

## BUS SERVICES (NO. 2) BILL

### Memorandum from the Department for Transport to the Delegated Powers and Regulatory Reform Committee

#### A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Bus Services (No. 2) Bill (“the Bill”). The Bill was introduced in the House of Lords on 17 December 2024. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.
2. The Bill contains **30 provisions** that include delegated powers, which are set out in **Annex A**. The Department has considered the use of the powers in the Bill as set out below and is satisfied that they are necessary and justified.

#### B. PURPOSE AND EFFECT OF THE BILL

3. The Bill delivers the Government’s manifesto commitment to reform bus services by providing new powers for local leaders, including allowing them to franchise bus services and lifting the ban on municipal ownership, so that local communities in England have greater control over bus routes and schedules and passengers access to better services.
4. The Bill simplifies the legal framework for public involvement in the provision of bus services, amongst other aims of protecting passengers from anti-social behaviour and violence, reducing fare evasion and expanding powers to local authorities in respect of bus funding.
5. The Bill includes provisions to:
  - a. **Accelerate the bus franchising process**
    - i. Simplifying and extending franchising powers to all local transport authorities (“LTAs”).
    - ii. Removing Secretary of State consent provisions.
    - iii. Clarifying the different ways areas and services can be specified in franchising schemes.
    - iv. Revising statutory timescales for implementing franchising.
    - v. Amending the variation requirements for franchising schemes to make the process simpler and easier to follow.
    - vi. Amending franchising scheme audit provisions.

- vii. Broadening the criteria that can be considered when granting service permits.
  - viii. Providing direct award of first franchising scheme contracts to incumbent operators, using net cost contracts.
- b. Improve enhanced partnerships and socially necessary services**
- i. Amending enhanced partnership legislation as result of learnings from the implementation of these.
  - ii. Providing greater protection for passengers against service cancellation
- c. Reduce the use of new, non-zero emission buses on English local bus routes**
- i. Powers to enable the Secretary of State to, from a specific date, restrict the ability for new, non-zero emission buses to be used on English local bus services (excluding London and franchised services).
- d. Bus registrations and data transparency**
- i. Amending existing powers to facilitate the provision of registration information and information akin to registration information consistently across different methods of bus service delivery, to ultimately facilitate bus service information to be recorded in a central database.
  - ii. Providing for greater data transparency on the operations of local bus services
- e. Support public ownership**
- i. Lifting the ban on LTAs establishing new local authority owned bus companies.
- f. Devolve funding further**
- i. Providing LTAs with the powers to design and pay grants to bus operating companies.
- g. Minimise fare evasion**
- i. Amending existing powers to provide LTAs with the ability to enforce against fare evasion.
- h. Improving accessible and inclusive travel**
- i. Powers for the Secretary of State to require mandatory training on responding to criminal offences affecting the personal safety of passengers and staff, and anti-social behaviour.
  - ii. Powers to tackle anti-social behaviour on buses and at bus stops/stations.

- iii. Powers to make statutory guidance for bus and coach stop and station safety and accessibility, and require LTAs, local traffic authorities and strategic highways companies in England to have regard to it.
  - iv. Requiring public service vehicle operators to check enhanced criminal record certificates for drivers of “closed” school transport services.
6. The Bill contains 31 clauses and 1 schedule.

## C. DELEGATED POWERS

7. To support these policy objectives, the legislation includes 30 legislative delegated powers. The Bill amends the existing framework which governs the provision of bus services, notably the Transport Act 2000. Parts of the framework will have to be adapted to ensure that the legislation remains fit for purpose and ensures flexibility for different LTAs who would be more appropriate to manage the specificity for the local area. This is the rationale for why delegated powers, subject to scrutiny, are required so local authorities have the powers they require to improve the bus network and provide accessible and safe travel.
8. The majority of the powers in the Bill also have precedents in similar legislation, where setting requirements through secondary legislation is a common approach. For the proposed powers in these areas, the technical level of detail is more appropriately dealt with through secondary legislation.
9. The delegated powers in the Bill fall into the following thematic categories.
- a. New regulation-making powers and powers to issue statutory guidance.
  - b. Provisions which modify, or are based upon, existing delegated powers.
  - c. A power to make consequential amendments to primary legislation.
  - d. Powers for other persons or bodies.
  - e. Powers to make consequential amendments, transitional or saving provisions, and provisions relating to commencement.
10. The delegated powers in the Bill can be grouped between the different sections of the Bill and can be summarised as follows:
- a. **The delegated powers that follow well-established precedent for bus related legislation.** Many of the existing provisions for the operation of bus services are set out in the Transport Act 1985 and, subsequently, the Transport Act 2000, which the Bill seeks to further amend. Examples of this are powers relating to the bus registration system which requires certain operators of local bus services to provide specific data to the Traffic Commissioner. Moreover, for provisions such as creating byelaws to tackle anti-social behaviour, technical details are best suited to secondary legislation. The Department has ensured that these powers are comparable in scope to the powers readily available for other transport modes.

- b. **Delegated powers that are necessary to ensure the legislation remains fit for purpose.** An example of this is the power that places a requirement on the Secretary of State to set requirements for reporting on staff training, where data standards and reporting periods may need to adapt to policy and technological changes.
11. The Bill also contains standard powers in respect of commencement and transitional or saving provision. A full summary is at **Annex A**.
  12. The Bill drafting has been supported by engagement with stakeholders, which has ensured that the powers in the Bill have been sufficiently developed, with significant detail already included on the face of the Bill.

### Henry VIII powers

13. The Bill contains one power to amend primary legislation through secondary legislation (so-called “Henry VIII powers”).
14. Clause 28 confers a power on the Secretary of State to make consequential provision for the purposes of the Bill. Such provision may include repealing, revoking or otherwise amending primary and secondary legislation.
15. The powers conferred by this clause are wide, but they are limited by the fact that any amendments made under the regulation-making power must be genuinely consequential on provisions made by or under the Bill.

### Persons and bodies within the DPM/Abbreviations

16. This memo refers to a number of persons and bodies. These are:
  - a. The “Secretary of State”: This refers to the Secretary of State for the Department for Transport.
  - b. “Local Transport Authorities (LTAs)”: This refers to:
    - i. a county council in England,
    - ii. a council of a non-metropolitan district in England comprised in an area for which there is no county council,
    - iii. an Integrated Transport Authority for an integrated transport area in England,
    - iv. a combined authority, or
    - v. a combined county authority established under section 9(1) of the Levelling-up and Regeneration Act 2023

### Analysis of delegated powers by clause

17. The Bill confers delegated powers on the Secretary of State and the appropriate LTAs/local authorities. The powers are required primarily to ensure that our legal

framework for bus services will continue to be fit for purpose in the long term, by providing some flexibility to local areas and their leaders, as well as accommodate future changes in evidence, approaches, policymaking, or other factors which are not predictable at this time.

## **Franchising schemes: non-franchised services**

### **Clause 7 – Registration of services provided under service permits**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

#### Context and Purpose

18. Clause 7 of the Bill amends sections 123J and 123P of the Transport Act 2000 to change the default position for registration of services operating under service permits within a franchised area. Previously, section 123J(2) disapplied the registration requirements in sections 6 to 9 of the Transport Act 1985 in relation to these services. Subclauses 7(1)-(3) re-apply the registration requirements to the services, meaning that their operators will have to have their particulars registered with the traffic commissioner. The clause also inserts a new section 123PA into the TA 2000, conferring power on the franchising authority to exempt services or classes of services provided under service permits from the registration requirements (see subclause 7(4)).
19. Existing section 123V of the Transport Act 2000 provides that the Secretary of State may, by regulations, make transitional provision in connection with various matters related to franchising schemes. The matters are set out in section 123V(1) and include, relevantly, the disapplication from the registration requirements in section 123J of the Transport Act 2000.
20. Subclause 7(5) of the Bill amends existing section 123V(1) to add a new matter in a new subsection (ba), “the application of section 123PA in relation to services or classes of services ...”. This will allow the Secretary of State to make transitional provision in connection with the new power in section 123PA for franchising authorities to exempt services provided under service permits from the registration requirements.

#### Justification for taking the power

21. The amendment to existing section 123V(1) is necessary to ensure that the existing power to make transitional provision in that section applies in relation to the new exemption power in section 123PA. As transitional provision in relation to registration requirements in franchising scheme areas is currently made by regulations under section 123V(1), we think it is logical take the same approach for this new power. Transitional provision in connection with exemptions from the registration requirements is likely to be detailed and technical and most appropriately dealt with in regulations.

#### Justification for the procedure

22. Section 160(2) of the Transport Act 2000 makes the negative procedure the default procedure for regulations in Part 2 of the Act, where new section 123V(1)(ba) will be inserted. The negative resolution procedure is considered to provide the appropriate level of scrutiny given the power is technical in nature.

