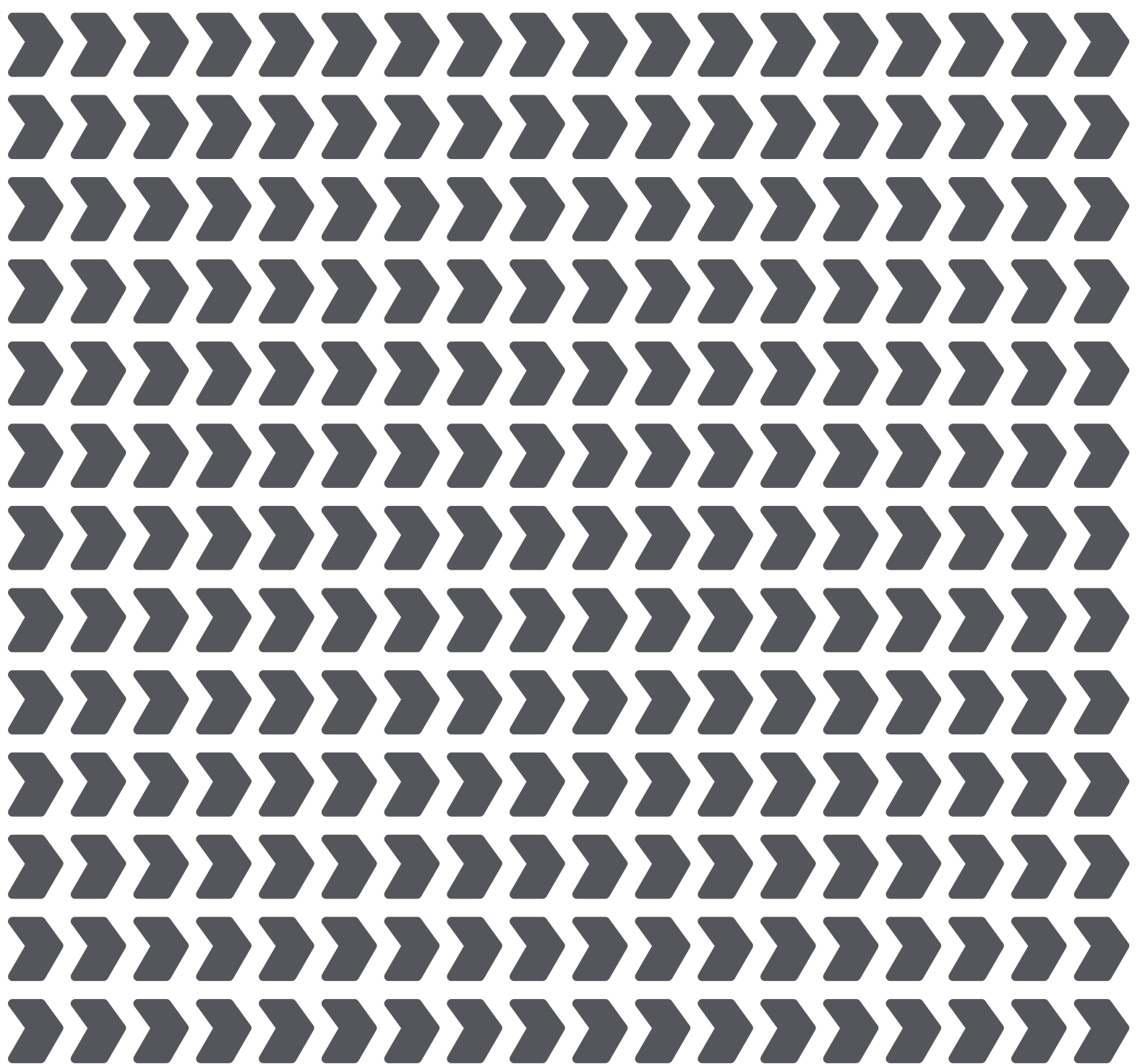




Department  
for Transport

# The Bus Services Act 2017 Advanced Quality Partnership Schemes Guidance



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Department for Transport  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR  
Telephone 0300 330 3000  
Website [www.gov.uk/dft](http://www.gov.uk/dft)  
General enquiries: <https://forms.dft.gov.uk>



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# 1. Purpose of guidance

- 1.1 This guidance relates to Advanced Quality Partnership schemes made under Part 2 of the Transport Act 2000 ('the 2000 Act'), as amended by the Bus Services Act 2017 ('the 2017 Act'). It is issued under section 113O of the 2000 Act by the Secretary of State to local transport authorities and metropolitan district councils in England, who must have regard to it when exercising functions related to advanced quality partnership schemes. The existing QPS provisions under section 114 of the 2000 Act (and their associated regulations and guidance) apply only to schemes in Wales or to schemes crossing the England/ Wales border.
- 1.2 It is envisaged that the guidance will also be of interest to bus operators, transport user groups and other interested parties. References in this guidance to provisions in the 2000 Act are references to that Act as amended by the 2017 Act and the Local Transport Act 2008.
- 1.3 This document includes two different types of guidance:
  - informal guidance which seeks to explain how the new provisions introduced through the 2017 Act work in practice and offer some practical suggestions as to their application. This guidance is in normal type. It has no formal legal status and there is no statutory requirement for a local authority to have regard to it. It may however reference requirements which are themselves set out in statute (such as requirements to follow a particular process or to consult); and
  - statutory guidance to which a local authority must have regard in exercising relevant functions. This statutory guidance is underlined. It is issued under section 113O(1) of the Transport Act 2000.

## 2. Overview

- 2.1 The Quality Partnership Scheme model was introduced by the 2000 Act. Under such a scheme a local transport authority ('LTA') (or two or more LTAs acting jointly) agrees to invest in improved facilities at specific locations along bus routes (e.g. bus stops or bus lanes) and operators who wish to use those facilities undertake to provide services of a particular standard (e.g. new buses, or driver training standards).
- 2.2 Only those operators prepared to provide services to the standards specified in the scheme were permitted to use the facilities. Whilst other operators were not generally prevented from providing local services in the area covered by the scheme, they could not use the facilities provided by the LTA under it. The 2000 Act, associated regulations and guidance – published in 2009 - set out the way this process would operate.
- 2.3 The 2017 Act created a new mechanism called an advanced quality partnership based around the existing quality partnership mechanism (see section 1 of the 2000 Act, which inserted sections 113C - 113O into the 2000 Act). The new advanced quality partnerships applied in England only. The existing quality partnership regime under sections 114 -123 of the 2000 Act now applies only to schemes in Wales or schemes that cross the border between England and Wales.
- 2.4 For the purpose of clarity within this volume, a Quality Partnership Scheme is referred to as a 'QPS' and an Advanced Quality Partnership Scheme is referred to as an 'AQPS' or 'Scheme'. From 27 June 2017 all QPS operating wholly in England automatically became an AQPS.
- 2.5 The AQPS model is even more flexible than a QPS: schemes can continue to be route or corridor specific, cover larger networks of routes, or even a geographical area. The 2017 Act also allows, under an AQPS, a LTA to specify requirements as to ticketing arrangements, information provided to passengers and how bus services are marketed and publicised. It also removes the requirement that local authorities should always provide 'facilities' and introduces the new concept of local authority 'measures' that can be taken to directly or indirectly encourage bus use.

- 2.6 The AQPS model also retains the important safeguards when specifying frequencies, timings or maximum fares as part of the standard of service to be provided under a scheme - to ensure that unrealistic conditions are not imposed on operators, and that their legitimate right to a fair commercial rate of return on their investment is not undermined. These safeguards are extended to requirements covering vehicles or ticketing. But at the same time it continues to place a responsibility on operators to justify the grounds for their objection, thus minimising the scope for vexatious or frivolous objections.
- 2.7 It should be stressed at the outset, however, that the AQPS model is intended to be used as a true partnership between consenting parties. Indeed, the Department continues to stress that one of the strongest arguments for an AQPS in a particular area is to support and underpin voluntary agreements between authorities and operators, with agreed objectives and outputs on both sides. AQPSs and voluntary partnership agreements are therefore best thought of as complementary measures, rather than merely as substitutes. This might be in the context of pre-existing partnerships with operators, major schemes supported through Local Enterprise Partnerships.
- 2.8 Separate guidance issued by the Competition and Markets Authority (CMA) in March 2016<sup>1</sup> explains the CMA's process for considering the appropriate balance between competition in local bus markets and partnership working between bus operators and LTAs.

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<sup>1</sup> Found at: <https://www.gov.uk/government/publications/letter-from-the-cma-to-local-transport-authorities-on-bus-partnership-arrangements>

# 3. Introduction to AQPSs

- 3.1 Like a QPS, an AQPS is a statutory scheme with its process, form and content prescribed by the 2000 Act and associated regulations<sup>2</sup>. Unlike a voluntary partnership agreement, which is entered into jointly by local authorities and bus operators, it is a 'scheme' which is 'made' by a LTA. It should not be described as an agreement.
- 3.2 There is a statutory procedure for publishing proposals to make an AQPS and for consultation on those proposals before the scheme is actually made. Once the scheme is made, the LTA is under a statutory duty to provide any facilities and to take any measures identified in the scheme from the dates specified, and to maintain those facilities and continue to take those measures for as long as the scheme is in operation.
- 3.3 Once the scheme has been made by the LTA, any operator providing local services in the relevant area may use any facilities provided under the scheme, so long as they have given a written undertaking to the traffic commissioner that they will provide services to the standards specified in the scheme. The traffic commissioner can take enforcement action against any operator who uses the facilities, but has not given the necessary undertaking, or against an operator who has given such an undertaking but who fails to provide services to the specified standards. This also applies to operators where an authority has taken 'measures' (see paragraph 5.4 below).
- 3.4 LTAs may also continue to specify in schemes restrictions on the registration of new services, or the variation or withdrawal of existing ones, in the area of the scheme ('registration restrictions'). Where these are included, the scheme must also continue to include registration criteria, against which the traffic commissioner must decide whether or not to accept applications to register new services, or to change existing ones. The intention of this remains protecting operators and LTAs from:

the introduction of new services which might undermine services already provided under the AQPS; and operators who are not willing to operate to the standards in the AQPS running services alongside, but not using, any facilities and undermining the position of those that do.

