STATUTORY INSTRUMENTS

2017 No. 1093

PUBLIC PASSENGER TRANSPORT, ENGLAND

The Franchising Schemes and Enhanced Partnership Schemes (Pension Protection) (England) Regulations 2017

Made - - - -	*20th November 2017*
Laid before Parliament	*27th November 2017*
Coming into force - -	*19th December 2017*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 123X(6) and (7)(e) and 138S(6) and (7)(e) of the Transport Act 2000(**1**).

The making of these Regulations fulfils the obligations imposed on the Secretary of State by sections 123X(9) and 138S(9) of the Transport Act 2000(**2**):

Citation and commencement

1.—(1) These Regulations may be cited as the Franchising Schemes and Enhanced Partnership Schemes (Pension Protection) (England) Regulations 2017.

(2) These Regulations come into force on 19th December 2017.

(3) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations—

"the 2000 Act" means the Transport Act 2000;

"relevant employee" means a transferring original employee who, as an employee of the original operator, had rights to acquire pension benefits(**3**); and

(**1**) 2000 c.38. Sections 123X and 138S were inserted into the Transport Act 2000 by sections 4 and 9 respectively of the Bus Services Act 2017 (c.21).

(**2**) These provisions require the Secretary of State to make regulations to ensure that pension protection is secured for transferring original employees (as defined in section 123X(10) and 138S(10) of the Transport Act 2000), and that such employees have the right to acquire pension benefits from the new employer which are the same, broadly comparable to, or better than those which they had with the original employer.

(**3**) The terms "original operator" and "transferring original employee" are defined in section 123X(10) and 138S(10) of the Transport Act 2000.

"scheme" means a franchising scheme or an enhanced partnership scheme(**4**).

Duties to secure pension protection

3.—(1) The duties prescribed in paragraph (2) apply to a local transport authority, or two or more such authorities acting jointly, which have made a scheme and which—

(a) enter into a local service contract(**5**) or, as the case may be, an awarded contract(**6**) with a person under the scheme; or

(b) enter into, in the circumstances described in section 123X(2) or, as the case may be, 138S(2) of the 2000 Act, any other agreement with a person for the provision of local services in the area to which the scheme relates.

(2) The authority or authorities must ensure that any contract or agreement entered into with a person in a situation described in paragraph (1) is made, in the event of there being any transferring employees(**7**), on terms—

(a) that require the person to secure pension protection(**8**) for every relevant employee;

(b) that, where there are relevant employees, require the person—

(i) to procure a pensions statement which satisfies the requirements prescribed in regulation 6; and

(ii) to provide every relevant employee with a copy of any part of the statement which relates to that employee; and

(c) that, so far as relating to—

(i) the requirement to secure pension protection described in sub-paragraph (a); and

(ii) the requirement to procure and provide the statement described in sub-paragraph (b),

are enforceable against the person by every relevant employee.

Rights to acquire pension benefits

4. For the purposes of section 123X(8)(b) and 138S(8)(b) of the 2000 Act (rights to acquire pension benefits), the rights to acquire pension benefits which a relevant employee must have as an employee of the new operator(**9**) are rights which—

(a) are the same as the rights the relevant employee had as an employee of the original operator; or

(b) count, by virtue of regulation 5, as being broadly comparable to, or better than, those rights.

Broadly comparable

5.—(1) For the purposes of regulation 4(b), the rights to acquire pension benefits, which a relevant employee must have as an employee of the new operator, count as being broadly comparable to, or better than, the rights which the employee had as an employee of the original operator—

(**4**) By virtue of section 162(1) of the Transport Act 2000 as amended by the Bus Services Act 2017, Schedule 2, paragraph 23(2) and Schedule 4, paragraph 8, the terms "franchising scheme" and "enhanced partnership scheme" are to be construed in accordance with section 123A(3) and 138A of that Act as inserted by the Bus Services Act 2017, sections 4 and 9 respectively.

(**5**) By virtue of section 162(1) of the Transport Act 2000 as amended by the Bus Services Act 2017, Schedule 2, paragraph 23(2), the term "local service contract" has the meaning given in section 123A(5) of that Act as inserted by the Bus Services Act 2017, section 4.

(**6**) The term "awarded contract" is defined in section 138S(11) of the Transport Act 2000.

(**7**) The term "transferring employee" is defined in section 123X(8)(a) and 138S(8)(a) of the Transport Act 2000.

(**8**) The term "pension protection" is defined in section 123X(8)(b) and 138S(8)(b) of the Transport Act 2000.

(**9**) The term "new operator" takes the meaning given in section 123X(1)(b) or 138S(1)(b) or, as the case may be, section 123X(2)(b) or 138S(2)(b), of the Transport Act 2000.