### **Franchising schemes: procedure**

#### **Clause 9 – Report on assessment of proposed scheme**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

#### Context and Purpose

23. Once amended, section 123D of the Transport Act 2000 will require the authority to obtain a report from an independent Approved Person (rather than specifically an “auditor”) on its assessment of its proposed franchising scheme if they wish to proceed with the proposed scheme. The Approved Person must prepare a report that must include, under s.123D(2), the Approved Person’s opinion of whether the information relied on by the franchising authority, when determining whether it can afford the proposed franchising scheme and whether the scheme represents value for money, is of sufficient quality and whether the analysis of that information is of sufficient quality.

24. The Bill gives the Secretary of State a power to make regulations to specify approved persons, including by description. This power is intended to be exercised by reference to the qualifications or experience, in the absence of a prescribed qualification, that would permit a person to be an Approved Person.

#### Justification for taking the power

25. The power is required in order to set out (categories of) persons permitted to prepare reports including by reference to prescribed qualifications and, potentially, alternative experience, and to update these over time, to provide further flexibility and reduce costs to the franchising authority. We intend that auditors (as currently defined in section 123D(8)) will be a category of Approved Persons under the regulations.
26. The instrument will define the qualifications required by an Approved Person, and thus need to be flexible to respond to changes in the sector and qualifications.

#### Justification for the procedure

27. Section 160(2) of the Transport Act 2000 makes the negative procedure the default procedure for regulations in Part 2 of the Act, where this new provision will be inserted. The negative resolution procedure is considered to provide the appropriate level of scrutiny given the power is technical in nature.

### **Clause 9 – Report on assessment of proposed scheme**

Power conferred on: Secretary of State

Power exercised by: Statutory Guidance

Parliamentary procedure: None

#### Context and Purpose

28. The existing guidance power in section 123D(3) is being amended to require the Secretary of State to issue guidance as to when it is appropriate to appoint the Approved Person. This is because current section 123D(1) sets up a sequential process where an auditor cannot be appointed until the franchising authority's assessment is completed. This sequencing is being removed by the primary legislation and the purpose of this guidance power is to assist LTAs at this stage of the process. The guidance power is also being expanded to address the question of the independence of an Approved Person, building on the existing requirement to issue guidance on matters to be taken into account when selecting an auditor (which will become "Approved Person").

#### Justification for taking the power

29. Statutory guidance will allow for flexibility in determining the approach to supporting LTAs and approved persons to ensure that the report adds value, is appropriately robust and independent, and is less likely to cause unnecessary delays to the franchising process. We intend to clarify in guidance that an Approved Person

can be contracted at an earlier point in the franchising process in order that they might provide feedback on an authority's assessment during its production, in order to reduce the risk of abortive work and delays.

30. Due to the technical nature of such guidance, and the need for flexibility, the Department judges it appropriate to not to set out the particulars on the face of the Bill.

#### Justification for the procedure

31. Any guidance issued under this power will not be subject to any parliamentary procedure. This is consistent with similar guidance making powers that appear in other parts of Part II of the Transport Act 2000. For example, see section 123W of the Transport Act 2000. It will deal with practical advice to franchising authorities about various matters surrounding the appointment of an Approved Person. Although the franchising authority must have regard to any guidance issued, and the Approved Person is required to specify in the report that the franchising authority has had due regard to the guidance, there will be no statutory duty for persons to abide by the guidance – the aim is to assist the franchising authority, not to direct it.

### **Local government functions**

#### **Clause 16 – Grants**

Power conferred on: Secretary of State

Power exercised by: Statutory Guidance

Parliamentary procedure: None

#### Context and Purpose

32. The Government pledged to empower local transport authorities and reform funding by giving local leaders more control and flexibility over bus funding and allowing them to plan ahead to deliver their local transport priorities. Granting powers to design and pay bus grants helps deliver on these ambitions.
33. Section 154 of Transport Act 2000 allows the Secretary of State to design and pay grants to operators of eligible bus services towards their costs in operating those services (a bus grant). These bus grants are made with the approval of His Majesty's



Treasury and are for “eligible bus services” as prescribed in The Bus Service Operators Grant (England) Regulations 2002.

34. Clause 16 inserts the new section 154A into the Transport Act 2000 which confers on LTAs the power to make grants to operators of local bus services and to set the criteria for eligibility, and terms and conditions of those grants. LTAs will not require consent from HM Treasury to design or pay their bus grants, nor will they be obliged to follow regulations relating to bus grants set out by the Secretary of State for Transport.
35. Inserted section 154A(6) confers on the Secretary of State for Transport a delegated power to issue guidance as to the exercising of the grant payment and design powers by LTAs.

#### Justification for taking the power

36. While local leaders will have the flexibility to determine the correct manner and rate for bus grants, there is a need to set outcomes and reporting requirements for locally designed bus grants, such that they align with the Government’s strategic aims, or to outline reporting requirements to gather data on the local bus grants.
37. Providing for this in statutory guidance provides flexibility to respond to policy changes and government objectives over time. We adjudge that the text on the face of the legislation, which details a non-exhaustive list of outcomes and considerations the statutory guidance could include if issued, provides Parliament with sufficient scrutiny. In addition, there is a need to set out factors LTAs should consider ensuring they comply with the relevant subsidy control and competition requirements and to ensure compliance with certain international obligations. Due to the technical nature of such guidance, the Department judges it appropriate to not include this detail on the face of the Bill.

#### Justification for the procedure

38. Any guidance issued under this power will not be subject to any parliamentary procedure. This is consistent with similar guidance making powers that appear in other parts of Part II of the Transport Act 2000. See, for example, section 123W or 138R of the Transport Act 2000. It will deal with practical advice to relevant authorities about how to design bus grants and will aim to encourage alignment with the Government’s strategic aims. Although LTAs must have regard to any guidance issued, there will be no statutory duty for persons to abide by the guidance – the aim is to assist LTAs, not to direct them.

### **Information about local services**

## **Clause 17, subsection (2)(a)(i) – power to make regulations enabling the provision of registration information to the Secretary of State**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

### Context and Purpose

39. Currently, applications for the registration of a local bus service by an operator, as well as its variation and cancellation, are made to the Traffic Commissioner under section 6 of the Transport Act 1985 (amongst other provisions in Part 1 of that Act and its accompanying regulations). A new power is required so that this information can be provided to additional persons in order to fulfil the Department's objective to create a central database that holds registration information for the public to be able to view. Our current intention is for the database to be hosted by the Department, and so a power is required to enable registration information to be provided to the Secretary of State, as well as the Traffic Commissioner.
40. Therefore, clause 17(2)(a)(i) introduces new section 6(9)(da) of the Transport Act 1985. This enables regulations to be made so that registration information can be provided to prescribed persons.
41. Two of the three remaining provisions in clause 17(2)(a) restate the current powers in relation to England (section 6(9)(e)(ii)) and in relation to Wales (section 6(9)(ea)). The amendment at section 6(9)(e)(i) is explained separately below.

### Justification for taking the power

42. The Department intends to exercise this power so that the Traffic Commissioner (who, is responsible for registering bus services under section 6 of the Transport Act 1985, and accordingly already receives this information) and the Secretary of State are prescribed persons. This is the first legislative step required in order to meet the ambition of creating one database that hosts all registration information and bus open data information (under section 141A of the Transport Act 2000) and which is accessible by the Secretary of State as well as the Traffic Commissioner. The power therefore enables appropriate information flows, as the intention is for the new database to be hosted by the Department.
43. Creating a power to make regulations prescribing to whom registration information can be provided also gives the Department flexibility with regards to the ownership of the database. While we currently intend for the database to be hosted by the

Department, the development of the database has not yet begun and so this power enables us to prescribe a different entity if needed. This power also provides flexibility for the future, in case ownership of the database needs to change at any point once it is created.

#### Justification for the procedure

44. Section 135(3) of the Transport Act 1985 makes the negative procedure the default procedure for regulations in the Transport Act 1985, including under section 6. The negative resolution procedure is considered to provide the appropriate level of scrutiny given that the power relates to information-related matters that are technical in nature.

#### **Clause 17, subsection (2)(a)(i) – power to make regulations enabling the provision of information to the Secretary of State where a traffic commissioner has the power to refuse to accept an application for registration, variation or cancellation**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

#### Context and Purpose

45. Currently, section 6(9)(e) of the Transport Act 1985 allows for regulations that provide that the Traffic Commissioner can refuse to accept an application for the registration, variation or cancellation of a local bus service by an applicant (i.e. an operator), unless the operator gives to the Traffic Commissioner such information as the Traffic Commissioner may reasonably require in connection with the application. Clause 17(2)(a)(i) introduces new section 6(9)(e)(i), which is a regulation-making power to allow the Traffic Commissioner to not accept the application unless the operator gives that information to prescribed persons.
46. The purpose is so that regulations can be made to prescribe the persons to whom the applicant has to give the information that is reasonably required by the Traffic Commissioner.
47. This is required so that this information can be provided to additional persons in order to fulfil the Department's objective to create a central database that holds registration information for the public to be able to view. We currently expect the database to be hosted by the Department, , meaning that the prescribed persons would be the Secretary of State, as well as the Traffic Commissioner.

