments?

While accepting that the Government will set out its funding in its forthcoming Bill, EEH remains concerned about the resource and organisational challenges associated with delivering franchising.

The proposals set out by government tier additional cost upon additional cost upon the LTA at each stage of the franchising process for benefits that will only be realised in the longer term, if at all. Also, capacity and capability within DfT itself to support the LTAs through this process, will also need to be considered, as this will likely require extra support and staff, within the DfT, as well as possibly filling gaps within those LTA’s who currently do not have the experience themselves to take forward franchising, if they wish.

It remains unclear if the benefits of the franchising exercises undertaken in urban conurbations such as London and Manchester will equally apply or will accrue to more rural polycentric areas such as EEH region. With more than 35% of EEH population living in small market towns and their rural hinterlands, there are large parts of the region not served by rail, making journeys by bus the only viable public transport mode. This is a challenge for bus services in our rural areas, low population densities and longer distances between stops makes it more difficult to deliver bus services

commercially and this has been exacerbated by LTA - funded bus mileage being reduced over several years. We would of course support the governments focus on buses but are keen to reflect that franchising might not necessarily be deliverable for all the LTAs within the EEH region and that alternatives such as EPs should also receive an increase in support, powers and funding so they can also serve as a more effective route to better bus delivery.

EEH is also concerned that franchising may lead to market domination by large bus operating companies, as was the case in Manchester, and that contract award and delivery expenditure may increase as a consequence. Our suggestion of 'shadow franchising' in the previous point is a potential means of addressing this.

As is currently the case with the railways and TfL, where a franchise exists, it is necessary for the LTA to maintain the ability to step in as an 'operator of last resort' (ORL) in the event of a contract and/or service abruptly coming to an end. This may be because the operating company has ceased trading, or because it has seriously failed in its obligations under the contract, and the LTA is compelled to terminate the contract early. Both eventualities are significant strategic and operational risks; the former is a bigger risk, as it may happen unexpectedly; the latter is a more manageable risk, as the LTA can activate transitional contingencies which give notice of a termination and allow for the transfer of services, vehicles, and staff from one operator to another.

An OLR could be a government body associated with the LTA, another transport company, or a special purpose organisation. Whatever its form and structure, the OLR must be equipped to respond quickly and effectively whilst ensuring minimal disruption in terms of service delivery, staffing, ticketing, and maintenance. How such a body would be funded is not clear from the guidance, so further information would need to be made available to LTAs, so they consider it further, when make their franchising decisions.