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<sup>2</sup> At the time of publication, the following Regulations have been made specifically in relation to AQPSs: The Advanced Quality Partnership Schemes (England) Regulations 2018 (SI.21), The Advanced Quality Partnership Schemes (Existing Facilities) (England) Regulations 2018 (SI.22)

- 3.5 It will be important to ensure that this process of registration restrictions is not used by LTAs to constrain the commercial freedom of participating operators unnecessarily. Detailed guidance is provided in paragraphs 6.1 to 6.13.
- 3.6 Before making an AQPS, the LTA must be satisfied that it is likely to achieve certain specified outcomes. In addition, when making an AQPS, a LTA must ensure that the competition test in Part 1 of Schedule 10 to the 2000 Act is met (see paragraphs 7.19 to 7.26)
- 3.7 The outcomes that the LTA believe the scheme is likely to achieve are that any facilities, measures and standard of services specified in an AQPS will themselves result in one or more of the following:
- an improvement in the quality of local bus services that benefits persons using those services;
  - a reduction or limitation in traffic congestion, noise or air pollution;
  - an increase in the use of local bus services or an end to, or a reduction in, a decline in the use of local bus services.
- 3.8 One key benefit of the AQPS model is that it can continue to work alongside, and support, voluntary arrangements with operators. Indeed, where an AQPS includes requirements as to frequencies or timings, it may be necessary (at least in a multi-operator environment) for two or more operators to enter into a qualifying agreement<sup>3</sup>, setting out how they will in practice, between them, meet those requirements. Agreements of this sort are likely to be subject to competition law and, provided such an agreement is endorsed by the LTA<sup>4</sup>, will normally be subject to the competition test in Part 2 of Schedule 10 to the 2000 Act. Further guidance on this point is provided later in this volume and in separate competition guidance (see paragraph 2.8 above).

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<sup>3</sup> The term 'qualifying agreement' is defined in paragraph 17(4) of Schedule 10 to the 2000 Act.

<sup>4</sup> See paragraph 18 of Schedule 10 to the 2000 Act.



## 4. Benefits of an AQPS

### Why operators might find an AQPS beneficial

- 4.1 There are two important reasons why operators might favour an AQPS. One is to ensure, as far as is possible, the delivery of effective bus priority and other measures required to enable bus services to be operated punctually, reliably and efficiently; and that their provision, maintenance and enforcement cannot be unilaterally revoked by a LTA and so survives any subsequent change in local authority policies or priorities.
- 4.2 The second is to offer some degree of protection of an operator's investment, where guaranteed provision of bus infrastructure by a LTA is matched by a high level of investment in service quality (including perhaps introduction of new high-specification vehicles, or enhanced service frequencies). Under a voluntary agreement alone, an operator may undertake considerable investment in improving the quality of service provision. This may be put at risk or undermined by another operator running services to a lower standard immediately ahead of the higher quality vehicles provided as part of the voluntary agreement. Under an AQPS, operators who are not prepared to provide services to the appropriate standards may not use any facilities that the LTA has chosen to provide or take advantage of any measures that LTA has taken as part of the scheme, and enforcement action can be taken against operators who do so. An AQPS may also include 'registration restrictions', in circumstances in which it may be detrimental to the scheme for the traffic commissioner to allow new services to be registered in the area to which the AQPS relates. These features of the AQPS model can provide comfort to operators who are prepared to invest in providing better quality services.

### Why LTAs might find an AQPS beneficial

- 4.3 There are three reasons why a LTA may prefer an AQPS to a voluntary agreement, which generally lacks powers of enforcement. One is that under an AQPS, all operators using any facilities or taking advantage of any measures taken by the LTA must meet the relevant standard of service specified in the scheme. In contrast, voluntary agreements may be diluted, or fail to deliver, because an existing operator does not wish to provide a higher standard of service.

- 4.4 The second is that, even when a voluntary agreement is in place, there is no power to stop another operator providing services to a lower standard on the route or in the area. The enforcement powers which come with an AQPS, and the potential to include registration restrictions, are intended to help prevent such an incursion.
- 4.5 The third is that a LTA may wish to lever a higher quality of service from operators than it can obtain through a voluntary agreement. As with the existing QPS powers, the local authority will need to be careful in adopting the latter strategy under an AQPS. If it sets the standard too high, it may risk operators responding in a way that it may not intend, for instance by reducing commercial services or increasing fares (if a maximum fares provision is not included in the scheme). An AQPS is best developed in partnership with all potentially affected operators to ensure that the standards are set at an appropriate and achievable level that will deliver the proposed benefits – including value for money (for passengers and in terms of policy and commercial objectives), growth in patronage, or improvements in the efficiency and effectiveness of operations.

# 5. Contents of an AQPS

How does an AQPS differ from the existing QPS powers?

5.1 There are a number of key differences between a QPS and an AQPS. These are listed below:

**There is no requirement for the LTA to provide ‘facilities’**

5.2 Under the existing QPS powers, facilities were a mandatory part of all QPSs. The LTA could not introduce one unless it was going to provide new facilities as part of the scheme. Under the AQPS powers, it is for the LTA to decide whether to include facilities or take measures in the scheme and it can, if it wishes to, do both. This provides further flexibility as it does not require the LTA to wait until it has money to spend before introducing a scheme.

**There is no upper limit on the age of existing facilities**

5.3 Under the QPS regime, if an existing facility were included in the scheme, this could not be more than 10 years old. This upper limit has been excluded from the AQPS regime – although the existing mechanism of operator objections for facilities more than 5 years old applies.

**An LTA may also take additional ‘measures’ as part of the scheme**

5.4 The LTA also has freedom to include in the scheme any additional ‘measures’ it wishes to take to improve bus services or make bus services more attractive. These measures are not defined in the legislation. Further guidance on what can be included is provided in Annex B.

**An AQPS can specify additional standards of service**

5.5 Under the existing QPS powers, the LTA could specify:

- Vehicle requirements
- Requirements about frequency or timing of services
- Requirements about maximum fares.

5.6 The AQPS powers also allow these and add further categories:

- Emission requirements – AQPS specifically allows vehicle requirements to include requirements about emissions and the types of fuel or power used.
- Ticketing – the scheme can specify how passengers can pay for journeys and specify a ticketing structure.
- Information requirements – the scheme can set requirements about what information about bus services must be provided to passengers and how it should be provided.
- Marketing and publicity – the scheme can also specify how local bus services, fares or ticketing arrangements should be marketed or publicised.

5.7 A LTA may include in an AQPS any facilities, either direct or ancillary, which it considers will bring benefits to passengers by improving the quality of services, or reducing or limiting traffic congestion, noise or air pollution. The provision of some facilities may require the making of a Traffic Regulation Order (TRO)<sup>5</sup>. In some areas, the provision of new facilities may involve a significant investment, for example to provide a new bus station, or an extensive network of bus lanes. By contrast, the 'facilities' offered might consist mainly of relatively minor infrastructure, such as new bus stop poles, shelters, raised kerbs and bus stop clearways (which could be provided as part of a long-term plan for developing the network, alongside proposals for registration restrictions and criteria – so long as they were proportionate to the infrastructure improvements). **Annex A** provides a non-exhaustive list of facilities that might be provided under an AQPS.

5.8 As part of an AQPS it may be desirable for the LTA to include facilities that are outside its own powers to deliver - this might include highway improvements that are the responsibility of a separate highway authority. Indeed it will be particularly important to consider the role of the highway, traffic, planning, environmental health, police and other appropriate authorities if the necessary powers do not rest with the LTA, either partly or fully. Though it is not necessary to seek the formal agreement of these bodies before making a scheme (although the chief officer of police for the area is a statutory consultee), the Department expects lead local authorities to engage with them as fully and positively as possible in the development of schemes. Interaction with the local planning authority (where different from the LTA) would also be important where there is scope for facilities in an AQPS to be funded from section 106 Town and Country Planning Act 1990 (developer funding) agreements.

5.9 Information about bus services (routes, timetabling and fares etc.) provided by a LTA under section 139 or section 140 of the 2000 Act cannot be provided as a facility or a measure under a scheme - the LTA is already under a statutory obligation to decide what information should be provided, and then to ensure that it is, so it would not be fair to expect operators to improve standards of service in return for it. Measures cannot also be facilities. But anything over and

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<sup>5</sup> 5 If a TRO needs to be made on a road for which a metropolitan district council or the Secretary of State is the traffic authority, then the scheme must be made jointly by the LTA and that council or, as the case may be, the Secretary of State. See section 113F and 113M of the 2000 Act.

above this could be included in an AQPS, subject to meeting the definition of 'facility' contained in section 113E(1) and 'measure' in section 113E(2)<sup>6</sup> of the 2000 Act.

5.10 An AQPS must also specify the 'standard of services' required from operators under the scheme. **Annex C** provides a non-exhaustive list of examples of 'standards of service' that might be included in an AQPS. It is for the LTA to determine whether to include such requirements in a scheme. Some of them may be included only if there are no 'admissible objections' from 'relevant operators'. This issue is discussed further in paragraphs 6.14 to 6.33.

**Does the same 'standard of service' have to apply equally to all services covered by a scheme, or to all services using a particular facility?**

5.11 No. A scheme can specify different requirements for different services, or for services of different descriptions. For example, a particular frequency, timing or maximum fare that is appropriate on one route is not necessarily appropriate on another, and so different requirements could be specified for different routes covered by a scheme. Moreover, it might be appropriate for a scheme to apply different requirements on a particular route at different times of day – e.g. a higher frequency at peak times, or a higher maximum fare for night-bus services.

