

Greater Manchester Combined Authority

Date: Friday 30th September 2022

Subject: Bus Service Permit Scheme Consultation

Report of: Andy Burnham, Mayor of Greater Manchester, Portfolio Lead for Transport and Eamonn Boylan, Chief Executive Officer, GMCA & TfGM.

Purpose of Report

Where a bus franchising scheme is introduced, the Transport Act 2000 requires a franchising authority to operate a 'service permit scheme' to ensure that other services, which do not form part of the network of services operated under local service contracts, are still able to operate.

This report sets out the statutory process required to establish a 'service permit scheme' for the Greater Manchester Franchising Scheme for Buses 2021 and makes a recommendation that TfGM be given delegated authority to undertake a statutory consultation exercise on behalf of the GMCA.

Recommendations:

The GMCA is requested to:

1. Note the contents of this report.
2. Delegate to TfGM the authority to undertake the consultation on a service permit scheme pursuant to the Franchising Scheme (Service Permits) (England) Regulations 2018.

Contact Officers

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Equalities Impact, Carbon and Sustainability Assessment:

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

Carbon Assessment		
Overall Score		
Buildings	Result	Justification/Mitigation
New Build residential	N/A	
Residential building(s) renovation/maintenance	N/A	
New build non-residential (including public) buildings	N/A	
Transport		
Active travel and public transport	TBC	
Roads, Parking and Vehicle Access	N/A	
Access to amenities	TBC	
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 the Service Permit scheme are being captured and managed as part of the overall Bus Franchising programme.

Legal Considerations

Legal considerations 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 consequences (capital) relating to this report.

Number of attachments to the report:

None

Comments/recommendations from Overview & Scrutiny Committee

N/A

Background Papers

- Report of the GMCA titled Bus Services Act 2017, dated 30 June 2017
- Report of the GMCA titled Bus Reform Objectives Update, dated 25 May 2018
- Report of the GMCA titled Bus Reform, dated 27 July 2018
- Report of the GMCA titled Transport Revenue Budget 2019/20, dated 15 February 2019
- Part A Report of the GMCA titled Bus Reform Update, dated 28 June 2019
- Report of GMCA titled Audit and Consultation, dated 7 October 2019
- Report of GMCA titled Financial Impact of COVID-19 dated 29 May 2020
- Report of GMCA titled Bus Reform: Update dated 26 June 2020
- Report to GMCA titled Covid-19 Impact on Bus Franchising Report and Consultation dated 27 November 2020
- Report to GMCA titled Bus Reform: The Greater Manchester Franchising Scheme for Buses 2021 – Implementation and Operation dated 28 May 2021
- Report to GMCA titled Bus Franchising – Land Acquisition dated 25 June 2021

Tracking/ Process

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

No

Exemption from call in

N/A

GM Transport Committee

N/A

Overview and Scrutiny Committee

N/A

1. Introduction/Background

- 1.1. On the 25 March 2021, the Mayor took the decision to introduce the Greater Manchester Franchising Scheme for Buses 2021 (the “**Franchising Scheme**”) using powers provided in the Transport Act 2000 -as amended by the Bus Services Act 2017 (the “**Act**”).
- 1.2. The Act provides that no local bus service may be provided in a franchised area (if there is a stopping place for the service in that area) unless:
 - i. It is provided under a local service contract (*i.e.*, a franchised contract);
 - ii. It is an interim or exempted service; or
 - iii. It is provided under a **service permit**.
- 1.3. In summary therefore, a service permit is something that certain operators would need to obtain in order to operate bus services which do not form part of the franchised network. An example of where a service will require a service permit within the Franchising Scheme is a cross boundary service, *i.e.*, those services which begin within a neighbouring authority outside of the franchised area but end within the franchised area. However, service permits could also apply in some circumstances to services that operate within the franchised area in full, but do not form part of the franchised network.
- 1.4. TfGM has, on behalf of the GMCA, been working on creating a proposed service permit scheme in readiness for the planned start date of the Franchising Scheme. The start date of the Franchising Scheme is September 2023. However, the service permit scheme will need to be operational at least 2-3 months prior to this date to allow applications from affected operators to be determined prior to the start date for the scheme, allowing for a smooth transition for those services that will require a permit to operate once the Franchising Scheme begins.

- 1.5. The Act requires a franchising authority to follow a specified process before introducing a permit scheme. This process includes a number of consultation exercises. This report sets out that process in more detail and recommends that authority be delegated to TfGM to enable it to carry out the required consultation on the proposed service permit scheme on behalf of the GMCA. The delegation sought would also allow TfGM to undertake any initial or ancillary steps required in order to carry out the consultation, such as requesting required data needed from operators to help shape the proposed service permit scheme to be consulted upon.

2. Service Permits– Overarching Legal Framework

- 2.1. As described above, a service permit would allow services that aren't either a franchised service or an exempted service to operate in the area of the Franchising Scheme.
- 2.2. Operators who wish to propose running a service that requires a permit (such as a cross-boundary service) would apply for a service permit via an application form. Section 123Q(3) the Act allows a franchising authority to charge an administration fee for reviewing a service permit application. Any proposed fee would be subject to consultation.
- 2.3. A service permit application must be reviewed and processed in accordance with s123Q(5) of the Act which states that a franchising authority must grant a service permit where:
 - i. the proposed service will benefit persons making journeys on local services in the area to which the scheme relates, and
 - ii. the proposed service will not have an adverse effect on any local service that is provided under a local service contract in the area to which the scheme relates.
- 2.4. Pursuant to the Act, a franchising authority cannot grant a service permit if it is not satisfied as to the matters stated in 2.3 (i) and (ii) above. The forum for appeal for operators on any decision regarding the refusal of a service permit is the Traffic Commissioner.

