STATUTORY INSTRUMENTS

2017 No. 1092

PUBLIC PASSENGER TRANSPORT, ENGLAND

The Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) (England) Regulations 2017

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

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

Citation, commencement and application

1.—(1) These Regulations may be cited as the Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) (England) Regulations 2017.

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

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

Interpretation

2.—(1) In these Regulations—

"the 1985 Act" means the Transport Act 1985(**2**);

"the Act" means the Transport Act 2000;

"affected local services"—

(a) in relation to franchising schemes, means local services(**3**) which, on the coming into force of a local service contract, the relevant operator would be required by virtue of section 123J(3)(a) and (b) of the Act (prohibition on provision of local services other than under a franchising scheme) to cease providing; or

(**1**) 2000 c. 38. Sections 123X and 138S were inserted into the Transport Act 2000 by section 4 and section 9 respectively of the Bus Services Act 2017 (c. 21).
(**2**) 1985 c. 67.
(**3**) By virtue of section 162(3) of the Transport Act 2000, the term "local service" has the meaning given in section 2 of the Transport Act 1985.

(b) in relation to enhanced partnership schemes, means local services which, on the coming into force of an awarded contract, the relevant operator would be required by virtue of regulations made under section 6E(6) of the Transport Act 1985(**4**) to cease providing;

"authority" means a local transport authority(**5**);

"awarded contract" has the meaning given in section 138S(11)(**6**) of the Act;

"local service contract" has the meaning given in section 123A(5)(**7**) of the Act;

"personal data" means data which relate to a living individual who can be identified—

(a) from the data; or

(b) from the data and other information which is in the possession of, or is likely to come into the possession of, the local transport authority or authorities;

"principally connected" has the meaning determined under regulation 3;

"relevant employee" means an employee whose employment with a relevant operator is principally connected with the provision of affected local services;

"relevant information" has the meaning given in regulation 4;

"relevant operator" means an operator of affected local services;

"scheme" means a franchising scheme or an enhanced partnership scheme(**8**);

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006(**9**); and

"working time", in relation to an employee, means any period during which an employee is working at the disposal of the employee's employer and is carrying out the activities or duties assigned by the employer, but does not include any period during which the employee is receiving relevant training, and "relevant training" means any work experience or training for employment provided in accordance with a training course or programme.

(2) The following expressions have the meaning given in TUPE(**10**)—

(a) "assigned";

(b) "appropriate representatives"; and

(c) "employee".

(3) Any period of days prescribed in these Regulations is to be calculated by excluding any day which is Christmas Day, Good Friday, or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(**11**).

(**4**) Section 6E is inserted by the Bus Services Act 2017, section 12.
(**5**) By virtue of section 162(1) of the Transport Act 2000, the term "local transport authority" has the meaning given in section 108(4) of that Act. Section 108(4) is amended by: the Local Transport Act 2008 (c. 26), section 77(5) and Schedule 4, Part 3, paragraphs 41 and 42; the Local Democracy, Economic Development and Construction Act 2009 (c. 20), Schedule 6, paragraphs 95 and 96.
(**6**) Section 138S was inserted by the Bus Services Act 2017, section 9.
(**7**) Section 123A was inserted by the Bus Services Act 2017, section 4.
(**8**) 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" have the meaning given in sections 123A(3) and 138A of that Act respectively.
(**9**) S.I. 2006/246, amended by S.I. 2009/592.
(**10**) The terms "assigned" and "employee" are defined in regulation 2 of TUPE to which there are amendments not relevant to these Regulations. The definition of "appropriate representatives" is contained in regulation 13(3) of TUPE as substituted by S.I. 2014/16.
(**11**) 1971 c. 80.

Determination of "principally connected" persons

3.—(1) For the purposes of sections 123X(4) and (7)(a) and 138S(4) and (7)(a) of the Act (organised grouping), the determination as to whether a person's employment is "principally connected" with the provision of affected local services is to be made by agreement or, where there is no agreement, in accordance with paragraph (5).