5.12 Some facilities provided under an AQPS might be available on just a single bus route, but many will be used by a diverse range of different services. For example, a town or city centre bus station might be used by higher-frequency commuter services in rush-hour and lower-frequency services to outlying villages on market day. An AQPS can quite legitimately specify different standards of service for different routes, even if those different routes are all using the same facility.

5.13 A scheme might also specify different maximum fares for different types of ticket. For example, it might specify a particular maximum fare for an all-day travelcard covering the whole of the area of the scheme. However, an AQPS cannot be used to broaden local authority travel concession schemes, for which a separate statutory framework exists.

5.14 The key consideration in deciding whether to include a particular standard of service in a scheme should be whether it would contribute to the scheme's objectives without unnecessarily or disproportionately constraining competition or operator innovation. This is why the competition test (paragraphs 7.19 to 7.26) requires that any significantly adverse effect on competition should be proportionate to the benefits of the scheme.

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<sup>6</sup> Definitions are: 'facilities provided at specified locations along routes served, or proposed to be served, by local services within the area to which the scheme relates, or facilities which are ancillary to such facilities', but excluding facilities provided under sections 139 or 140. 'Measures' "must be taken for the purpose of increasing the use of local services serving the routes to which the measures relate or ending or reducing a decline in the use of such services; or improve the quality of local services serving the routes to which the measures relate'.

**Do all facilities and measures have to be provided, and standards of service met, on the same date?**

- 5.15 No. An AQPS can specify that different facilities, measures and standards of service will be provided from different dates, enabling improvements to be phased in according to a pre-determined timetable. But the way in which facilities and measures, on the one hand, and standards, on the other, are phased in should be proportionate. For instance, a local authority should not propose to phase in facilities or measures over a five year period, but require full compliance with the standards of service from Day 1. This is unlikely to be proportionate.
- 5.16 Similarly, if – during the lifetime of an AQPS – a local authority was obliged to postpone<sup>7</sup>, or cancel, the provision of facilities or measures which had the result of undermining the basis on which operators were providing improved standards the Department would expect the LTA to open discussions with participating operators with a view to revising those standards. The 2000 Act allows for the postponement of facilities and measures for up to a year; if a LTA wished to cancel provision of a particular facility or measure completely, then it would need to vary the scheme (see paragraphs 9.6 to 9.8 below).

**Under what circumstances can existing facilities be included in an AQPS?**

- 5.17 An AQPS may, with restrictions, specify facilities which are already in place. This enables facilities originally provided under voluntary agreements, or developed by local authorities under their general investment in transport (for instance, parking and waiting controls or bus priority measures), to form part of an AQPS.
- 5.18 Safeguards are necessary because existing facilities may be used regularly by operators that do not wish to join the AQPS, or might find it difficult to meet the standards of service set by the scheme. The rules are set out in regulations: the Advanced Quality Partnership Schemes (Existing Facilities) (England) Regulations 2018 (SI 21). Essentially:
- facilities may not be incorporated in an AQPS if they were provided more than 5 years prior to the date on which notice is first given of the proposed scheme if the operators that are a party to the scheme object;
  - facilities provided within 5 years of that date can be incorporated without such conditions.
- 5.19 Where a proposed scheme would include any existing facilities that were originally provided more than 5 years prior to notice of the scheme, the notice proposing the scheme must give the date on which it believes the facilities were first provided and give bus operators that relied on the facilities at least 42 days in which to register an objection.

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<sup>7</sup> Section 113I(4) of the 2000 Act requires the LTA to consult operators before making a decision to postpone.

- 5.20 The conditions that need to be met for facilities that are more than 5 years old are that, within that objection period, no operator has objected to the inclusion of such a facility, or any objection made has subsequently been withdrawn.
- 5.21 This procedure gives an effective veto on the inclusion of a facility that is more than 5 years old. Conversely, whilst an operator does have the right, through the statutory consultation process, to object to the inclusion of a facility that was less than 5 years old at the time the notice was published, it does not have the right to veto its inclusion.

#### **How is the area of the scheme defined?**

- 5.22 There are references in the legislation to 'the area to which a scheme relates'. Depending on the circumstances, this area could be small (in the case of a scheme covering a single corridor or route) or large (where a scheme covers a wider network) or cover the whole of the LTA's area. Each scheme will need to define clearly the area to which it relates. This area should be appropriate given the nature and location of any facilities being provided or measures being taken.

#### **Can an existing Traffic Regulation Order (TRO) be included in an AQPS? What if a trunk road is involved?**

- 5.23 A TRO may often be necessary to give effect to the provision of a facility or a measure and, where that is the case and the LTA is not the appropriate traffic authority, the LTA must follow the provisions in sections 113F and 113M of the 2000 Act (see footnote 5 above). TROs themselves are not facilities or measures (see definition in section 113E(1)), but a facility such as a bus lane will depend on a TRO to prohibit the use of the lane by other traffic. Enforcing any TROs, and providing the traffic signs necessary to enforce them, can therefore be as important to the success of an AQPS as providing the facilities themselves.
- 5.24 It should be noted that paragraph 27(2A) of Schedule 9 to the Road Traffic Regulation Act 1984 (inserted by section 16(9) of the 2017 Act) prevents a traffic authority from varying or revoking a TRO that is required for an AQPS without the agreement of the other authority or authorities concerned. However this does not apply where the Secretary of State is the traffic authority. Therefore, any TRO required under the scheme must be maintained for the duration of the scheme, unless there is agreement to do otherwise.
- 5.25 If an AQPS involves the making of a TRO on a trunk road (or any other road for which the traffic authority is the Secretary of State) it is necessary for the Scheme to be made jointly by the LTA(s) and the Secretary of State. A local authority TRO may be made if necessary on a trunk road in conjunction with an AQPS, provided the Secretary of State consents – see section 1(3A) of the Road Traffic Regulation Act 1984.<sup>8</sup>

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<sup>8</sup> Section 1(3A) was inserted by Schedule 11 to the 2000 Act.

## Can provision be made for issues not included in an AQPS?

- 5.26 A voluntary agreement or agreements can be made to support an AQPS to cover issues which are not included within the AQPS itself. It may be appropriate for a voluntary agreement to be contained in a legally binding document, signed by the operator, the LTA and, where different, the traffic authority, together with any relevant third party – e.g. the Police or Highways England.
- 5.27 The potential to include timings, frequencies, maximum fares and ticketing arrangements within an AQPS may also give rise to the need for agreements between operators - described as 'qualifying agreements' in the legislation<sup>9</sup>. For example, the standard of service specified by the authority in a scheme might be that four services should be provided every hour on a particular route, at evenly-spaced intervals. Where more than one operator is to provide services on that route, it may be beneficial for those operators to make a qualifying agreement stipulating which operators will provide particular services at specified times.
- 5.28 The Department recognises that this may, in practice, be very difficult for operators – for instance, their flexibility to integrate service patterns within an AQPS may be severely constrained by operational or timetabling factors affecting connecting services starting outside the AQPS. Similarly there are practical constraints affecting how much one operator might be prepared to have his timetabling dependent on other operators.
- 5.29 The Department expects issues of this sort to be subject to pre-AQPS negotiation between operators and local authorities (who – with an eye to the admissible objections process – would want to make sure their proposals are practical and workable). The Department also expects operators to take a proportionate approach as to what might be practical. Where an authority is proposing an AQPS as part of a package of measures expected to deliver a substantial increase in demand for bus services, a more fundamental reorganisation of an operator's services, inside and outside the AQPS scheme, might be more viable, and change the nature of the commercial risk the operator would be prepared to take.
- 5.30 Where operators enter into qualifying agreements they need to be aware of the potential competition law implications. Where such a 'qualifying agreement' has as its object or effect the prevention, restriction or distortion of competition, it will be necessary for the appropriate competition test to be satisfied. Part 2 of Schedule 10 to the 2000 Act provides that, where such an agreement is certified by the LTA as being in the public interest, and only imposing restrictions which are necessary for the attainment of the bus improvement objectives<sup>10</sup>, then that agreement will be subject to the competition test in Part 2 of Schedule 10, paragraphs 20 and 22. Any qualifying agreement which does not have such an endorsement from the LTA must satisfy the test in section 9 of the Competition Act 1998 in order to be exempt from the

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<sup>9</sup> See paragraph 17(4)(a) of Schedule 10 to the 2000 Act.

<sup>10</sup> The term 'bus improvement objectives' is defined in paragraph 17(9) of Schedule 10 to the 2000 Act as 'securing improvements in the quality of vehicles or facilities used for or in connection with the provision of local services; securing other improvements in local services of benefit to users of local services, and reducing or limiting traffic congestion, noise or air pollution.'



prohibition in section 2 of that Act. See paragraphs 7.27 to 7.30 for further information as to how this might work in practice.

5.31 Authorities should also note that competition law requirements may also apply to a series of voluntary bilateral agreements between an LTA and operators. This is because it is possible for a series of related agreements, taken together, to have a significant impact on competition – even if each individual agreement has no such impact, and may fall outside the application of competition law by virtue of the fact that it is not an agreement between undertakings. In such circumstances, the new competition test in Part 2 of Schedule 10 needs to be applied to the series of agreements taken together. **Annex D** contains some flow charts, which provide an overview of the competition tests that apply in relation to both AQPSs and certain agreements involving bus operators. Further information on these competition issues is contained in the separate competition guidance mentioned in paragraph 2.6 above.

### **Can services be excluded from an AQPS?**

5.32 An AQPS need not apply to all the local transport services in a specified area or corridor, but if any are to be excluded from it (i.e. allowed to use any facilities or take advantage of any measures without meeting the standards) they must be specified in the scheme, by reference either to particular services or to particular classes of service. Services may be excluded either absolutely or subject to conditions. Possible examples would be:

- Excursion or tour services which are technically 'local services' but do not serve a local transport function.
- Interurban or other long distance scheduled services that are not generally used for local journeys within the scheme area but may also be registered as a local bus service for part of their route.
- Other services that make limited use of corridors or stops within the scheme area, perhaps including infrequent services from outlying rural areas if those services could not reasonably be expected to meet the standard specified in the scheme.
- Community bus services; or
- local services not normally available or widely used by the general public (e.g. school buses).