### Justification for taking the power

48. The Department intends to exercise this power so that the Traffic Commissioner (who, is responsible for registering bus services under section 6 of the Transport Act 1985, and accordingly already receives this information) and the Secretary of State are prescribed persons. This would enable the Traffic Commissioner to require the information to be provided via the database that hosts this information, given the intention for the new database to be hosted by the Department. The justification is therefore to meet the ambition to create one database that hosts all registration information and bus open data information (under section 141A of the Transport Act 2000) and which is accessible by the Secretary of State as well as the Traffic Commissioner. The power therefore enables appropriate information flows, as the intention is for the new database to be hosted by the Department.

### Justification for the procedure

49. Section 135(3) of the Transport Act 1985 makes the negative procedure the default procedure for regulations in the Transport Act 1985, including under section 6. The negative resolution procedure is considered to provide the appropriate level of scrutiny given that the power relates to information-related matters that are technical in nature.

### **Clause 17, subsection (2)(a)(ii) – power to make regulations relating to the provision of records to a traffic commissioner about the operation of a service**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

### Context and Purpose

50. Section 6(9)(j) of the Transport Act 1985 comprises a power to make regulations requiring an operator, who is required to keep records under regulations made under section 6(9)(i), to make those records available to the Traffic Commissioner. Given the ambition to create a central database, it is appropriate to extend this power to require operators to provide this information to prescribed persons. This is achieved by the amendments in clause 17(2)(a)(ii) to section 6(9)(j) of the Transport Act 1985, in respect of England only.

51. These amendments to the vires in section 6(9)(j) ensure that, in line with the current intention for the central database to be hosted by the Department, regulations can be made that require these records to be provided to the Traffic Commissioner and (if the database is hosted by the Department) to the Secretary of State.

#### Justification for taking the power

52. This power will enable the Department to make regulations that ensure an appropriate flow of information can take place under section 6(9)(i). The amendments do not amend section 6(9)(i) itself, in order to preserve the powers of the Traffic Commissioner to require that records are kept. Instead, the power would ensure that the information can be provided to prescribed persons for the purposes of a central database, which is currently intended to be hosted by the Department.. The power is therefore intended to be exercised in order to prescribe the Traffic Commissioner (which would maintain the status quo in section 6(9)(j)) and the Secretary of State as prescribed persons. The justification is therefore to meet the ambition to create one database that hosts all relevant registration information, and which is accessible by the Secretary of State as well as the Traffic Commissioner.

#### Justification for taking the procedure

53. Section 135(3) of the Transport Act 1985 makes the negative procedure the default procedure for regulations in the Transport Act 1985, including under section 6. The negative resolution procedure is considered to provide the appropriate level of scrutiny given that the power relates to matters that are technical in nature.

### **Clause 17, subsection (2)(a)(iii) – power to make regulations about the use and disclosure to enable publication of information received under section 6 of the Transport Act 1985**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

#### Context and Purpose

54. Previous entries explain that the Secretary of State is taking a power under clause 17(2)(a)(i) (comprising new section 6(9)(da) of the Transport Act 1985) to make regulations prescribing persons to whom registration information should be provided, and it is intended that these persons will be the Secretary of State and the Traffic Commissioner.

55. There is currently no power which enables the relevant prescribed persons (who we expect will be the Traffic Commissioner and the Secretary of State) to publish the information we will require operators to provide under the new section 6(9)(da). Accordingly, clause 17(2)(a)(iii) inserts a new power into the Transport Act 1985 (new section 6(9)(kb)) which allows the Secretary of State to make regulations as to the use and disclosure of information received under section 6.
56. The purpose of this power, therefore, is to ensure that the Secretary of State (or the relevant prescribed persons) can publish information received under section 6 of the Transport Act 1985 on the database, which will be made accessible to the public.

#### Justification for taking the power

57. This power is aimed at ensuring that information which is provided under section 6(9)(da), can be published on the new database. This will ensure that information which is gathered using the powers under section 6 of the Transport Act 1985 can be made available to the public. This would fulfil the Department's aim to enable greater transparency about the registration of local services.
58. The terms of the power are based on the equivalent power in section 141A of the Transport Act 2000, which relates to the provision to the Secretary of State of bus open data and under which regulations have been made that make this data publicly and electronically accessible. The Department has the same ambition for registration data under section 6 of the Transport Act 1985, and would therefore justify the terms of the power on the basis of parity between registration and service information. Taking this power in equivalent terms to that under section 141A should also enable the Department to make data available to the public in the same way.

#### Justification for taking the procedure

59. Section 135(3) of the Transport Act 1985 makes the negative procedure the default procedure for regulations in the Transport Act 1985, including under section 6. The negative resolution procedure is considered to provide the appropriate level of scrutiny given that the power relates to information-related matters that are technical in nature.

#### **Clause 17, subsection (2)(b) – power to make regulations on the manner and form in which information under section 6 of the Transport Act 1985 is to be provided**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

### Context and Purpose

60. Currently, bus operators can make paper-based or electronic applications to the Traffic Commissioner to register, vary and cancel the registration of their bus services. The part-paper-based provision of registration information contributes to fragmentation of registration information. We would like to require operators and/or local authorities to apply to register, vary and cancel registrations by electronic means only, to make this more efficient, but the existing vires in section 6 of the Transport Act 1985 does not provide sufficient scope to make regulations that set out the manner in which information is to be provided.
61. Therefore, the provision in new section 6(12) of the Transport Act 1985 (introduced by clause 17(2)(b)) amends the relevant vires to enable the Secretary of State to make regulations to provide for the manner or form in which information required under section 6 of the Transport Act 1985 can be provided. This mirrors the power available in respect of bus open data under section 141A of the Transport Act 2000.

### Justification for taking the power

62. This power is aimed at reducing the fragmentation of registration information collected by the Traffic Commissioner and streamlining the application process to a digital one, with the ultimate aim of supporting more efficient management of bus services.

### Justification for taking the procedure

63. Section 135(3) of the Transport Act 1985 makes the negative procedure the default procedure for regulations in the Transport Act 1985, including under section 6. The negative resolution procedure is considered to provide the appropriate level of scrutiny given that the power relates to information-related matters that are technical in nature.

**Clause 17, subsection (3)(a) – power to make regulations to prescribe persons to whom registration information from LTAs in Enhanced Partnership areas with delegated registration functions is to be provided**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

## Context and Purpose

64. Operators are obliged to register their local bus services with the Traffic Commissioner under s.6 of the Transport Act 1985. In Enhanced Partnership areas, the Traffic Commissioner's functions are delegated to the LTA mandatorily in some circumstances; otherwise, authorities can request delegation and the Traffic Commissioner must accept the request. Without delegation, registration functions remain with the Traffic Commissioner.
65. For those Enhanced Partnership areas where registration functions have been delegated to the LTA, there is currently no obligation to pass registration information to the Traffic Commissioner. This can affect the accuracy of the picture of bus services in such areas and have knock-on effects on the use of enforcement powers by the Traffic Commissioner, as well as for the Bus Open Data Service, which uses registration data as its source data.
66. Clause 17(3)(a) amends the existing regulation-making power in s.6I of the Transport Act 1985 so that where registration functions have been delegated to the LTA, details of registered services and any registrations that are varied or cancelled, must be provided to prescribed persons. The aim is to ensure that LTAs have to provide information to both the Traffic Commissioner and (in line with the intention for the Department to host a central database) the Secretary of State for provision to the central database. Regulations are intended to set out the technical details of data provision.

## Justification for taking the power

67. The Department intends to use this power to prescribe that this information is sent to the Traffic Commissioner and the Secretary of State, so that registration information can be provided to both parties and displayed on the database, which is currently intended to be hosted by the Department.
68. Due to the complexity of setting a data standard for registrations, and the need for such a standard to remain flexible to changes in technology and policy, the Department judges that it is best defined in secondary legislation. The regulations will specify matters such as the timeframes for data provision and the information required.

## Justification for the procedure

69. Section 135(3) of the Transport Act 1985 makes the negative procedure the default procedure for regulations in the Transport Act 1985, including under section 6. The negative resolution procedure is considered to provide the appropriate level of scrutiny given that the power relates to information-related matters that are technical in nature.



**Clause 17, subsection (3)(b) – power to make regulations in relation to the provision of registration information from LTAs in Enhanced Partnership areas with delegated registration functions**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

Context and Purpose

70. As explained in respect of clause 17(3)(a), the Secretary of State will have the power to make regulations to prescribe that information under section 6I of the Transport Act 1985 is to be provided to the Secretary of State as well as the Traffic Commissioner. Clause 17(3)(b) amends the existing regulation-making power in current section 6I(7)(b) in order to cross-refer to the particulars to be supplied under section 6I(4), and introduces two new powers. The purpose of those new powers is to enable the Secretary of State to make regulations as to the manner and form in which the particulars are to be supplied, and as to the use and disclosure of the records kept and particulars supplied.