- 2.5. A franchising authority may attach conditions to granted service permits. The Act sets out the matters relating to services which an authority may impose conditions on and examples of these include (non-exhaustive):
- i. The size and dimensions of vehicles used to carry out the service;
 - ii. Provision of adequate service/route identification and information;
 - iii. Timings of the proposed service;
 - iv. Fares and acceptance of TfGM multi-modal products;
 - v. Imposing measures to reduce vehicle emissions; and
 - vi. And a code of practice relating to aspects of the operation of the service such as customer care and customer feedback.
- 2.6. The conditions imposed do not need to be universal for all granted service permits. Some service permit services may have more conditions imposed on them than others. As an example, those services which run a long distance within the franchised area boundary may have more conditions imposed on them, compared to a cross boundary service that only has its final two stops of its route within the franchised area boundary.

3. Legal Process of Service Permit Scheme Development

- 3.1. It should be noted that there are 2 different pieces of legislation which together provide for the need to consult on the service permit scheme as a whole:
- i. The ‘Franchising Scheme (Service Permits) (England) Regulations 2018’ (the “**Regulations**”) provide the need for the franchising authority to consult on the service permit scheme generally (but does not include a requirement for an authority to undertake a consultation on proposed *conditions* which are to be attached to service permits); and
 - ii. Section 123R of the Act provides a requirement on the franchising authority to consult on the proposed conditions that may be attached to service permits.

- 3.2. These are two separate required consultations related to service permits before a service permit scheme can begin, however, paragraph 1.124 of the 'Transport Act and the Bus Services Act 2017: Franchising Scheme Guidance' (the "**Guidance**") states that the two consultations should take place concurrently as part of the same overall consultation process on service permits.
- 3.3. This report focuses on obtaining delegated authority from the GMCA for TfGM to carry out the consultation referred to in paragraph 3.1(i) above only, as the functions contained with the Regulations remain GMCA functions as opposed to Mayoral or joint functions. This is because the Regulations were not listed in the relevant schedules of The Greater Manchester Combined Authority (Functions and Amendment) Order 2019 (the "**Order**"), the effect of which was to make the functions listed in the said schedules exercisable either by the Mayor only, or by the Mayor jointly with the Greater Manchester Councils and the GMCA.
- 3.4. The requirement stated in section 123R of the Act for an authority to consult on proposed service permit conditions, described at paragraph 3.1(ii) above, is a Mayoral function as that section of the Act was contained in the schedules of the Order. A separate report seeking delegated authority from the Mayor to TfGM to conduct the consultation on the proposed service permit conditions will be submitted to the Mayor in due course.
- 3.5. Provided both delegations are provided from the GMCA and the Mayor respectively, the consultations on the service permit scheme generally and on the proposed service permits conditions will be carried out within a merged consultation process by TfGM, in accordance with the Guidance.
- 3.6. The Regulations set out procedural steps that the franchising authority must take before accepting any application for a service permit from an operator to operate within a franchised area.
- 3.7. In that regard, the Regulations require the franchising authority to:
 - i. Publish a consultation document in respect of the proposed scheme which satisfies the requirements set out in Regulation 4 (summarised in para 3.7 below);
 - ii. Consult relevant persons on the consultation document - Regulation 3(2)(b);
 - iii. Publish a report setting out the response to the consultation - Regulation 3(2)(c); and

- iv. Publish a service permit policy statement which satisfies the requirements set out in Regulation 5.
- 3.8. The consultation document referred to in paragraph 3.6(i) above must include: a description of the proposed application procedure, the proposed information which may be required as part of any application, permit fees and the periods of validity, the timescales on which we will take to consider each application (and the timescales between decision and a permit being effective) and the period of time for variations or withdrawals of the permits.
- 3.9. In terms of who to consult, a franchising authority must consult operators, relevant Local Authorities and any other persons as it may see fit.
- 3.10. Following consultation, the responses will be considered and the outcomes published, following which the final service permit policy statement is published.

4. Delegation for Consultation on the Service Permit Scheme

- 4.1. TfGM seeks delegated authority from the GMCA to carry out the consultation exercise described above, pursuant to the requirements of the Regulations. This delegation would include the authority for TfGM to carry out any initial or ancillary tasks which TfGM considers are required to carry out the consultation exercise. For example, one such initial task will be for TfGM to make a request for data from affected operators, which shall be used to shape the proposed service permit scheme to be consulted upon. This request would be made as soon as possible if the delegation sought in this report is granted.
- 4.2. Should authority be delegated, TfGM would plan to carry out the consultation exercise in the Autumn 2022. This would allow time for all steps required by the relevant legislation to be carried out and for a service permit scheme to be put in place before the planned start date of the Franchising Scheme in September 2023. This in turn will allow time for applications for service permits to be sent by operators before the start of the Franchising Scheme, which should help ensure any service permit services (such as cross boundary services for example) are able to run seamlessly from day one of the Franchising Scheme, should the applications be accepted.

- 4.3. A further report will be submitted after the consultation has taken place to report on the outcomes of the consultation and, as required, seek authority for TfGM to operate the service permit scheme on behalf of GMCA.

5. Recommendations

- 5.1. The GMCA is requested to:
- i. Note the contents of this report.
 - ii. Delegate to TfGM the authority to undertake the consultation on a service permit scheme pursuant to the Franchising Scheme (Service Permits) (England) Regulations 2018.