## 6. Registration restrictions

### **Do operators have any protection for the services they run in an AQPS?**

- 6.1 The LTA can include 'registration restrictions' in an AQPS. Where such restrictions are in place the traffic commissioner would, in certain circumstances, have the power to refuse an application either to register a new service, or to vary or withdraw an existing one. The inclusion of registration restrictions may be appropriate where participants in a proposed AQPS may be concerned about the risk of the scheme being destabilised by a new operator competing in the market without meeting the 'standard of services' specified in the scheme (by not operating services to the required standard that operator may, for example, be able to offer lower fares), or running services that undermine a marginally commercial part of the scheme.
- 6.2 The 2000 Act, and the Public Service Vehicles (Registration Restrictions) (England and Wales) Regulations 2009 (S.I 2009/443) prescribe the procedure to be followed. Briefly, where the traffic commissioner receives an application to which a registration restriction applies, that commissioner must notify the local authority and relevant bus operators within 14 days. Those parties then have the opportunity to make relevant representations, if they consider that accepting the application would be detrimental to the provision of services under the scheme. Relevant representations must be made within the time specified in the notification (which must be not less than 21 days from the date of the notification is sent).

### **How does the traffic commissioner decide what registrations or service changes to allow?**

- 6.3 The primary legislation<sup>11</sup> makes clear that the question the traffic commissioner must determine is whether or not accepting the application would be detrimental to the provision of services under the scheme. The commissioner should not refuse an application simply because somebody has made a relevant representation<sup>12</sup>; the traffic commissioner would need to be satisfied that there would be likely to be an appreciable (i.e. nontrivial) detriment.

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<sup>11</sup> See section 6A of the Transport Act 1985, inserted by section 48(3) of the Local Transport Act 2008 and amended by Paragraph 3 of Schedule 1 to the Bus Services Act 2017.

<sup>12</sup> Defined in section 6A(12) of the Transport Act 1985 as 'representations that the effect of accepting the application would be detrimental to the provision of services under the scheme, having regard to the registration criteria.'

- 6.4 The registration criteria spelt out in the scheme must be applied by the commissioner as part of the process of determining what is likely to be detrimental. But the commissioner must also take into account all relevant representations and any other relevant information when determining whether or not a particular application should be accepted. In making a judgement, the Commissioner is likely to look to gauge the extent to which new services would provide passenger benefits and generate increased patronage, rather than simply seeking to win passengers from existing services.
- 6.5 In certain circumstances, the commissioner might decide to hold an inquiry in order to examine in more detail the position of the relevant parties. This is a judgement for the commissioner based on the particular circumstances of the case.

### **When is it appropriate for a LTA to include registration restrictions in an AQPS?**

- 6.6 Where a LTA is considering the inclusion of registration restrictions in an AQPS, it would need to strike a balance between empowering the traffic commissioner to prevent undesirable or destabilising competition, while not imposing an undue barrier to the provision of additional services, or changes to existing ones, where that would be in the public interest.
- 6.7 Indeed, the sole reason for making statutory provision for registration restrictions was to prevent such destabilising competition – and local authorities should ensure against unintentionally constraining the commercial freedom of bus operators in ways that are not necessary to secure the objectives of the AQPS. For example, it might be appropriate for registration restrictions to be included in a scheme so that, where an operator applies to register a new service or to vary the timings of an existing one, the traffic commissioner must take into account whether accepting the registration would cause excessive congestion at a new bus terminus. But it is unlikely to be appropriate for registration restrictions to impose restrictions on a bus operator who wishes to reduce or withdraw a service where material changes in the market mean there is no longer sufficient demand for it.
- 6.8 It is inevitable that demand for services will change over the lifetime of a scheme, and any scheme requirements about frequencies, timings and maximum fares are likely to need to respond to those changes. Provisions for the review of requirements about these issues are discussed later, but it is important to ensure that registration restrictions in a scheme do not prevent changes to service registrations that are needed to implement the outcome of such a review.
- 6.9 It is important to note that registration restrictions can 'bite' only in circumstances where accepting an application would be detrimental to the provision of services generally under the scheme. It is possible for registration restrictions to apply to services that are not using the facilities or taking advantage of measures provided under the scheme – for example, it is possible that services running on a nearby parallel route could undermine the viability of AQPS

services. However, where a service was not operating on a route within an AQPS, and was not competing with services that were, it is unlikely that the registration (or variation or withdrawal) of that service would be detrimental to the scheme as a whole.

- 6.10 Though there is no formal procedure for interested parties to object to the inclusion of registration restrictions in the scheme as made, over and above the statutory consultation, LTAs must set out the registration restrictions and criteria in their consultation on the scheme, and must therefore have appropriate regard to operators' comments. As with any consultation, an authority which unreasonably failed to have regard to the views expressed by any consultee could be vulnerable to legal challenge.
- 6.11 An authority would also need to be satisfied that any adverse effects on competition in the market for local services - including the effects of any registration restrictions - are proportionate to the benefits. This is necessary to satisfy the competition test in Part 1 of Schedule 10 to the 2000 Act, which must be met where a local authority makes or varies an AQPS. This is an important safeguard, and it would be good practice for a LTA when consulting on a proposed scheme to set out a summary assessment of how it considers the scheme meets the competition test. Such an assessment could usefully consider the extent to which there is existing on-road competition between operators on the routes or networks covered by the scheme, and/or the realistic potential for such competition to occur, as well as considering the extent to which the AQPS would constrain the commercial freedom of existing operators.
- 6.12 Registration restrictions in a scheme that would limit operators' freedom, in the long term, to reduce or withdraw services (e.g. in response to a material change in the level of demand) could impose high costs on operators and have an adverse effect on competition, and so there would need to be evidence of substantial offsetting benefits to passengers to justify such a restriction. Similarly, the Department expects such restrictions to be reviewed and, if necessary, revised at regular intervals throughout the life of the AQPS.
- 6.13 Where an AQPS includes requirements about frequencies or timings, the normal process for handling a situation of a structural fall in demand should be for operators, in the first instance, to discuss the matter with the LTA. As with all aspects of AQPSs, such issues are likely to be resolved most effectively through discussion between the parties involved, and it should be in both the LTA's and the operators' interests to work together to find a mutually acceptable way forward. In light of those discussions, the authority could then formally propose any necessary changes in accordance with the provisions of the Regulations. Where such a review led to a reduction in the frequency of services specified in the scheme, registration restrictions should not prevent operators from varying or withdrawing service registrations in order to reduce frequency to the new minimum requirement. Even where registration restrictions are in place, if no relevant representations are made in response to the notice issued by the traffic commissioner, then the application to vary or withdraw must be accepted. In such circumstances the traffic commissioner has no discretion to refuse the application.

## Admissible objections

### When do bus operators have to agree to the inclusion of particular standards of service in an AQPS, and how should that agreement be sought?

- 6.14 An AQPS may include requirements as to vehicle requirements, ticketing provision, the frequency or timing of services, or maximum fares, only if there are no 'admissible objections' from 'relevant operators'. These two terms are defined in the Advanced Quality Partnership Schemes (England) Regulations 2018 (S.I. No. 21 - 'the AQPS regulations'), which also make other related provisions. The 'admissible objections' provisions do not apply to other standards of service so, if a scheme does not include requirements as to ticketing provisions, vehicle requirements, frequencies, timing of services, or maximum fares, these regulations would not apply. Where a scheme includes a variety of different requirements, the provisions about 'admissible objections' apply only in relation to those that relate to ticketing provisions, vehicle requirements, frequencies, timings and maximum fares.
- 6.15 The Government's aim in all the above is to prevent ill-conceived, vexatious or frivolous objections, while protecting the legitimate interests of operators involved in the provision of local services who would be affected by the scheme. LTAs and operators would be well advised to work closely together in partnership to identify mutually beneficial packages of facilities, measures and standards, with a view to avoiding the need to follow the formal 'admissible objections' process. This process is intended to be pursued only as a last resort where agreement cannot be reached.

### How are 'relevant operator' and 'admissible objection' defined?

- 6.16 The AQPS Regulations define a 'relevant operator'<sup>13</sup> as one who is operating services which have one or more stopping places in the area to which the scheme relates – or has submitted an application to register such services – when the local authority first gives notice of its intention to make a scheme. If a relevant operator applies to vary or cancel his service registrations in such a way that he would no longer have any services with stopping places in the area to which the scheme relates, that operator ceases to be a relevant operator. An admissible objection<sup>14</sup> is defined as an objection which is made under the procedure prescribed in the regulations<sup>15</sup>, and which satisfies either or both of the specified grounds for objection.

### What are the grounds for objection?

- 6.17 There are two grounds for an admissible objection, specified in regulation 8(3) of the 2018 regulations:

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<sup>13</sup> See regulations 6 and 7.

<sup>14</sup> See regulation 8.

<sup>15</sup> See regulation 9.

- that it would not be practicable for the operator who has lodged the objection to meet the standard of service specified at the time they would come into effect, in relation to a service which that operator was providing (or had submitted a registration application to provide) at the time the LTA gave notice of its scheme proposal. This might be because relevant operators would need more time to procure more vehicles, or upgrade existing ones, or to take on more staff, but the proposed scheme had not allowed them adequate time to do so.
- That it would not be commercially viable for that operator, acting in a competent and efficient manner, to provide services to the standard specified.

6.18 It follows from the above definitions that a 'relevant operator' should frame his objection in terms of the impact of the scheme on the services he operates. General concerns about a scheme, if they have no impact on his own registered services, cannot amount to an 'admissible objection'. The judgement about 'commercial viability' would need to take into account all of the objecting operator's services that would fall within the area to which the scheme relates (termed 'relevant services' in the AQPS Regulations<sup>16</sup>). So while an objection could relate to a particular standard within the scheme, the question of admissibility would also take into account the viability of other services provided by the operator under the scheme and whether, taking all those services together, the operator could be expected to secure an appropriate rate of return.

