

Date: 24 September 2021

Subject: Bus Reform: The Greater Manchester Franchising Scheme for Buses 2021 –Transfer of Undertakings (Protection of Employment) Regulations 2006 and Employee Related Information

Report of: Eamonn Boylan, Chief Executive Officer, GMCA & TfGM

PURPOSE OF REPORT

Following the making of the Greater Manchester Franchising Scheme for Buses 2021 by the Mayor on 30 March 2021 and the publication of the PIN/Qualification System Notice for the procurement of bus franchises in August 2021, this report sets out the processes to be followed when requesting employee related information and applying the Transfer of Undertakings (Protection of Employment) Regulations 2006 in a bus franchising context and makes recommendations for the delegation of certain connected functions to TfGM and the Chief Executive of the GMCA accordingly.

RECOMMENDATIONS:

The GMCA is requested to:

1. Note the contents of this report;
2. Delegate to TfGM the function of requesting relevant information from bus operators as set out in regulations 5 and 6 of the Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) (England) Regulations 2017 (the Regulations);

<u>BOLTON</u>	<u>MANCHESTER</u>	<u>ROCHDALE</u>	<u>STOCKPORT</u>	<u>TRAFFORD</u>
<u>BURY</u>	<u>OLDHAM</u>	<u>SALFORD</u>	<u>TAMESIDE</u>	<u>WIGAN</u>

3. Delegate to TfGM the function of undertaking any consultations as required by the Regulations;
4. Delegate to the Chief Executive of the GMCA the decision to approve any proposed definition of 'principally connected' at the end of the consultation; such approval to be obtained before notifying the parties and publishing the agreement;
5. Delegate to the Chief Executive of the GMCA the decision to approve the proposed allocation arrangements (including any revised allocation arrangements) at the end of the consultation; such approval to be obtained before notifying the parties and before the allocation arrangements are published (or finalised and published in the case of revised allocation arrangements).
6. In the event that agreement is reached as to the definition of 'principally connected', delegate the function of notifying the parties and publishing the agreed definition to TfGM.
7. Delegate to TfGM the function of notifying the parties and publishing the allocation arrangements and finalising and publishing any revised allocation arrangements.

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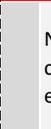
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Equalities Impact, Carbon and Sustainability Assessment:

Impacts Questionnaire		
Impact Indicator	Result	Justification/Mitigation
Equality and Inclusion	G	
Health	G	
Resilience and Adaptation		
Housing		
Economy	G	
Mobility and Connectivity		
Carbon, Nature and Environment		
Consumption and Production		
Contribution to achieving the GM Carbon Neutral 2038 target		
Further Assessment(s):	Equalities Impact Assessment	
	Positive impacts overall, whether long or short term.	 Mix of positive and negative impacts. Trade-offs to consider.
	Mostly negative, with at least one positive aspect. Trade-offs to consider.	 Negative impacts overall.

Carbon Assessment		
Overall Score	<input type="text"/>	
Buildings	Result	Justification/Mitigation
New Build residential	N/A	
Residential building(s) renovation/maintenance	N/A	
New Build Commercial/Industrial	N/A	
Transport		
Active travel and public transport	N/A	
Roads, Parking and Vehicle Access	N/A	
Access to amenities	N/A	
Vehicle procurement	N/A	
Land Use		
Land use	N/A	
 No associated carbon impacts expected.	 High standard in terms of practice and awareness on carbon.	 Mostly best practice with a good level of awareness on carbon.
 Partially meets best practice/ awareness, significant room to improve.	 Not best practice and/ or insufficient awareness of carbon impacts.	

Risk Management

Risks associated with this scheme are being captured and managed as part of the Bus Franchising programme.

Legal Considerations

The legal implications are set out in the report.

Financial Consequences – Revenue

The financial consequences (revenue) relating to this report are included in the background papers set out below.

Financial Consequences – Capital

There are no specific financial consequences (capital) relating to this report.