(2) Where an authority, or authorities, make a franchising scheme under section 123H(**12**) or an enhanced partnership scheme under section 138G(**13**), they must issue a consultation notice to—

(a) operators of affected local services; and

(b) appropriate representatives of employees employed on those affected local services.

(3) Any notice issued for the purposes of paragraph (2) must set out—

(a) the proposed criteria for determining if a person's employment is principally connected, which may include particular individual roles;

(b) the consultation process and the agreement sought;

(c) the periods over which the consultation process will take place;

(d) the parties to be issued with a consultation notice; and

(e) what constitutes agreement between the parties.

(4) Once there is agreement between the parties for the purposes of paragraph (1), the authority, or authorities, which have made the scheme must notify the parties and publish the details of the agreement.

(5) If there is no agreement for the purposes of paragraph (1), a person's employment is treated as "principally connected" with the provision of affected local services if that person spends, on average, at least half of their working time—

(a) assigned to the provision of affected local services; or

(b) assigned to activities connected wholly or mainly to the provision of affected local services.

(6) In this regulation, "the parties" means—

(a) the authority or authorities that have made a franchising scheme or an enhanced partnership scheme;

(b) the operators of affected local services; and

(c) appropriate representatives of employees working on those affected local services.

Meaning of "relevant information"

4.—(1) For the purposes of these Regulations, "relevant information" means—

(a) relevant employee information; and

(b) information about the identity of appropriate representatives of relevant employees.

(2) For the purposes of this regulation "relevant employee information", in relation to a relevant employee, means—

(a) such of the particulars of employment that an employer is obliged to give to an employee by virtue of section 1 of the Employment Rights Act 1996(**14**),

(**12**) Section 123H was inserted by the Bus Services Act 2017, section 4.
(**13**) Section 138G was inserted by the Bus Services Act 2017, section 9.
(**14**) 1996 c. 18.

(b) such information about any collective agreements, as defined in section 178(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(**15**), in respect of a relevant employee,

(c) such information describing the affected local services with which a relevant employee's employment is principally connected, including the proportion of a relevant employee's working time assigned to those affected local services, and

(d) such other information,

as the authority or authorities making a request under regulation 5 consider necessary in order to enable any person considering entering into a local service contract, an awarded contract, or any other agreement for the provision of local services, to calculate the costs and liabilities likely to arise from the application of TUPE to such a contract or agreement.

Request for information

5.—(1) At any time after an authority or authorities have made a scheme under section 123H or 138G of the Act the authority or authorities may issue a request to a relevant operator for such relevant information about relevant employees as may be specified by the authority or authorities.

(2) A request made by virtue of paragraph (1)—

(a) must specify the date by which the relevant operator is to respond to the request, which must be not less than 21 days beginning with the date on which the request is issued;

(b) must contain sufficient information about the scheme to enable a relevant operator to determine which of their employees would be relevant employees for the purposes of that request;

(c) must only request such information as the authority or authorities consider necessary in order to carry out their functions in relation to the application of TUPE in connection with the scheme; and

(d) must not include a request for personal data, except to the extent that such a request is for information about the identity of appropriate representatives.

(3) If a relevant operator in receipt of a request for information made by virtue of paragraph (1) is of the opinion that the requirement specified in paragraph (2)(b) has not been satisfied, the relevant operator must—

(a) notify the authority or authorities of that opinion within 14 days of receipt of the request made by virtue of paragraph (1); and

(b) describe the information which, in the opinion of the relevant operator, is required in order to satisfy the requirement in paragraph (2)(b).

(4) If the authority or authorities receive a notice in accordance with paragraph (3)(a) the authority or authorities must—

(a) supply to the relevant operator such information as seems to the authority or authorities to be necessary, taking into account the description of information supplied in accordance with paragraph (3)(b), in order to enable the relevant operator to respond to the request made by virtue of paragraph (1); and

(b) specify a revised date by which the relevant operator is to respond to the request made by virtue of paragraph (1), which must be not less than 21 days beginning with the date on which the information described in sub-paragraph (a) is received by the relevant operator.

(5) If a request has been made by virtue of paragraph (1) and the authority or authorities no longer require information about relevant employees they must notify the relevant operator.

(**15**) 1992 c. 52.