6.19 This judgement of commercial viability will need to take into account the costs and revenues that are likely to accrue to the operator – acting in a competent and efficient manner – as a result of operating its existing services to the standards required under the scheme. This includes taking into account cost savings and increased revenues resulting from the provision of facilities or the taking of measures by the LTA, and increased costs and revenues associated with the improvements to the standard of services.

6.20 The judgement may also need to take account of any changes in the level of commercial risk resulting from the LTA's commitment to deliver any improved facilities or take measures, and from any registration restrictions included in the scheme. Material changes in the level of risk could affect the judgement of what constitutes an appropriate rate of return on an operator's investment: in a well-functioning market, lower risk would normally be associated with lower rates of return (and vice versa).

6.21 The question of whether an operator can be expected to secure an appropriate rate of return is a complex one. To inform the LTA's judgement, the objecting operator will need to submit evidence in support of his objection, and the LTA should provide appropriate assurances about the confidentiality of any information that is commercially sensitive.

6.22 Though not specifically referred to in the regulations it will also be important for LTAs, in developing their proposals, to have due regard to the effect of frequency patterns within the

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<sup>16</sup> See detailed definition in regulation 8(6) to (8).

AQPS on connecting and other bus services that connect with them. The LTA should also have regard to longer routes which might only be within the area of the scheme for a part of their journey. These factors could have implications for vehicle and staff requirements, and might also have an impact as to whether or not it would be commercially viable for the operator to provide the service in the way proposed in the scheme.

- 6.23 In making its case, an operator will also need to consider the timescale of potential benefits accruing from the scheme and the basis on which commercial viability should be judged. No well-negotiated and aspirational scheme (to generate growth in the market) is likely to produce instant commercial success, but many will meet commercial criteria over the medium term.

**Are there any circumstances when a relevant operator cannot make an admissible objection?**

- 6.24 Where a standard of service in a scheme is to be met by an operator under the terms of a subsidised service agreement, the requirement for there to be no 'admissible objections' does not apply in relation to the application of that standard to the subsidised service. This is because operators should not be able to object to a requirement where the LTA is providing a subsidy to an operator to meet that requirement.

**What is the procedure for making an objection?**

- 6.25 Under the process specified in the regulations, an objection must be made in writing to the local authority in accordance with set timescales, and must include a statement describing the basis of an operator's objection, including evidence as to why the operator believes that either or both of the grounds of objection (see regulation 9(3)) are satisfied. The LTA may request further evidence from the operator if it considers this necessary to enable it to determine the question of admissibility. Once the LTA has made a decision as to whether the objector is a relevant operator, and whether the objection is admissible, it must inform the operator in writing. If an operator is unhappy with the decision of the authority, he may refer the matter to the traffic commissioner for a determination.
- 6.26 Where, in considering whether the objection is admissible, the traffic commissioner has to make a determination as to whether the second ground, on commercial viability, has been made, the traffic commissioner may seek the advice of an expert assessor. It is for the commissioner to consider procedural issues such as whether a hearing is needed, based (among other things) on the nature of the evidence submitted by the operator to the LTA (which will also have been sent to the commissioner when the objection was made to the LTA). Regulations made under powers in section 54 of the Public Passenger Vehicles Act 1981 allow for the traffic commissioner to hold hearings, or particular parts of a hearing, in private where confidential financial information is being discussed.

6.27 The process set out in the regulations consists of the submission of applications, and the making of decisions and determinations, in a structured and formal manner. But within that process, the Department would expect authorities to engage positively with operators who either have made, or are likely to make, an objection to try and find a mutually acceptable solution without recourse to the full objection procedure. It would also be helpful, where an operator registers an objection, for the operator to indicate what changes to the proposed requirements would be sufficient for that operator to withdraw his objection. This may allow the LTA to make adjustments to the scheme so that it can proceed without objection.

### **How long does the process take?**

6.28 The procedure prescribed in the AQPS Regulations sets clear deadlines for each stage of the process. The Regulations also stipulate that if either party fails to meet a deadline, for example in providing further information to either the authority or the traffic commissioner, a determination can nevertheless be made. On that basis, the overall timetable for implementing an AQPS should not be significantly affected (unless the authority has proposed requirements which are unrealistic or unachievable, in which case an operator's objection is likely to be admissible and further time will need to be allowed to revise the proposals).

6.29 An example timetable, setting out the key stages of the admissible objections procedure, follows. It assumes, for illustrative purposes, that a particular AQPS might take 18 weeks, from when the LTA first publishes a notice and launches a consultation about the proposal, to when the scheme is made. In the 'best case' scenario, where no additional information is requested by either the LTA making the original determination, or the traffic commissioner, the admissible objections procedure would add just one week to the overall timetable. In the 'worst case' scenario, where additional information is requested, the admissible objections procedure would not be expected to add any more than nine weeks to the overall timetable. But in practice, the additional time may be less than this, because many of the stages in the process are within the LTA's control and could therefore proceed more quickly than the time limits stipulated.



Timescales for admissible objections process (assuming objection is referred to the traffic commissioner, but not upheld)

	Weeks (no A/Os)	Weeks (with A/Os) Best case	Weeks (with A/Os) Worst case
<b>Publish s. 113G(1) notice and launch consultation</b>	0	0	0
<b>Deadline for A/Os</b>		4	4
<b>LA requests further info (if needed)</b>		-	6
<b>Operator must provide further info</b>		-	8
<b>LA must determine whether an objection is admissible and inform the objector</b>		8	12
<b>Public consultation period closes</b>	13	13	13
<b>Objector appeals LA determination to the TC</b>		10	14
<b>Lead authority provides supporting information to the TC</b>		12	16
<b>TC requests further information</b>		-	18
<b>Further information must be provided</b>		-	20
<b>TC must determine the matter and notify all parties</b>		16	24
<b>Decision about final content of scheme, in light of consultation and any objections</b>	17	18	26
<b>Scheme made</b>	18	19	27

6.30 The AQPS Regulations also provide scope for particular time limits to be extended, but this would be only by mutual agreement between the LTA and the operator, or at the discretion of the traffic commissioner (but this discretion may be exercised only where the traffic commissioner is of the opinion that the case cannot be dealt with fairly and justly within the constraints of the prescribed time limits).

**What happens if the traffic commissioner finds an objection is admissible? Does the authority have to go right back to the start of the process, and re-consult on a new set of proposals?**

6.31 Where the traffic commissioner has determined that there is an admissible objection, he may (but is not obliged to) make recommendations as to how the requirements as to vehicles, ticketing, frequencies, timings or maximum fares might be modified to render the objection inadmissible. Such recommendations would need to be clear and specific, so that it will be readily apparent whether or not the LTA has followed them.

**Where an objection is found to be admissible, the LTA:**

- May, where recommendations are made by the traffic commissioner, remove the particular requirement from the scheme, and then make the scheme. The 2000 Act does not require further consultation in this case, though the LTA should exercise discretion on this point, taking into account the particular circumstances of the case. Once the requirement has been removed, there is no further opportunity to lodge 'admissible objections' before the modified scheme is made.
- May amend the requirement in accordance with any recommendations made by the traffic commissioner. Again, the 2000 Act does not require further consultation, but the LTA should exercise discretion. There would be no further opportunity to lodge 'admissible objections' before the modified scheme is made.
- May propose to amend the requirement in some other way (in a way which differs from the recommendations of the traffic commissioner)
- Or, where none of the above apply, and the traffic commissioner has made no such recommendations, must propose modifications to the scheme in such a way as the LTA considers will address the objection which has been upheld.
- In the last two situations, must notify the objector of those proposed modifications, giving him the chance to withdraw his objection in respect of the requirement as modified. If the objection is not withdrawn the LTA will need, if it wishes to include the modified requirement in the scheme, to refer the matter back to the traffic commissioner. To avoid a long-drawn-out process, however, the LTA should take full account of the objector's concerns when revising the requirements.
- Enter into a subsidised service agreement (either under de minimis rules or by competitive tender), under which an operator is paid a subsidy in exchange for agreeing to meet the standard of service to which the admissible objection relates. If such an agreement is in place, any objection to the requirement in question ceases to be admissible.

6.32 It would also be an option for the LTA to abandon its AQPS proposal altogether, although it is to be hoped that a more positive way forward would normally be found.

6.33 In none of these situations is the authority under a statutory obligation to fulfil the requirements of section 113G of the 2000 Act (notice and consultation) a second time.

# 7. Establishing an AQPS

What consultation is needed before establishing an AQPS?

## Preliminary steps

- 7.1 Prior to the statutory consultation procedure prescribed in the 2000 Act, and at an early stage of planning an AQPS, LTAs are advised to make informal contact with bus operators, and with Highways England where there is potential for impact on the trunk road network. In addition, where the LTA is not also the local traffic authority for any road likely to be affected by the scheme, the LTA is also advised to make informal contact with the traffic authority. These steps will ensure that the published proposals come as no surprise and that operators and other interested parties have a chance to comment on the feasibility and acceptability of the proposals in advance of the formal consultation.
- 7.2 Operators will need to be willing partners in an AQPS in order for it to deliver its objectives. For practical reasons, therefore, the LTA will need to be offering facilities or taking measures that are of sufficient benefit (e.g. are likely to generate sufficient patronage growth) to justify asking operators to invest in the proposed improvements to the standard of their services.
- 7.3 Where it is proposed to include requirements relating to vehicles, ticketing, frequencies, timings or maximum fares, such requirements must, under section 113G of the Transport Act 2000, be fully consulted upon, and operators given the opportunity to discuss any concerns and conduct effective negotiations with the LTA. Such consultation is also advised before and – if necessary – after, the formal period of consultation. The AQPS Regulations set out the detailed requirements and procedure for making a scheme which includes such requirements. But the Government advises that the pre-formal consultation version of an AQPS should not only spell out the initial requirements as respects vehicles, ticketing, frequencies, timings or maximum fares, but should also include provisions explaining how and when those requirements might, or must, be subsequently reviewed and revised.
- 7.4 It is worthwhile at this pre-formal consultation stage also considering any matters that might be the subject of separate agreements between operators and the LTA, to underpin and support the AQPS. Where the LTA is a Combined or Integrated Transport Authority (ITA), it is also important to initiate early meetings with the relevant metropolitan district council(s) (MDCs) that may be joint makers of the Scheme. It is recommended that the need for this preliminary

consultation is specified in any voluntary agreement with an operator developed prior to an AQPS.