Number of attachments to the report: 0

Comments/recommendations from Overview & Scrutiny Committee

n/a

Background Papers

Report to GMCA titled Bus Reform: Consultation and the GMCA Response dated 23 March 2021

Decision of the Mayor 25th March 2021

Report to GMCA titled Bus Reform: The Greater Manchester Franchising Scheme for Buses 2021 - Implementation and Operation dated 28 May 2021

The Franchising Schemes and England Partnership Schemes (Application of TUPE) (England) Regulations 2017 : [The Franchising Schemes and Enhanced Partnership Schemes \(Application of TUPE\) \(England\) Regulations 2017 \(legislation.gov.uk\)](#)

The Bus Services Act 2017 Franchising Scheme Guidance: [The Bus Services Act 2017 franchising scheme guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/guidance/the-bus-services-act-2017-franchising-scheme-guidance)

Tracking/ Process

Does this report relate to a major strategic decision, as set out in the GMCA Constitution

No

Exemption from call in

Not exempt from call in.

GM Transport Committee

n/a

Overview and Scrutiny Committee

n/a

1. Background

- 1.1 As members are aware, the GMCA considered the TfGM report titled '*Bus Franchising in Greater Manchester March 2021: Consultation Report*' at its meeting on 23 March 2021 and recommended that the proposed franchising scheme be made by the Mayor.
- 1.2 On 25 March, the Mayor made the decision to make the proposed franchising scheme.
- 1.3 On 30 March the Mayor made the Greater Manchester Franchising Scheme for Buses 2021 (the Franchising Scheme) and the GMCA published its response to the consultation together with the Mayor's decision, as required by section 123G of the Transport Act 2000 (the Act) and (on behalf of the Mayor) the Franchising Scheme itself.
- 1.4 On 28 May the GMCA agreed to delegate certain functions to TfGM (relating, amongst other matters, to the procurement of local service contracts) to

enable TfGM to implement and operate the Franchising Scheme on the GMCA's behalf.

- 1.5 Subsequently, TfGM established a Passport System by which potential suppliers can pre-qualify so that they can bid for local service contracts and the related PIN/Qualification System Notice was published in August. Potential suppliers who have successfully obtained a Passport will qualify to participate in the subsequent stages of the procurement for bus franchise local service contracts.
- 1.6 In that regard, when TfGM is commencing a particular franchise competition on behalf of the GMCA it will issue a franchise Expression of Interest (EoI) to those who have met the criteria set out in the Passport Selection Questionnaire and successfully obtained Passport Holder status. Subsequently, the Invitation to Negotiate/Invitation to Tender (as the case may be) will be issued to Passport Holders who have been assessed as having met the requirements of the EoI.
- 1.7 Where bus franchising is introduced, there may be a need for staff to transfer to new operators who have won local service contracts to provide franchised bus services (or in some cases to GMCA/TfGM). This was considered by TfGM when preparing its assessment of a proposed bus franchising scheme (the Assessment) on behalf of GMCA. The Act makes specific provision for the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to apply to these situations. This report sets out the statutory processes to be followed when requesting employee related information and applying TUPE in a bus franchising context and makes recommendations for the delegation of certain connected functions to TfGM and the Chief Executive of the GMCA accordingly.

2. TUPE

- 2.1 The Act recognises that where bus franchising is introduced, there may be a need for staff to transfer to new operators who have won local service contracts to provide franchised bus services. In addition to this, the

Assessment noted that it would be likely that some staff would transfer to GMCA/TfGM to deliver roles which it would be responsible for undertaking as part of the Franchising Scheme. The Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) (England) Regulations 2017 (the Regulations) support the Act and (along with the statutory guidance issued under the Bus Services Act 2017 – *The Bus Services Act 2017 Franchising Scheme Guidance* (the Guidance)) sets out further detail regarding the processes to be followed when applying TUPE in this context.

2.2 The Guidance summarises the process regarding TUPE as follows. The franchising authority should in the first instance look to reach agreement with the existing local bus operators who are affected by franchising, and local employee representatives about the criteria to be applied when determining which staff are 'principally connected' with the affected local services and therefore in scope for TUPE and potential transfer to a new employer.

2.3 At the start of the process towards reaching any agreement, the Regulations require the franchising authority to publish a notice setting out:

- i. the criteria by which they propose to determine whether a member of staff is 'principally connected' with the provision of particular services and should therefore transfer under TUPE;
- ii. the consultation process and agreement sought;
- iii. the time period over which the consultation process will take place; and
- iv. what constitutes agreement between the parties.

2.4 The franchising authority should then consult with the relevant local employers and employee representatives, with the aim of reaching agreement and publishing a final notice setting out the agreed criteria by which to determine whether staff members are in scope for TUPE and should

transfer. If agreement is reached the authority must notify the parties and publish details of the agreement.