Justification for taking the power

71. The justification for this power to enable the electronic provision of this information from LTAs and to enable the Secretary of State to publish this information on the database. This is in keeping with the ambition to create one database that hosts all relevant registration information, which is expected to be hosted by the Department, and which is accessible by the Secretary of State as well as the Traffic Commissioner.

72. In order to remain flexible to changes in technology and policy, the Department judges that it is best defined in secondary legislation. The regulations will specify matters such as the timeframes for data provision and the information required.

Justification for the procedure

73. Section 135(3) of the Transport Act 1985 makes the negative procedure the default procedure for regulations in the Transport Act 1985, including under section 6. The negative resolution procedure is considered to provide the appropriate level of scrutiny given that the power relates to information-related matters that are technical in nature.

## **Clause 18, subsections (2), (3) and (4) – power to make regulations about the provision of information about local services**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

### Context and Purpose

74. As noted previously, Section 141A of the Transport Act 2000 sets out powers to require information about English bus services. This clause amends section 141A to provide for further types of information about local services and their operators to be provided to, and published by, the Secretary of State, by way of regulations.
75. Subsection 2 inserts a new purpose to section 141A(2), to allow the Secretary of State to require information in order to monitor the provision of relevant local services and to facilitate the exercise of functions by the Secretary of State.
76. Subsection (3) amends section 141A(3)(a) to insert a reference to passenger numbers and inserts new subsections 141A(3)(d)-(f), to set out new categories of information which may be prescribed under section 141A, including information about the operators of relevant local services and information about the vehicles that provide the services. These amendments are aimed at improving data transparency around bus operators and the vehicles they use to provide local services. They also assist a separate ambition to require LTAs in franchise areas to provide information akin to registration information; section 123J of the Transport Act 2000 exempts franchise areas from registration under section 6 of the Transport Act 1985, which has contributed to the fragmentation in data provision about bus services. The amendments in subsection (3) therefore allow the Secretary of State to make regulations to require such information from LTAs in franchise areas.
77. Subsection (4) amends section 141A(4) to provide that the existing reference to “the operation of the services” in section 141A(3)(c) includes information about the costs of operating the services and the number of staff engaged in their operation. These amendments are aimed at improving the transparency around bus operators’ performance.
78. The Department takes the view that it is in the public’s interest to have full transparency of the performance of operators of local services. In the Department’s view, providing transparency about the operations of an operator and key details such as the vehicles an operator uses, their features, and staffing levels will assist passengers in having trust in the service that is local to them, and in turn having confidence that if they choose to take the bus that it will meet their needs.

### Justification for taking the power

79. The Department is seeking to extend the existing regulation-making power in section 141A to enable the collection of more types of data, in furtherance of the overarching intention to enable data transparency about local services and their operators. This will empower passengers. The amendments are also aimed at meeting the ambition to create one database that hosts all relevant information about local services including franchise areas, again to empower passengers, and while keeping issues relating to franchising schemes outside the auspices of section 6 of the Transport Act 1985. The Department's view is that these are matters best defined in secondary legislation in order to remain flexible to changes in technology and the policy; equally, this mirrors how bus services provide their registration data (under regulations made under section 6 of the Transport Act 1985), which would enable the section 141A franchise regulations to track changes to the regime in regulations made under section 6.

### Justification for the procedure

80. Section 160(2) of the Transport Act 2000 makes the negative procedure the default procedure for regulations in Part 2 of the Act, where this new provision will be inserted. The negative resolution procedure is considered to provide the appropriate level of scrutiny given that this comprises an extension to an existing power and is consistent with the existing level of scrutiny of section 141A.

### **Clause 18, subsection (5) – power to make regulations so that information can be provided to the Traffic Commissioner**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

### Context and Purpose

81. There are also other duties upon operators and local transport authorities to provide information on an ongoing basis. This is known as BODS, or the Bus Open Data Service. This information is required by the Public Service Vehicles (Open Data) (England) Regulations 2020, made under section 141A of the Transport Act 2000.

82. The duty applies to a 'relevant local service' as defined in section 141A(12) and in the Regulations. At present, BODS data must be reported to the Secretary of State. The vires in section 141A is being amended so that the data can also be provided to the Traffic Commissioner.

#### Justification for taking the power

83. The Department is seeking to extend the existing regulation-making power in section 141A(8) to enable the Traffic Commissioner to receive the data, in furtherance of the overarching intention to enable both the Traffic Commissioner and the Secretary of State to have access to this information. This will empower traffic commissioners supporting more efficient management of bus services.

#### Justification for the procedure

84. Section 160(2) of the Transport Act 2000 makes the negative procedure the default procedure for regulations in Part 2 of the Act, where this new provision will be inserted. The negative resolution procedure is considered to provide the appropriate level of scrutiny given that this comprises of an extension to an existing power and is consistent with the existing level of scrutiny of section 141A.

## **Enforcement**

### **Clause 20 – Local transport authority inspectors**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

#### Context and Purpose

85. At present, the powers to handle fare evasion rest with bus operators, rather than with LTAs. In some cases, this means that bus operators are able to prosecute fare evasion, even though the franchising authority/LTA retains bus fares and thus takes the revenue risk.

86. Section 24 of the Public Passenger Vehicles Act 1981, ("the 1981 Act"), enables regulations to be made regarding the conduct of drivers, inspectors and conductors, and Section 25 of the Act enables regulations to be made regarding the conduct of passengers on public service vehicles.

87. The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 (“1990 Regulations”), made under the 1981 Act, contain measures to target fare evasion. These powers are conferred on drivers, conductors and ‘inspectors’.
88. Section 24(4) of the 1981 Act defines the role of ‘inspector’ as a person authorised to act as an inspector by the holder of the public service vehicle (“PSV”) operator’s licence under which the vehicle is being used.
89. The Bill will amend this definition of ‘inspector’ so that LTAs in England and TfL, as well as PSV operators, can authorise persons as ‘inspectors’. This will allow LTAs in England and TfL to authorise locally accredited enforcement officers to exercise the fare evasion-related powers in the 1990 Regulations.
90. Bus routes may not be confined to a single LTA’s/TfL’s area and may cross the boundaries between different LTA areas in England. To clarify how the powers of an LTA or TfL-authorized inspector will apply when bus services cross LTA or TfL boundaries, this clause inserts a new subsection 24(1A) into the 1981 Act. Inserted subsection 24(1A) provides that the existing regulation-making power in section 24(1)(b) of the 1981 Act extends to making provision about whether LTA and TfL-authorized inspectors can exercise their powers outside the authorising LTA or TfL’s area, or in relation to a local bus service which does not stop in the authorising LTA or TfL’s area.

#### Justification for taking the power

91. In the Department’s view, how LTA and TfL-authorized inspectors’ powers will apply across LTA/TfL area boundaries is a technical matter most appropriately dealt with in regulations. Requirements may need to change as local bus services develop and different provision may need to be made for different kinds of LTAs, TfL or different areas of England, depending on local circumstances.
92. Setting out these matters in regulations is also consistent with the existing approach to inspectors’ powers in the 1981 Act. As noted above, inspectors’ substantive powers, including those relating to fare evasion, are already set out in regulations made under sections 24 and 25 of the 1981 Act. It makes sense to deal with matters relating to the powers’ application in the same way.

#### Justification for the procedure

93. Regulations made under this power will be subject to the negative procedure, by virtue of section 61(1) of the 1981 Act. This is the procedure currently applicable to regulations made under section 24 of the 1981 Act and other regulation-making powers in the Act. On this basis, the Department considers it will provide the appropriate level of scrutiny.

## Clause 21 – Local transport authority byelaws

Power conferred on: Local Transport Authorities

Power exercised by: Byelaw

Parliamentary Procedure: None

### Context and Purpose

94. At present, there are no specific powers for LTAs to make byelaws dealing with anti-social behaviour (“ASB”) on bus networks. Certain LTAs may use the general byelaw power in section 235 of the Local Government Act 1972 to make byelaws of this nature, but this power is not available to all LTAs.
95. In contrast to the position for buses, local authorities have been conferred with specific powers to make byelaws addressing ASB on light rail networks and heavy rail operators also have equivalent byelaw powers in relation to their network.
96. This creates an inconsistency where, for example, some LTAs hold extensive powers to make byelaws for their light rail network, but do not have immediate powers to make equivalent byelaws for their bus networks.
97. Without access to byelaw powers, LTAs lack the tools they need to address new and evolving forms of ASB on their bus networks – for example, rowdy behaviour and vaping – in a timely way. This can have a negative impact on personal safety of staff and the public across bus networks, both on buses and at bus-related infrastructure (e.g. bus shelters), which may impact ridership.
98. Accordingly, this clause introduces specific powers for LTAs to make byelaws in relation to ASB, and specifically the matters specified in inserted new subsection 144A(2) of the Transport Act 2000. The byelaws may apply on buses (i.e. on the vehicles themselves), provided the bus is providing a service in the LTA’s area that is part of a franchising scheme or specified in an enhanced partnership. The byelaws may also apply at bus facilities in the LTA’s area, including bus stations and bus shelters.
99. The LTA can provide in the byelaws for breach of the byelaws to be an offence. The Bill also provides for certain enforcement powers to apply in relation to the byelaws. These include a fixed penalty scheme, which is available in relation to breaches of the byelaw and set out on the face of the Bill.