## Notification

- 7.5 The first formal statutory stage is for the promoting LTA to publish a notice of the proposed AQPS. It is for the LTA to determine how best to engage a wide range of interested parties through the combination of electronic and printed media. Either the notice itself must give full details of the contents of the proposed scheme (including details of the facilities, measures taken and standards of service proposed to be included, and any registration restrictions and criteria), or it must state where such details may be found.

## Consultation

- 7.6 After giving notice, the LTA must formally consult the stakeholders. It is obligatory to consult:

- All operators of local bus services who would, in the opinion of the authority or authorities, be affected by the AQPS;
- Organisations representing the users of local bus services. In the absence of a known local group, the LTA should consult the national organisation, Bus Users UK and Passengers' Council/ Transport Focus (although consultation with Passengers' Council/Transport Focus is also required anyway – see bullet below);
- LTAs should also particularly ensure there is thorough and positive consultation with groups who represent the needs of passengers with disabilities (in this respect it is vital to ensure that needs of disabled persons are represented in the consultation process). Often there are relevant local disability groups, and these groups should be involved in the consultation process. But authorities should also consider whether there are disabled people whose interests are not adequately represented locally, and how best to ensure those interests and needs are taken into account in the consultation process (this might, for example, include consulting regional or national disability organisations, or even individuals). The LTA must have regard to the obligations contained in section 112(2) of the 2000 Act with regard to the transport needs of disabled persons, older persons, and those who have mobility problems;
- In addition, as with any consultation, the Department would encourage authorities to consider how best to involve other specific groups in society who might have particular transport needs – for example children and other young people, older people and ethnic minority groups. This might involve actively engaging with local organisations representing such groups, and (in the case of young people) local schools and colleges;
- Other relevant local authorities that they think would be affected by the AQPS - these include other LTAs, district councils, and also, where appropriate, National Park authorities and the Broads Authority and adjoining local authorities in London, Wales or Scotland;
- The traffic commissioner;

- The chief officer of police for each police area affected by the AQPS;
- The Passengers Council (Transport Focus);
- The Competition and Markets Authority.

7.7 The LTA should also consult such other persons as they think fit. This could well include anyone likely to be affected by works on the facilities or any measures that need to be completed before the scheme can commence (i.e. development of the facilities or any works related to the provision of measures). There is no fixed time limit for consultation but sufficient time should be allowed to ensure that those who are likely to have views have a reasonable opportunity to make a considered response

7.8 As the Competition and Markets Authority are a statutory consultee, a LTA when consulting on a proposed scheme, should set out a summary assessment of how the scheme meets the competition test.

#### **Who proposes and develops an AQPS and how?**

7.9 It is for LTAs to develop proposals for an AQPS, though in practice they should do so in close collaboration with bus operators and perhaps other interested parties (the initial suggestion for a scheme could come from external sources). Where a highway authority is also the LTA the situation is relatively straightforward because they hold the necessary powers, though Highways England will need to be involved if the AQPS affects a trunk road. A scheme crossing one or more LTA boundaries can be established provided it is made jointly by both or all the LTAs.

7.10 In the metropolitan areas, the LTA concerned is the Integrated Transport Authority (ITA) or a Combined Authority. However, those authorities do not have responsibility for highways or traffic management - those belong with the metropolitan district councils (MDCs)<sup>17</sup>. So in cases where an AQPS will require a TRO to form part of, or enable a facility, the scheme must be made jointly by the ITA or Combined Authority and the relevant MDC(s) in accordance with section 113F(1) of the 2000 Act.

7.11 Where an AQPS can be made without recourse to a TRO, there may nevertheless be highway or traffic aspects to it which make it highly desirable, if not essential, for an MDC to be directly involved. There may be features of the scheme which cannot be delivered without the MDC's participation. In cases where there is no formal role for the MDC in the AQPS, it may be advisable for the ITA/ Combined Authority and MDC to enter into a legally binding agreement to ensure that this participation is achieved in practice (and for the full period of the AQPS).

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<sup>17</sup> However, the Local Transport Act 2008 includes provisions enabling future secondary legislation to delegate transport-related functions of MDCs to ITAs.

7.12 Likewise, whilst nothing in the 2000 Act precludes other parties such as the Police or Highways England from being involved in an AQPS, they have no formal role in 'making' the scheme. However, it is advisable to secure the commitment from the third party through a legally binding voluntary agreement which may also enable a wider range of commitments to be agreed. This also applies to an AQPS being supported by operator specific agreements, which may refer to and dovetail with the AQPS, and provide greater enhancements in overall service provision and quality. Indeed, there may be great value in a bilateral process linking voluntary partnership agreements directly to the terms and durations of the AQPS.

7.13 It is for the LTA to consider how best to go about developing a scheme, but early involvement of all relevant parties is a key to success.

### **'Lead authority' for a joint scheme**

7.14 Where a scheme that includes requirements about vehicles, ticketing, frequencies, timings or maximum fares is made (or proposed to be made) jointly by two or more LTAs, the regulations require a 'lead authority' to be specified in the scheme. The purpose is to provide a single channel for communications between the local authorities and - for example - bus operators, the traffic commissioner and other relevant parties. Each authority will retain full responsibility for the decisions about how schemes will work in their areas, but LTAs will need to work in close partnership to deliver a joint scheme. Indeed, they are under a statutory duty:

(a) when considering making an AQPS to have regard to the desirability of making a scheme jointly with one or more other authorities; and

(b) to cooperate with each other when exercising functions relating to advanced quality partnership schemes, and regulation 4(2)(b) of the AQPS Regulations requires the lead authority to act in accordance with the representations of the other authorities, wherever appropriate.

### **What does an operator do if it does not like what is proposed?**

7.15 We would expect any local authority contemplating introducing an AQPS to enter into preliminary discussions with local operators prior to the first drafting, and during the production of proposals. LTAs will want to give thought to the best way to include smaller, as well as the major, operators within these discussions. In that way, through the spirit and practice of partnership, the content of the AQPS (and, importantly, any voluntary partnership agreement) is likely to meet the aspirations of all parties. As well as this informal consultation, the LTA must follow the formal consultation requirements set out in section 113G of the 2000 Act. However, it would be expected that all the issues that an operator might raise at this stage would have been the subject of informal discussion. Operators should not wait until the formal consultation phase before raising their concerns.

7.16 Additional notice requirements apply if the proposed AQPS contains any items of infrastructure which are already in place prior to the making of the scheme. This is outlined in paragraphs 5.17 to 5.21 above.

7.17 If a proposed AQPS includes any requirement as to vehicles, ticketing, frequencies, timings or maximum fares, then relevant operators have the right to object if it is found to be an 'admissible objection' the scheme cannot go ahead with that requirement included. This is fully explained in paragraphs 6.14 to 6.33.

7.18 When a LTA makes or varies an AQPS, it must ensure that the competition test in Part 1 of Schedule 10 to the 2000 Act is met, and the LTA should also publish its assessment of how that test is met. If, despite the LTA's assessment, an operator or other interested party considers that the test has not been satisfied, in that it raises a barrier to entry or competition which is disproportionate, then it may refer the matter to the Competition and Markets Authority (CMA) for investigation. Details of how to contact the CMA can be found at:  
<https://www.gov.uk/guidance/tell-the-cma-about-a-competition-or-market-problem>.

#### **How does the Competition Test apply to an AQPS?**

7.19 As with the former QPS arrangements, a LTA can only make or vary an AQPS if it satisfies the requirements of the Competition Test in Part 1 of Schedule 10 to the 2000 Act. The test is satisfied if:

- the scheme does not have or is not likely to have a significantly adverse effect on competition, or
- the effect it has on competition is proportionate to the achievement of one or more of the following purposes:
  - improving the quality of vehicles or facilities covered by the scheme;
  - securing other improvements to local services of benefit to their users;
  - reducing or limiting traffic congestion, noise or air pollution.

#### **Part 1 test**

7.20 AQPs are subject to the test in Part 1 of Schedule 10 to the Transport Act 2000. This test has three elements:

a) Is there or is there likely to be a significantly adverse effect on competition? If yes:

b) Is the LTA's involvement with a view to securing one or more of the three purposes specified (known as 'bus improvement objectives'), either:

- to secure improvements in the quality of vehicles or facilities used to provide local services,
- to secure other improvements in local services, or
- to reduce or limit traffic congestion, noise or air pollution; and



c) is the effect on competition proportionate or likely to be proportionate to the achievement of that purpose?