- 2.5 The Regulations provide that where there is no agreement, the determination as to whether employees are 'principally connected' is to be based on whether such employees spend at least half their working time assigned to affected services or assigned to activities connected wholly or mainly to the provision of the affected local services.
- 2.6 Once the authority, operators and employee representatives are in agreement about the staff who should transfer, a process should be undertaken to determine where they should transfer to i.e. which employees should transfer to each individual local service contract. The Regulations require authorities to consult affected operators and employee representatives about the proposed 'allocation arrangements' – the plan which sets out which employees should transfer to which local service contract.
- 2.7 The Regulations also make provision for circumstances where an operator applies to the Traffic Commissioner for a cancellation or variation of a registration under section 6 of the Transport Act 1985. In that regard, if the effect of the application is that affected local services would cease to be provided before the coming into force of the local service contract, and the authority propose to enter into an agreement with a person to provide replacement local services, the authority must consult with relevant operators and appropriate representatives of relevant employees about revised allocation arrangements, and finalise and publish the revised allocation arrangements accordingly.
- 2.8 To aid with the above and later processes, the Regulations enable the authority to request information from operators about employees and their representatives (Relevant Information) at any point after they have made

their franchising scheme. The Regulations provide details about what information can be requested.

2.9 When requesting Relevant Information the authority must:

- specify the date by which the operator should respond to the request, which must not be earlier than 21 days after the request is issued;
- ensure the request contains sufficient information about the franchising scheme to enable operators to respond effectively;
- only request the information that they need to carry out their functions in connection to TUPE;
- refrain from requesting personal data, unless the request is for information about the identity of employee representatives.

2.10 Schedule 2 to the Act gives Traffic Commissioners the ability to attach conditions to an operator's license or penalise an operator where they do not provide the information requested without good excuse.

2.11 The GMCA is the franchising authority for the Greater Manchester Franchising Scheme for Buses 2021 but has previously instructed TfGM to act on its behalf in connection with, for example, preparing the Assessment and undertaking the legal processes as required by the Act. Most recently, and as referred to above, further functions relating to the operation and implementation of the Franchising Scheme have been delegated to TfGM. In that regard it is recommended that authority now be delegated to TfGM to enable it to make any requests for Relevant Information under the Regulations as are appropriate, conduct the consultations with relevant operators and employee representatives as detailed above and complete any associated procedural steps on behalf of the GMCA.

2.12 It is recommended that any proposals as to the definition of 'principally connected' which are reached at the end of the consultation should be

approved by the Chief Executive of the GMCA; such approval to be obtained before notifying the parties and publishing the agreement.

2.13 In relation to the allocation arrangements consultation (included any revised allocation arrangements consultation), it is recommended that at the end of the consultation, the decision to approve the proposed allocation arrangements is also delegated to the Chief Executive of the GMCA; such approval to be obtained before notifying the parties and before the allocation arrangements are published, or revised allocation arrangements finalised and published.

2.14 Further, in the event that agreement is reached as to the definition of 'principally connected', it is recommended that the function of notifying the parties and publishing the agreed definition is delegated to TfGM. Finally, it is recommended that the function of notifying the parties and publishing the allocation arrangements (and the function of finalising and publishing any revised allocation arrangements) is delegated to TfGM.

RECOMMENDATIONS:

The GMCA is requested to:

1. Note the contents of this report;
2. Delegate to TfGM the function of requesting relevant information from bus operators as set out in regulations 5 and 6 of the Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) (England) Regulations 2017 (the Regulations);
3. Delegate to TfGM the function of undertaking any consultations as required by the Regulations;
4. Delegate to the Chief Executive of the GMCA the decision to approve any proposed definition of 'principally connected' at the end of the consultation; such approval to be obtained before notifying the parties and publishing the agreement;
5. Delegate to the Chief Executive of the GMCA the decision to approve the proposed allocation arrangements (including any revised allocation arrangements) at the end

of the consultation; such approval to be obtained before notifying the parties and before the allocation arrangements are published (or finalised and published in the case of revised allocation arrangements).

6. In the event that agreement is reached as to the definition of 'principally connected', delegate the function of notifying the parties and publishing the agreed definition to TfGM.
7. Delegate to TfGM the function of notifying the parties and publishing the allocation arrangements and finalising and publishing any revised allocation arrangements.