### Justification for taking the power

100. The Department considers it is appropriate for ASB on local bus networks to be dealt with in byelaws made by the relevant LTA. These kinds of local matters are commonly dealt with by way of local authority byelaws, including in section 235 of the Local Government Act 1972 and in the light and heavy rail byelaws mentioned above: see for example section 30 of the Greater Manchester (Light Rapid Transit System) Act 1988 and see also TfL's road transport premises byelaws, made under section 25 of the London Transport Act 1969. The intent is for LTAs to make byelaws which are tailored to their local area and its specific needs, and to be able to enforce these byelaws on a local level. General laws on the face of the Bill would not provide the flexibility necessary to accommodate each LTA's specific local requirements and policies regarding ASB.

101. The Department also considers that it is appropriate to allow LTAs to decide if individuals will be made subject to criminal penalties for breach of the byelaws or not, based on their local circumstances. The Bill sets out the maximum criminal penalty that can be made available for breach of the byelaws, in inserted new subsection 144A(3) of the Transport Act 2000. The enforcement powers that are available in relation to the byelaws are also set out on the face of the Bill, in inserted section 144D.

#### Justification for the procedure

102. The byelaws are not subject to any Parliamentary procedure. This is standard for local authority byelaws, which must ordinarily be confirmed by the Secretary of State before they can come into force: see e.g. section 236 of the Local Government Act 1972. In the Department's view, scrutiny by the Department and approval from the Secretary of State provides the appropriate degree of scrutiny for local authority byelaws regarding ASB on bus networks.

#### **Clause 21 – Local transport authority byelaws**

Power conferred on: Secretary of State

Power exercised by: Statutory guidance

Parliamentary Procedure: None

#### Context and Purpose

103. Inserted new section 144D(1)(a) of the Transport Act 2000 empowers an "authorised person" to issue a fixed penalty notice to a person where the authorised person has

reason to believe that the other person has committed an offence against byelaws made under inserted section 144A, or an offence under inserted section 144D(3) (failing to comply with a requirement to give a name and address or leave a vehicle or premises). Further details of the fixed penalty scheme are set out in inserted section 144E.

104. Inserted new section 144D(1)(b) of the Transport Act 2000 empowers an authorised person to require a person to give their name and address or leave a vehicle or premises where the byelaws apply, where the second person is suspected of committing an offence against the byelaws. The authorised person can use reasonable force to remove a person who does not comply with a requirement to leave (inserted section 144D(2)).

105. "Authorised person" is defined in section 144D(7) as a person authorised by a LTA (or LTAs) who have made byelaws under section 144A. The intention of the various enforcement powers in section 144D(1) is to assist LTAs in enforcing byelaws made under new section 144A.

106. The delegated power in inserted section 144D(4) allows the Secretary of State to issue statutory guidance about the exercise of the enforcement functions under inserted sections 144D and 144E. LTAs and authorised persons must have regard to guidance issued under section 144D(4).

#### Justification for taking the power

107. The delegated power will enable the Secretary of State to issue guidance about the appropriate and proportionate use of the enforcement powers in new section 144D(1). Guidance issued under the power may, for instance, give examples of circumstances where it would be appropriate to issue a fixed penalty notice, or explain how authorised persons should approach using the enforcement powers in relation to young people. In the Department's view, these are detailed matters best suited to statutory guidance rather than primary or delegated legislation. Guidance will allow the Secretary of State to set out examples and broad principles to follow, rather than prescriptive legal rules. All the relevant legal limitations and requirements are set out on the face of the Bill.

#### Justification for the procedure

108. Given the likely nature and content of the statutory guidance, and in particular the fact that it will not define or create new mandatory legal responsibilities, the Department does not consider it is necessary for the guidance to be subject to any parliamentary procedure. The Secretary of State must publish any guidance issued, varied or revoked under section 144D (section 144D(6)).



## **Safety and accessibility of stopping places**

### **Clause 22 – Safety and accessibility of stopping places**

Power conferred on: Secretary of State

Power exercised by: Statutory guidance

Parliamentary procedure: None

### **Context and Purpose**

109. The principles for this policy flow from the Government's ambition to increase accessibility for disabled passengers across transport, and to ensure all passengers can travel in safety.
110. There is currently no legislation or statutory guidance concerning the accessibility or wider inclusivity of bus and coach stations and stops, despite the essential role that they play in the journeys made by virtually every bus or coach passenger.
111. While there are various pieces of guidance covering the accessibility of aspects of bus stop design, such as Transport for London's accessible bus stop design guidance, and the Department for Transport's Inclusive Mobility guidance, there is no single, holistic set of recommendations concerning the accessibility and inclusivity of such infrastructure, nor any requirement to consider its application to individual installations.
112. The consequence is local authorities choosing which examples of good practice to follow when providing new or upgrading existing infrastructure, constraining their ability to achieve value for money, and resulting in a patchwork of provision for passengers. At its worst, poor accessibility can prevent disabled people from travelling at all, such as because wheelchair ramps or lifts cannot be deployed. Even where passengers are able to access services they may choose not to do so where infrastructure design fails to anticipate their accessibility or personal safety needs.

### **Justification for taking the power**

113. Clause 22(1) gives the Secretary of State power to give statutory guidance concerning the accessibility and personal safety aspects of stops and stations, and facilities in the vicinity of those stops and stations, serving local bus and coach services. Clause 22(3) gives the Secretary of State power to vary or revoke the guidance given under clause 22(1) at any time. LTAs, local traffic authorities and

strategic highways companies in England must have regard to the guidance. Local traffic authorities in relation to stopping places on roads in Greater London are excluded.

114. The Department intends to draft the guidance in such a way that it will only apply when infrastructure is being installed, upgraded or maintained, and will not in and of itself require the replacement of existing facilities. The statutory guidance is intended to support infrastructure providers to make design and maintenance decisions which support the creation of accessible and safe environments for people to access local bus and coach services, and will likely cover the location of facilities, access and egress from and to the local built environment, the design of waiting areas, the provision of information in accessible formats, and the interface with buses and coaches, amongst other relevant considerations.
115. The guidance will be developed through engagement and is intended to act as a single source of advice for infrastructure providers on providing facilities that people can and want to use. It is intended that this will reduce the incidence of costly retrospective refurbishments to achieve inclusivity goals and so improve value for money for infrastructure providers, and support passengers to travel when and where they want to, unlocking their access to education, employment and economic activity. This directly supports the Government's missions to break down barriers to opportunity and take back our streets.
116. The guidance is likely to be technical in nature and developed through research and stakeholder engagement. The exercise of this power is subject to consultation with the Disabled Persons Transport Advisory Committee. It is also important that its recommendations are sufficiently flexible to apply to infrastructure in a range of locations from busy city streets to remote rural villages, and to allow infrastructure providers to consider environmental, financial and other relevant factors when taking design decisions.
117. The Department considers it would be inappropriate to provide such detail on the face of the Bill, given the likely need to amend it over time and the Parliamentary time that would be required for even minor updates. We also consider that neither a detailed Bill clause nor Regulations would support the flexible approach sought to ensure recommendations are relevant to a range of situations across the country.
118. The Department therefore considers that statutory guidance is the most appropriate vehicle to support and steer infrastructure providers towards local service stop and station and facility designs and policies which promote inclusivity, whilst taking appropriate account of the circumstances in which they are developed and delivered.

#### Justification for the procedure

119. Given the likely nature and content of the statutory guidance, and in particular the fact that it will not define or create new mandatory legal responsibilities, the Department does not consider it is necessary for the guidance to be subject to any parliamentary procedure. In addition, before giving, revoking or substantially changing the guidance, the Secretary of State will be required to consult with the Disabled Persons Transport Advisory Committee.

## **Training of staff**

### **Clause 24 – Training about crime and anti-social behaviour**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative resolution

### **Context and Purpose**

120. There are currently no requirements for bus drivers or other relevant bus staff to be trained in relation to criminal offences that would cause a victim of the offence to fear for their personal safety, and anti-social behaviour.

121. Clause 24(2) of the Bill amends the Transport Act 2000 to introduce a new s.144F of that Act. That provision provides for a new training requirement that within the past 5 years, the holders of PSV licences are to ensure that relevant staff have undertaken training in relation to crime and anti-social behaviour (new s.144F(2)). New s.144F(3) sets out that the Secretary of State may, by regulations, require holders of PSV operators' licences to keep records relating to their compliance with those training requirements, publish required information in a time and manner to be determined in secondary legislation and to provide information to the Secretary of State relating to their compliance with the requirements. This is because the Department judges it necessary for PSV licence holders to provide evidence that required employees have been so trained.