- 7.21 It is for the LTA(s) making AQPS to consider these issues and set out - in a document - why they believe the content of the AQPS - meet those tests.
- 7.22 The specified standards of service should be ones which can be reasonably met by any competent and efficient operator, unless the standard is higher but the benefits of those higher standards outweigh the costs of compliance (in this respect, an assessment of the benefits and the costs will, in all likelihood, take account of the extent to which existing passengers are prepared to pay for that compliance – and whether any new passengers will be attracted by the improvements being provided). For instance, a requirement to operate buses equipped to give a high standard of accessibility for disabled people will probably be considered reasonable, as the benefit to the travelling public would justify any operator investment (provided any facilities and/or measures provided under the AQPS were complementary - e.g. built up kerbs, bus stop boarders, enforced clearways at stops).
- 7.23 The competition test is different from the grounds on which an 'admissible objection' may be made. The purpose of the competition test is to ensure that any adverse effect on competition of a scheme (which in turn can be detrimental to consumers) is outweighed by the wider benefits to society. The 'admissible objections' process focuses on the potentially adverse effects specifically on operators and does not factor in the wider benefits to society as a whole.
- 7.24 The CMA is empowered to investigate whether the making or varying of a scheme complies with the competition test. It may do so if the operator affected or likely to be affected by the AQPS considers that the requirements of the competition test are not met, and having failed to persuade the LTA, refers the matter to the CMA. As previously mentioned in paragraph 7.18, guidance on the application of this and other competition tests is available on the CMA's website (<https://www.gov.uk/government/organisations/competition-and-markets-authority>).
- 7.25 If the CMA finds that the competition test is not met, it must publish its decision together with its reasons. The LTA would not be able to proceed with the scheme in its current form, and the CMA may give a written direction either prohibiting the making of the scheme, or (if it has already been made) requiring it to be varied or revoked. There are no powers for the CMA to impose financial penalties on any party if the making of an AQPS is found not to meet the competition test. However if the LTA does not comply with the direction of the CMA, it may apply to the High Court for an order requiring the LTA to comply with the direction. The High Court may order the LTA to bear the costs of the application. Also the CMA may charge fees in connection with the exercise of its functions, for example if it conducts an investigation.
- 7.26 Schedule 10 to the 2000 Act also contains provisions about other types of agreement – see the flow chart at **Annex D** and the 'Part 2' test described in the competition guidance referred to above. Where an agreement is made between operators (described in the Schedule as a 'qualifying agreement') in support of a proposed AQPS, the Part 2 test will apply to that

agreement provided it is certified by the LTA as being in the public interest and not including unnecessary restrictions on competition, and provided it is not a price-fixing agreement.

### **How do the competition rules apply to agreements between operators entered into in support of an AQPS?**

- 7.27 It may be appropriate for operators to enter into agreements alongside an AQPS - e.g. to agree how they will collectively meet a minimum frequency specified in an AQPS. If the LTA were a party to such an agreement, and were providing 'facilities' or taking 'measures' as part of the agreement, then that agreement could be a voluntary partnership agreement (VPA)<sup>18</sup> - falling to be considered within the competition test in Part 2 of Schedule 10 to the 2000 Act.
- 7.28 However, if the LTA were not a signatory to that agreement, but had certified that it was in the public interest and did not include unnecessary restrictions on competition, then that agreement would be a qualifying agreement and would also fall to be considered within the Part 2 test mentioned above. The LTA may wish to play a role in facilitating or brokering such an agreement, and this is likely to be helpful to the operators concerned as it should give them a guide as to whether or not the LTA is likely to be prepared to certify a particular agreement.
- 7.29 The important thing to bear in mind during any brokering phase is that the operators will wish to avoid entering into an agreement between themselves until the end of the process. This is because it is the making of an agreement that is likely to engage competition law in this context. Keeping a written record of any discussions, agreed by each of the participants, should help to demonstrate that no agreements are entered into until the appropriate time. In brokering an agreement of this kind, the LTA should also ensure that operators wishing to participate in the discussions are given an opportunity to do so.
- 7.30 If a qualifying agreement of the kind envisaged here does not have local authority endorsement, it would need to satisfy the relevant provisions of the Competition Act 1998. Further details are contained in the flow chart at **Annex D**, and in the separate guidance on competition issues (see paragraph 7.24 above).

### **How can an AQPS include requirements as to frequencies and timings in a multi-operator environment?**

- 7.31 Suppose a local authority and bus operators wish to work in partnership to provide a minimum of four services per hour on a particular route, with a maximum interval of 15 minutes between services, supported by a new bus lane at a key pinch-point on the route. Suppose further that, prior to the AQPS, there are two operators (A and B) each operating two services an hour, but

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<sup>18</sup> Defined in section 153(2) of the 2000 Act.

with an overall effect of services being provided at irregular intervals. The process could work as follows:

- 7.32 The proposed AQPS specifies the required standard of service as 'four services an hour, with a maximum interval of 15 minutes between services'. Because it relates to frequencies and timings, the local authority would engage in negotiations with bus operators, with a view to agreeing how they would participate in achieving this service pattern.
- 7.33 The proposed AQPS also makes clear that, where a specified set of criteria is met, it would be inappropriate for additional services to be registered in the area of the AQPS. This could be done by the inclusion of a suitable registration restriction in the scheme. The registration criteria might seek to restrict 'disruptive' entry to the market (e.g. by preventing registrations of additional services not meeting the partnership standards where there is insufficient demand to sustain them alongside the existing partnership services), while preserving the possibility of 'beneficial' entry (e.g. to meet sustained demand for increased frequencies).<sup>19</sup>
- 7.34 Individually, neither A nor B wishes to run four services per hour. So neither operator, on his/her own, can provide the necessary undertaking under section 113J(4) and (5) to the traffic commissioner that he/she will meet the 'standard of service' specified in the AQPS. In the absence of an AQPS neither would be prepared to revise their timetables (because of their own operational priorities), but, in light of the benefits arising from the proposed local authority investment, both are prepared to review and amend their timetable commitments.
- 7.35 Therefore, the two operators could reach an agreement (separate from the AQPS) under which A will operate services at xx00 and xx30, while B will operate services at xx15 and xx45.<sup>20</sup>
- 7.36 The two operators can then give an undertaking to the traffic commissioners that they will (between them) meet the standard of service specified in the AQPS (with suitable caveats to allow flexibility if one operator subsequently failed to deliver its commitment – see below). They would both then have access to the facilities provided under the scheme.
- 7.37 The operators might wish to include provisions in their agreement as to the terms under which one operator may withdraw services. This might include provisions as to notice periods (to enable the remaining operator to put in place alternative arrangements to ensure that the frequency specified in the AQPS can continue to be met), or as to compensation.
- 7.38 Once the scheme has been made and one operator then withdraws its services, if the remaining operator is unable to provide services to the required frequency (either alone or in cooperation

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<sup>19</sup> Examples of registration criteria include: 'the registration of a new service should not be permitted if it would materially affect the commercial viability of services already being provided under the Scheme', or 'registration of a new service should not be permitted unless there is evidence of significant passenger demand that is not being met by existing services provided under the AQPS'. Although such criteria would likely have an adverse impact on competition, they could nevertheless be justified as part of an AQPS - so long as this adverse impact was proportionate to the benefits of the Scheme (in accordance with the competition test in Part 1 of Schedule 10 to the 2000 Act).

<sup>20</sup> This agreement would need to meet either the competition test in Part 2 of Schedule 10 (if it is a 'qualifying agreement' which has been endorsed by the LTA), or that in section 9 of the Competition Act 1998 (if not), in order to be lawful.

with another operator), it may be necessary for the local authority to review and modify the frequency requirements in the AQPS - or to enter into a subsidised service contract with an operator to make good the 'gap' in provision. There should be no obligation however for the remaining operator to take over the service. If another 'partner' cannot be found - either voluntarily or by means of a subsidy agreement - the local authority should review and vary the relevant requirement in the scheme, so that the remaining operator is not forced to withdraw his undertaking to the traffic commissioner. In this respect, one operator should not be held liable for the decisions of another.

- 7.39 Where operators give a joint undertaking to the traffic commissioner, it might be advisable for them to draw up a legally binding voluntary or qualifying agreement setting out what would happen if one party wishes to reduce or withdraw services.
- 7.40 This approach would provide greater stability for participants in the AQPS, while still preserving the possibility of 'beneficial' entry into the market. Either A or B could register additional services - unless the traffic commissioner concluded that such registrations would be detrimental to the scheme (as per the criteria set out in the AQPS itself). In this respect, there should be a presumption that providing services in excess of the basic requirements will – so long as there is evidence of sufficient and sustainable demand for those additional services – normally be beneficial.
- 7.41 A new operator, C, could also enter the market in the same way. If C wished to provide additional services alongside A and B's services, and if the traffic commissioner concluded that such competition was consistent with the registration criteria set out in the AQPS, then C could register additional services.
- 7.42 In these circumstances – though it would not be necessary so long as the original AQPS terms were still being delivered – the local authority might wish to review the frequency requirements, with a view to reflecting the new, increased level of commercially viable frequency.

# 8. Making and introducing an AQPS

## What is involved in making and introducing an AQPS?

- 8.1 Following consultation, the LTA may make the AQPS, either as originally proposed or with modifications. Modifications, where made, should take account of views expressed in response to consultation, though some may also be necessary simply because external circumstances have changed since the AQPS was originally proposed. Modifications might arise, for example, as a result of consultation responses, changing external circumstances, or an admissible objection.
- 8.2 If modifications are likely to change the scheme significantly, or in ways that the consultees could not reasonably have anticipated, the LTA would be advised to re-consult at least those parties who would be specifically affected by the changes (and who might have responded differently had they known about the changes). Re-consultation is not a statutory requirement under the 2000 Act, so each case must be considered on its merits in line with the general duties of the authority to involve local persons in the exercise of their functions where appropriate.
- 8.3 Nevertheless, where a LTA makes changes to requirements relating to vehicles, ticketing, frequencies, timings or maximum fares in response to the consultation process, it should discuss those with affected operators before making the scheme. If modifications to the scheme have the effect of bringing additional operators within the definition of a 'relevant operator', the AQPS regulations require the LTA to serve an appropriate notice on those operators informing them of the modifications, so as to provide an opportunity for them to consider the requirements and make objections, if appropriate.
- 8.4 The 2000 Act does not specify what is meant by 'making' a scheme - the formal procedure for adopting it will depend on the practice of the LTA concerned. For example, a resolution of the Full Council, or Executive Committee or ITA/ Combined Authority, may be necessary and a copy may need to be signed by an appropriate member or officer. However, the effect of a scheme being made is clear enough. It means that the scheme details are finalised, with specification of:
  - the facilities to be provided or measures taken under, or covered by, the AQPS (whether to be provided from the outset of the scheme or from a later, specified date);
  - the standard of services to be provided by bus operators under the scheme (as above);

- the date on which it comes into operation (see below);
- the period during which it remains in operation, which must not be less than five years, and
- any registration restrictions imposed by it and any registration criteria specified by it.