### **Justification for taking the power**

122. The justification for taking the power is the desire to ensure those who have a PSV operator's licence comply with the training requirement. The expectation of a holder of a PSV operator's licence is set in the clause, and the requirement to keep and publish records is thought to be a sufficient method to encourage the licence holder to ensure the training is provided.

123. Care has been taken to ensure the delegated power is drawn so as to give sufficient certainty as to what the regulations may be expected to contain. For example, the requirements in the clause set out the expectations of licence holders.
124. The Department assesses that it is appropriate to take this power because requirements relating to what data should be reported to show compliance will need to be flexible to changes in policy, for example what information will be published, how and where it will be published and how often it will be published.
125. The power would also enable the Secretary of State to request information from carriers and terminal managing bodies. Such data may be required by the Secretary of State, such as for the accurate reporting of statistics, at a time that falls outside of the reporting requirements as outlined in the regulations. It will also enable the Secretary of State to take action in respect of any shortcomings in their compliance with the training, record-keeping or data publication requirement.

#### Justification for the procedure

126. Section 160(2) of the Transport Act 2000 makes the negative procedure the default procedure for regulations in Part 2 of the Act, where this new provision will be inserted. The negative resolution procedure is considered to provide the appropriate level of scrutiny given that the power relates detailed information-related matters that are technical in nature.

#### **Clause 24 – Training about crime and anti-social behaviour**

Power conferred on: Secretary of State

Power exercised by: Statutory Guidance

Parliamentary procedure: N/A

#### Context and Purpose

127. As mentioned above, there are currently no requirements for bus drivers or other relevant bus staff to be trained in relation to criminal offences that would cause a victim of the offence to fear for their personal safety, and anti-social behaviour.
128. The guidance power appears in new s.144F(4) of the Transport Act 2000. The power enables the Secretary of State to issue guidance about compliance with the requirements of new s.144F and of regulations made under it, as described in the power above. This relates to the training requirement as well as the record-keeping, data publication and provision of information requirement.

### Justification for taking the power

129. The statutory guidance will set out the Secretary of State's view of what the training ought to cover and who should be required to undertake the training. The content of the training and its nature is highly technical and thus not suitable for inclusion on the face of the Bill. The Department considers that setting out detailed provisions on the face of the Bill would not allow the flexibility needed or allow the Department to take account of lessons learnt, by adapting the standards as necessary over time in response to changes in the wider context or evolving behaviours, and to support continued safety improvements, where necessary. The Department also considers that guidance is an appropriate vehicle to give support to industry in complying with the record-keeping, data publication and provision of information requirement.

130. The Department intends to exercise this power in relation to, specifically, violence against women and girls and anti-social behaviour.

### Justification for the procedure

131. Any guidance issued under this power will not be subject to any parliamentary procedure. The Department believes this is appropriate because the guidance will deal with practical advice to holders of the PSV operator's licence on the training requirement (such as topics it should cover and the associated record-keeping and data publication requirements), advice which may need to be altered as circumstances (such as new or evolving threats to a person's personal safety) develop, including disseminating industry best practice.

### **Clause 26 – Training about disability: further provisions**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative resolution

### Context and Purpose

132. Paragraph 1A of Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 ("Regulation 181/2011"), as it has effect in UK law, requires that carriers and, where appropriate, terminal managing bodies, shall establish disability-related training procedures. This is to ensure that personnel, dealing both with the general public and specifically with

disabled persons, are trained to a certain level. Clause 25 will make amendments to Article 16 of Regulation 181/2011 to extend disability-related training to relevant staff and requires carriers and terminal managing bodies to ensure that the relevant staff have undertaken the training at least every 5 years (as opposed to the relevant staff only having to take the training once). These amendments apply only in respect of local bus services as defined in section 2 of the Transport Act 1985.

133. In furtherance of those amendments, clause 26(1) gives the Secretary of State powers to make regulations that require carriers and terminal managing bodies to keep records of their compliance with the requirements in Regulation 181/2011, to publish such information in a time and manner to be determined, and to provide information to the Secretary of State relating to their compliance with the requirements.

134. This will allow passengers to be able to transparently access such information, driving up standards in accessibility, holding carriers and terminal managing bodies to account, and giving confidence to travel on buses.

#### Justification for taking the power

135. The Department considers that setting out detailed provisions on the face of Bill would not allow the flexibility needed, such as to changes in policy on the types of records that carriers or terminal managing bodies will be asked to maintain, or the type of information they will be required to publish, and how often it will be published. Such flexibility would allow the Department to take account of lessons learnt in the continued drive to hold carriers and terminal managing bodies to account.

136. Care has been taken to ensure the delegated power is drawn so as to give sufficient certainty as to what the regulations may be expected to contain. For example, the requirements in the clause set out the expectations from carriers and terminal managing bodies.

137. The power would also enable the Secretary of State to request information from carriers and terminal managing bodies. Such data may be required by the Secretary of State, such as for the accurate reporting of statistics, at a time that falls outside of the reporting period as outlined in the guidance. It will also enable the Secretary of State to take action in respect of any shortcomings in their compliance with the training requirement or the record-keeping, data publication or provision of information requirement.

#### Justification for the procedure

138. Section 160(2) of the Transport Act 2000 makes the negative procedure the default procedure for regulations in Part 2 of the Act, where this new provision will be inserted. The negative resolution procedure is considered to provide the appropriate

level of scrutiny given that the power relates detailed information-related matters that are technical in nature.

### **Clause 26 – Training about disability: further provisions**

Power conferred on: Secretary of State

Power exercised by: Statutory Guidance

Parliamentary procedure: None

#### Context and Purpose

139. Clause 26(4) of the Bill provides that the Secretary of State may issue guidance about compliance with, firstly, the disability training requirements defined in clause 26(7)(c) by reference to the amendments made by clause 25, and secondly, regulations made under clause 26.

140. As mentioned, clause 25 will make amendments to Article 16 of Regulation 181/2011 to extend disability-related training to relevant staff and requires carriers and terminal managing bodies to ensure that the relevant staff have undertaken the training at least every 5 years (as opposed to the relevant staff only having to take the training once). These amendments apply only in respect of local bus services as defined in section 2 of the Transport Act 1985.

141. The power in clause 26(4) is therefore limited to the particular amendments made by clause 25, which are themselves in respect of local bus services.

#### Justification for taking the power

142. The expectation of carriers and terminal managing bodies is described in clause 25 and the regulation-making power above. Statutory guidance is considered necessary to provide industry with support regarding compliance with the requirements of both paragraph 1A of Article 16, Regulation 181/2011 and for the requirements set out in any regulations made under the power set out at 26(1), in relation to record-keeping, data publication and the provision of information.

143. Setting out compliance with the provisions is highly technical, and thus not suitable for inclusion on the face of the Bill. The Department also considers that setting out detailed provisions on the face of the Bill would not allow the flexibility needed or allow the Department to take account of lessons learnt, by adapting the standards as necessary over time to support operational good practice.

### Justification for the procedure

144. The Department considers that guidance is the most appropriate vehicle to set out expectations in relation to the publication of disability-related training data.

145. Any guidance issued under this power will not be subject to any parliamentary procedure. This is an appropriate level of scrutiny because the guidance will deal with practical advice on the disability training requirements, together with the associated record-keeping, data publication and the provision of information requirements made by regulations under this clause.

### **Zero emission vehicles**

**Clause 27 – Restriction on using non zero-emission vehicles for registered local services in England – power to specify the date after which a non-zero emission vehicle must have been first registered under the Vehicle and Registration Act 1994 in order to be caught by the restriction.**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative resolution procedure

### Context and Purpose

146. Clause 27 of the Bill will insert a new section 151A into the Transport Act 2000 which prohibits the use of “new” non-zero emission buses on registered local bus services in England (excluding London and franchised services).

147. The policy aim of only prohibiting the use of “new” non-zero emission buses is achieved under the new section 151A(2)(b), which provides that vehicles will only come within the scope of the prohibition if they are first registered under the Vehicle and Registration Act 1994 on or after a date specified in regulations. Subsection (4) of the new section 151A provides that the date specified cannot be before 1 January 2030.

148. Restricting the usage of new non-zero emission buses on English local bus routes would deliver significant environmental and air quality benefits contributing to the UK meeting its interim carbon budget and net-zero emissions targets, as required by the Climate Change Act 2008.



149. The measure will affect all bus services in England which are within the scope of section 6 of the Transport Act 1985, which sets out the mechanism for the registration of local bus services. This excludes local bus services in Scotland, Wales, Northern Ireland, London and franchised services.

150. In relation to cross border services, the restriction is intended to apply only to the part of a service operating in England.

#### Justification for taking the power

151. Not specifying in primary legislation the exact date after which vehicles must have been registered, to be caught by the restriction, ensures that the government has flexibility to adapt policy depending on changes in technology and market economics. The policy will provide certainty for manufacturers, bus operators and local transport authorities to begin transitioning their fleets away from non-zero emission buses. It will empower them to focus R&D and other activities on achieving zero emissions, thereby reducing the need for subsidy support by making zero emission buses cheaper and reducing operator running costs.

152. Setting the earliest possible date after which vehicles must have been registered to be caught by the restriction as 1 January 2030, will provide reassurance that there will be sufficient time to properly plan the transition.

#### Justification for the procedure

153. Section 160(2) of the Transport Act 2000 makes the negative procedure the default procedure for regulations in Part 2 of the Act, where this new provision will be inserted. The negative procedure is considered appropriate for this new power, given that the content of the regulations will be very limited (specifying the relevant date) and the primary legislation will require the date specified to be after 1 January 2030, giving those affected sufficient notice.

### **Clause 27 - Subsection (3)(a) of the new section 151A – power to specify documentation to determine what is included in a vehicle’s tailpipe emissions**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

#### Context and Purpose

154. As explained above, clause 27 will insert a new provision in the Transport Act 2000 which will prohibit the use of new non-zero emission buses on registered local bus services in England. The prohibition will apply to vehicles that emit tailpipe emissions. To provide certainty for operators of buses, and for the traffic commissioner in their enforcement of the restriction, the Department considers it necessary to provide the Secretary of State with the power to specify in regulations which documentation may be used to establish that a vehicle emits zero tailpipe emissions.

#### Justification for taking the power

155. To ensure that the ability to certify a vehicle as zero emission stays current as both policy and technology changes, the Department judges it appropriate to not include this on the face of the Bill and rather specify such documentation in secondary legislation.

#### Justification for the procedure

156. Section 160(2) of the Transport Act 2000 makes the negative procedure the default procedure for regulations in Part 2 of the Act, where this new provision will be inserted. The Department believes that given the limited and technical nature of the provision that is to be made under these regulations, the negative procedure will afford an appropriate level of scrutiny.

### **Clause 27 - Subsection (3)(b) of the new section 151A – power to make regulations to exempt vehicles of specified descriptions, from the restriction on using new non-zero emission buses on registered local bus services in England**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

#### Context and Purpose

157. There may be a need to exempt certain types of vehicles from the aforementioned restriction on using new, non-zero emission buses on registered local bus services in England. For example, exemptions may be needed where adequate zero-emission models are unavailable for particular types of service, and volumes are so low as to make investment in them unfeasible.

#### Justification for taking the power

158. If the government considers that the market for specific types or use cases of zero emission vehicles has not developed sufficiently by the time the measure takes effect, then the Secretary of State may consider exempting those types of vehicles to enable the relevant local services reliant on those vehicles to still run, provided there are no reasonable alternatives. The market for zero emission buses is developing quickly; it would be appropriate to make an assessment nearer to the time the restrictions will come into effect.

#### Justification for the procedure

159. Section 160(2) of the Transport Act 2000 makes the negative procedure the default procedure for regulations in Part 2 of the Act, where this new provision will be inserted. As these regulations are likely to be technical and limited in scope, the Department considers that the negative resolution procedure would be appropriate.

#### **Clause 27 - Subsection (3)(c) of the new section 151A – power to make regulations to exempt specified local services, or descriptions of local services, from the restriction on using new non-zero emission buses on registered local bus services in England**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

#### Context and Purpose

160. As for the above power, there may be a need to exempt certain services from the aforementioned restriction on using new non-zero emission buses on registered local bus services in England. For example, exemptions may be needed where particular types of service are unviable to operate with zero emission vehicles.

#### Justification for taking the power

161. As for the above power, there may be a need for the Secretary of State to exempt certain local services from the restriction set out in subsection 1 of the newly inserted Section 151A, if the market for specific types or use cases of zero emission vehicles has not developed sufficiently by the time the measure comes into force. This power would allow particular services to be run by vehicles that are not zero-emission vehicles, while not allowing those vehicles to operate all registered local services.

#### Justification for the procedure

162. Section 160(2) of the Transport Act 2000 makes the negative procedure the default procedure for regulations in Part 2 of the Act, where this new provision will be inserted. As these regulations are likely to be technical and limited in scope, the Department considers that the negative resolution procedure would be appropriate.

## **General**

### **Clause 28 – Power to make consequential provision**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Affirmative procedure if amending an Act otherwise negative procedure

### **Context and Purpose**

163. Clause 28 confers a power on the Secretary of State to make consequential provision for the purposes of the Bill. Such provision may include repealing, revoking or otherwise amending any provision made by or under an Act passed before this Bill or in the same Session.

### **Justification for taking the power**

164. The powers conferred by this clause are wide, but they are limited by the fact that any amendments made under the regulation-making power must be genuinely consequential on provisions made by or under the Bill. There is established precedents for such provisions, including section 23 of the Bus Services Act 2017.

165. The legislative framework for bus services is very complex. There are a number of Acts that the Bill is amending (including the Transport Act 1985, the Transport Act 2000, the Public Passenger Vehicles Act 1981 and the Bus Services Act 2017). We have identified all the changes to primary legislation that we believe are necessary to make the legislation work and have included them in the Bill. However, given the complexity of the existing legislation, there is a possibility that something important has been missed.

### **Justification for the procedure**

166. We understand the importance of proper Parliamentary scrutiny and we are proposing that any regulations made by the Secretary of State under this clause that amend or repeal primary legislation must be laid before and approved by a resolution of each House of Parliament. This follows the general principle that changes made to primary legislation by secondary legislation should be subject to the affirmative procedure, in order to provide an appropriate degree of Parliamentary scrutiny.

167. If regulations made under this power do not amend or repeal primary legislation, they will be subject to the negative resolution procedure. It is considered that this gives an adequate level of Parliamentary scrutiny as such regulations would only be making minor, necessary amendments to secondary legislation.

### **Clause 30 – Commencement and transitional provision - subsection 4(b) – power to make commencement regulations**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: N/A

#### Context and Purpose

168. Clause 30, subsection 4(b) contains a standard power for the Secretary of State to bring provisions of the Bill into force by commencement regulations.

#### Justification for taking the power

169. Leaving provisions in the Bill to be brought into force by regulations will afford the necessary flexibility to commence the provisions of the Bill at the appropriate time, having regard to the need to make any necessary secondary legislation, issue guidance, undertake appropriate training and put the necessary systems and procedures in place, as the case may be

#### Justification for the procedure

170. Consistent with common practice, commencement regulations under this clause are not subject to any parliamentary procedure. Parliament will have approved the principle of the provisions in the Bill by enacting them; commencement by regulation enables the provisions to be brought into force at the appropriate time.

## **Clause 30 – Commencement and transitional provision - subsection 5 – power to make transitional or saving provisions**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: N/A

### Context and Purpose

171. This is a standard power to make transitional or saving provision in connection with the coming into force of any provision of this Bill.

### Justification for taking the power

172. The power to make transitional or saving provision is often needed when bringing legislative provisions into force, for example in transitioning between two legislative regimes.

### Justification for the procedure

173. The procedure for this power is consistent with that for commencement regulations.

## **Schedule – Procedure for varying franchising scheme**

### **Schedule 9A, Paragraph 4 – Report on assessment**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative procedure

### Context and Purpose

174. The Schedule to the Bill inserts a new Schedule 9A into the Transport Act 2000. New Schedule 9A details the procedure for varying a franchising scheme. Different procedures apply for different kinds of variations, as set out in Parts 1, 2 and 3 of Schedule 9A. Part 1 of the Schedule sets out the procedure applicable to a variation of the scheme area specified under section 123H(2)(a) of the Transport Act 2000, where

the variation adds to the scheme area. This kind of variation may extend the scheme to a new area which was not previously covered by a franchising scheme. For that reason, the applicable variation procedure is closely modelled on the procedure for making a franchising scheme in the first place, in sections 123B-123H of the Transport Act 2000.

175. Paragraph 4 in Part 1 of new Schedule 9A mirrors the requirements in section 123D of the Transport Act 2000, as amended by clause 9 of the Bill. It requires the franchising authority or authorities to obtain a report on their assessment of the proposed variation from an independent approved person. Reflecting new subsection 123D(8), as substituted by subclause 9(7) of the Bill, paragraph 4(7) of new Schedule 9A gives the Secretary of State a power to make regulations specifying approved persons, including by description.

#### Justification for taking the power

176. Like the equivalent power in clause 9 of the Bill, the regulation-making power in paragraph 4 of Schedule 9A is required in order to set out (categories of) persons permitted to prepare reports on variations, including by reference to prescribed qualifications and, potentially, alternative experience, and to update these over time, to provide further flexibility and reduce costs to the franchising authority.

177. The instrument will define the qualifications required by an approved person, and thus need to be flexible to respond to changes in the sector and qualifications. Regulations made under this power are likely to be the same as those made under section 123D of the Transport Act 2000, as amended by clause 9(7) of the Bill.

#### Justification for the procedure

178. Section 160(2) of the Transport Act 2000 makes the negative procedure the default procedure for regulations in Part 2 of the Act. This will apply in relation to this regulation-making power in new Schedule 9A, which will be given effect by a new provision in Part 2 (see clause 10 of the Bill). Like for the equivalent power in clause 9, the negative resolution procedure is considered to provide the appropriate level of scrutiny for this power, given the power is technical in nature.

### **Schedule 9A, Paragraph 4 – Report on assessment**

Power conferred on: Secretary of State

Power exercised by: Statutory guidance

Parliamentary procedure: None

### Context and Purpose

179. Again, for consistency with section 123D of the Transport Act 2000, as amended by clause 9 of the Bill, paragraph 4(3) of new Schedule 9A sets out a power for the Secretary of State to issue statutory guidance. The statutory guidance must set out the time at which it is appropriate to appoint an approved person to produce a report on the assessment of the variation, and the matters to be taken into account by a franchising authority when selecting such a person, including for determining whether a person is independent. Guidance made under this power is likely to be the same as guidance issued under section 123D of the Transport Act 2000, as amended by clause 9(4) of the Bill.

### Justification for taking the power

180. Statutory guidance will allow flexibility in determining the approach to appointing approved persons to report on the assessment of a variation, ensuring that the report process adds value, is appropriately robust and independent, and is less likely to cause unnecessary delays to the variation process. Like for the equivalent power in clause 9 of the Bill discussed above, the technical nature of the guidance, and the need for flexibility, mean that, in the Department's view, it is appropriate not to include on the face of the Bill.

### Justification for the procedure

181. Any guidance issued under this power will not be subject to a parliamentary procedure. This is consistent with the equivalent guidance making powers in clause 9 of the Bill, discussed above, and similar guidance making powers in other parts of Part II of the Transport Act 2000 (see for example section 123W of the Transport Act 2000). Guidance issued under the power will provide practical advice to franchising authorities about various matters surrounding the appointment of an approved person. Although the franchising authority must have regard to any guidance issued, and the approved person is required to specify in the report that the franchising authority has had due regard to the guidance, there is no statutory duty for persons to abide by the guidance – the aim is to assist the franchising authority, not to direct it





## Annex A – Summary of delegated powers

Act/Clause	Power conferred	Parliamentary procedure
Clause 7 – Franchising schemes: non-franchised services – Registration of services provided under service permits	The Secretary of State will be given a power to make transitional provision in relation to the new power for franchising authorities to exempt services provided under service permits from the registration requirements in sections 6 to 9 of the Transport Act 1985.	The Statutory Instrument will be made by the negative procedure.
Clause 9 – Franchising schemes: Procedure - Report on assessment of proposed scheme	The Secretary of State will be given a power to describe an “approved person” to conduct a franchising report.	The Statutory Instrument will be made by the negative procedure.
	The Secretary of State will be given a power to publish statutory guidance on when it is appropriate to appoint the “approved person” on the question of the independence of an Approved Person. This builds on the existing requirement to issue guidance on matters to be taken into account when selecting an auditor (which will become “Approved Person).	N/A
Clause 16 – Local government functions – Grants	The Secretary of State will be given a power to publish statutory guidance for local authorities, who will need to have regard for certain reporting requirements and policy objectives.	N/A
Clause 17 – Information about local services - Information	The Secretary of State will be given a power to define prescribed persons to whom data on bus registrations and their variation,	The Statutory Instrument will be made by the negative procedure

provided on registration of local services	cancellation, etc. is provided, in addition to the Traffic Commissioner	
	The Secretary of State will be given a power to make regulations that enable the provision of information to the Secretary of State where the Traffic Commissioner has the power to refuse to accept an application for registration, variation or cancellation	The Statutory Instrument will be made by the negative procedure
	The Secretary of State will be given a power to make regulations relating to the provision of records to a Traffic Commissioner about the operation of a service	The Statutory Instrument will be made by the negative procedure
	The Secretary of State will be given a power to make regulations as to the use and disclosure of information received under section 6 of the Transport Act 1985.	The Statutory Instrument will be made by the negative procedure
	The Secretary of State will be given a power to make regulations to provide for the manner or means of form in which information required under section 6 of the Transport Act 1985 can be provided	The Statutory Instrument will be made by the negative procedure
	The Secretary of State will be given a power to, where registration functions have been delegated to the LTA in Enhanced Partnership areas, make regulations that enable details of registered services and any registrations that are varied or cancelled, to be provided to prescribed persons.	The Statutory Instrument will be made by the negative procedure

	<p>The Secretary of State will be given a power to, where registration functions have been delegated to the LTA in Enhanced Partnership areas, make regulations to provide for the manner and form in which particulars supplied under the above power are to be supplied, and to provide for the use and disclosure of records kept and particulars supplied under the above power.</p>	<p>The Statutory Instrument will be made by the negative procedure</p>
<p>Clause 18 – Information about local services</p>	<p>The Secretary of State will be given powers to make regulations to require bus operators to furnish certain types of bus service data to the Secretary of State and to require franchise areas to provide data akin to registration data to the Secretary of State</p>	<p>The Statutory Instrument will be made by the negative procedure</p>
	<p>The Secretary of State will be given a power to enable the Traffic Commissioner to receive the data currently provided only to the Secretary of State</p>	<p>The Statutory Instrument will be made by the negative procedure</p>

Clause 20 – Enforcement – Local transport authority inspectors	The Secretary of State will be given a power to make regulations to clarify how the powers of LTA-authorized inspectors will work across LTA boundaries.	The Statutory Instrument will be made by the negative procedure.
Clause 21 – Enforcement – Local transport authority byelaws	Byelaw making powers for LTAs to provide analogous powers to tackle anti-social behaviour on buses, as exist for rail.	N/A
	The Secretary of State will be given a power to publish statutory guidance about the exercise of enforcement functions and for authorised persons to have regard for it	N/A
Clause 22 – Safety and accessibility of stopping places – safety and accessibility of stopping places	The Secretary of State will be given a power to publish statutory guidance concerning bus and coach station and stop accessibility and personal safety, requiring specified organisations responsible for such infrastructure to have regard for it.	N/A
Clause 24 – Training of staff - Training about violence and anti-social behaviour	The Secretary of State will be given a power to publish statutory guidance about compliance with the obligations under new s.144F, which can include the content of the mandatory training, who should be required to undertake the training, and the record-keeping and data-publication requirements.	N/A
	The Secretary of State will be given a power to make regulations which requires holders of Public Service Vehicle operators' licences to keep records and publish data relating to their	The Statutory Instrument will be made by the negative procedure

	compliance with the training requirement, and to provide information to the Secretary of State on request.	
Clause 26 – Training of staff - Training about disability: further provisions	The Secretary of State will be given a power to publish statutory guidance about compliance with the new disability training obligations, which can include how and for which staff carriers and terminal managing bodies should establish disability-related training, and the record keeping and data publication requirements.	N/A
	The Secretary of State will be given a power to make regulations requiring carriers and terminal managing bodies to keep records of and publish data on their compliance with disability training, and to provide information to the Secretary of State on request.	The Statutory Instrument will be made by the negative procedure
Clause 27 – Zero-emission vehicles– Restriction on use of new, non-zero-emission vehicles for registered local services in England	The Secretary of State will be given a power to make regulations relating to the restriction on using new, non-zero emission buses on local bus services in England. The regulations will specify the date after which vehicles must have been first registered under the Vehicle and Registration Act 1994, in order to be subject to the restriction (such date not to be earlier than 1 January 2030)	The Statutory Instruments will be made by the negative procedure.
	The Secretary of State will be given a power to specify which documentation can be used establish a vehicle’s emissions.	The Statutory Instrument will be made by the negative procedure

	The Secretary of State will be given a power to make regulations to exempt vehicles of certain description from the restriction	The Statutory Instrument will be made by the negative procedure
	The Secretary of State will be given a power to make regulations to exempt certain local services or descriptions of local services from the restriction	The Statutory Instrument will be made by the negative procedure
Clause 28 – General - Power to make consequential provision	The Secretary of State will be given a power to make consequential provision for the purposes of the Bill. Such provision may include repealing, revoking or otherwise amending any provision made by or under an Act passed before this Bill or in the same Session.	The Statutory Instrument will be made by the affirmative procedure if it is amending an Act, otherwise the negative procedure will apply.
Clause 30 – General – Commencement and transitional provision	The Secretary of State will be given a power to bring relevant provisions of the Bill into force by commencement regulations.	N/A
	The Secretary of State will be given a power to make transitional or saving provision in connection with the coming into force of any provision of this Bill.	N/A
Schedule – Procedure for varying franchising scheme – report on assessment	The Secretary of State will be given a power to describe an “approved person” to conduct a report on an assessment of variation to a franchising scheme which adds to the scheme area.	The Statutory Instrument will be made by the negative procedure

	The Secretary of State will be given a power to publish statutory guidance on when it is appropriate to appoint an “approved person”.	N/A
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