8.5 The date of coming into operation must not, in any event, be less than 3 months after the date on which the AQPS is made. But if one or more Traffic Regulation Orders (TROs) are needed to give effect to the Scheme then the date must also be at least 3 months after the date on which the TRO (or the latest of those TROs) is made. However, these are only minimum times, and the important issue is that sufficient time is allowed for the LTA to put in place the necessary facilities or take the necessary measures and for operators to ensure they can provide services to the specified standard.

## What steps need to be taken after the AQPS has been made?

### Notification

8.6 Once the AQPS has been made, then within 14 days, a further notice must be published – it is for individual LTAs to decide how to publish the notice. However, a copy of this notice must be sent to:

- All operators of local services that would be affected by the scheme, and
- a traffic commissioner.
- The LTA must also give notice in such manner as they consider appropriate for drawing it to the attention of persons in the area to which it relates.

8.7 As with the original notice, it must either give full details of the AQPS or state where they may be inspected. If it is a modification of the original proposal, that fact must also be stated in the notice. When giving notice to the traffic commissioner, it will be important for the LTA to provide full details of the precise area to which the scheme relates, and of any registration restrictions it contains. The traffic commissioner will need to be aware of those details, because of their role in the registration restriction process.

### Postponement

8.8 Although the AQPS must specify the date (or dates) from which the prescribed facilities must be made available, or measures taken, and services must be provided to the prescribed standard, there may be instances where, due to unforeseen circumstances, it becomes impossible to make all the necessary arrangements by the specified date(s). There is therefore provision for

postponing implementation dates for up to (but no more than) 12 months from the original proposed date. This applies equally to facilities provided, measures taken and standards that were due to apply from the outset of the scheme, and to those that were due to be introduced at a later date specified in the scheme. However, the LTA:

- must, before any postponement can be made, consult all the operators they think would be affected by the AQPS;
- should review and, if necessary, revise the standards expected from operators. In doing so, the LTA should bear in mind the question of proportionality between the facilities being provided or measures being taken by the LTA and the standard of service expected from the operators; and
- must give notice of the postponement decision (not more than 14 days after reaching it) in the same way as the notice was given at the time that the scheme was made, i.e. in such manner as they consider appropriate for drawing it to the attention of persons in the area to which it relates and directly to affected operators and the traffic commissioner.

## Implementation

8.9 The LTA making the AQPS has a duty to ensure that any facilities are in place and useable by the date (or dates) specified in the scheme, and to ensure that these are maintained for the duration of the scheme. It has a similar duty to ensure that any measures are taken by the date (or dates) specified in the scheme. There is an exception to cover the temporary withdrawal of facilities or measures due to circumstances beyond the LTA's control.

8.10 Unless their services are excluded from the scheme, operators wishing to use any facilities or take advantage of any measures provided under the scheme will need to meet the applicable standard under the AQPS when using any facilities or taking advantage of any measures. The legislation requires such operators to give a written undertaking to a traffic commissioner that they will provide the standard of services required by the AQPS when using any relevant facilities or taking advantage of any measures. It would be sensible for the AQPS to include a 'Form of Undertaking' for this purpose as a schedule. The operator is required to provide the services to this standard for the duration of the scheme whenever using any facilities or benefiting from any measures, except for any period when they are temporarily unable to do so owing to circumstances beyond their control. The traffic commissioner has the powers to enforce compliance<sup>21</sup> with that undertaking, i.e. that:

- any operator that has given the undertaking adheres to the necessary standard of services;
- any operator which has registered services in the affected area, but has not given the undertaking (or which has given the undertaking but is not complying with it) is prohibited

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<sup>21</sup> The powers of enforcement available to the traffic commissioner are powers to attach conditions to the licence under section 26 of the Transport Act 1985, or to impose sanctions under section 155 of the 2000 Act.

from using any facilities provided under the scheme or taking advantage of any measures, but not from operating in general traffic along that corridor, if in doing so it does not use any defined facilities or take advantage of any measures taken;

- in the case of services that are excluded from the scheme subject to conditions, those conditions are complied with (the conditions have the same status as registered particulars of services).

8.11 The traffic commissioner does not have power to cancel an existing service registration simply because the operator has chosen not to give an undertaking to meet the standard of service.

### **How long does an AQPS last?**

8.12 The 2000 Act provides that an AQPS must remain in operation for at least 5 years. There is no upper limit, but LTAs should bear in mind that policies and service requirements are likely to change over time and that schemes should therefore be reviewed at reasonable intervals. Review procedures for the AQPS, if not appropriate for inclusion in the scheme itself, can be specified in a supporting agreement. The 2000 Act requires there to be a definite end-date for a scheme, though this may be subsequently varied, provided the variation procedure specified in section 113L of the 2000 Act (which applies to any variation of a scheme) is complied with. The same procedure applies for revoking a scheme before the end-date, should the need arise, although such early revocation can only be done with the consent of all bus operators providing services in accordance with the scheme (and such consent must not be unreasonably withheld). Both procedures require public consultation.



# 9. Managing and enforcing an AQPS

## How should an AQPS be monitored?

- 9.1 Once an AQPS is in place, all the participants will want to monitor the delivery of key outputs and whether it is achieving the objectives that they each expected from the scheme. It would be good practice for all participants to agree to a formal governance structure in advance of the start of the scheme, perhaps with a board headed by an independent chair (e.g. a representative of the business community), to oversee progress and – importantly – arbitrate over differences which may arise during the course of the scheme. LTAs and operators would both wish to have regard to any proposals or recommendations coming from this board. Indeed, an independent chair would be well placed to help the AQPS come into being, avoiding formal objections, and minimising the need for any parties to seek the intervention of the traffic commissioner during the life of the scheme. An independent chair might also have a role if, for instance, standards of service were not met consistently or facilities were not delivered on time, and during periods in which particular standards of service in the scheme are under review.
- 9.2 As part of this, it would be good practice at the start of implementation to set a formal review date perhaps 6 to 12 months ahead so that the parties involved can share experiences and report impacts. It would be appropriate at the inception of the scheme to agree what will be monitored, how, over what timescale, and which parties are responsible for which aspects of monitoring. Issues of commercial confidentiality should be tackled at this stage to avoid problems at a later date and account must be taken of the obligations of the LTA making the scheme in relation to the Freedom of Information Act 2000.
- 9.3 In addition, a formal review process should be initiated 12 to 18 months before the date set for the termination of the scheme. This enables all parties to review their position and ensures that a fully informed decision can be taken by the LTA as to whether to vary the scheme so as to extend the period over which it will operate.
- 9.4 The nature of the partnership should be dynamic, allowing development as the need arises and opportunities present themselves. A continuing and open dialogue between the various parties should be encouraged (e.g. through the independently chaired board structure described above). And the governance arrangements set up at the outset should provide scope for operators to provoke a review – and variations – to the scheme.

9.5 Notwithstanding the above, there is a process in the 2000 Act for varying any scheme, and this must be followed if for example any LTA wishes to add any facilities or undertake new measures, or update the standards of service. Any such variation will require the same notification, consultation and making procedure as is required the first time any Scheme is made.

#### **What is the procedure for varying an active AQPS?**

9.6 The notification and consultation procedure for a LTA wishing to vary an AQPS is currently the same as for making a new scheme. Other than where the variation would require the making of a TRO, there is a power for the Secretary of State to modify this procedure by regulations, but at present no such regulations have been made.

9.7 Where the LTA and bus operator(s) wish to link a series of planned provisions of facilities or the taking of measures with a series of tiered standards of service (see the comments above on the investment/commitments on both sides being proportionate), this can be achieved through the power in section 113C(9) to include additional items from certain dates. The LTA would have to provide the added facilities and take any additional measures, and operators would have to provide services to the newly-applicable standard at the dates specified. By this means, the need for modifications to the AQPS to reflect additional facilities or measures would be avoided. However, local authorities would need to be sure when they make the scheme that they could deliver the facilities and take the measures as specified by the relevant dates if a postponement or variation of the scheme is to be avoided later.

9.8 Specific arrangements would apply for the review of requirements about frequencies, timings and maximum fares. Where such requirements are revised following the completion of a review, the legislation provides for any such revision not to be treated as a 'variation' to which the consultation and other requirements of section 113L of the 2000 Act apply.

#### **What about reviewing and revising requirements about frequencies, timings or maximum fares in an AQPS?**

9.9 The legal framework for AQPSs recognises that requirements included in a scheme at the outset may need to be reviewed and revised over time in light of changing circumstances. This is especially true of requirements about frequencies, timings or maximum fares, which will have a substantial impact on the ongoing commercial viability of services provided under a scheme. In this regard, the legal framework also seeks to strike a balance, ensuring that passengers can benefit from network stability and that schemes cannot be undermined by an endless cycle of reviews, while also allowing for schemes to evolve in response to material changes in circumstances. Note that there is no power to review vehicle or ticketing requirements.

9.10 Part 3 of The Advanced Quality Partnership Schemes (England) Regulations 2018 S.I.21 sets out the procedures for reviewing requirements about frequencies, timings and maximum fares. The arrangements are slightly different in relation to maximum fare levels.

## Maximum fare levels

- 9.11 Where a scheme includes requirements about maximum fares, it may do so either in the form of a fare level (e.g. £1.50) or as a formula (which might include variables such as cost indices reflecting operators' key input costs, determinants of patronage, etc). The latter approach may be more complex but might also have the advantage of requiring less frequent review.
- 9.12 Where a scheme includes maximum fare levels, it must also specify a maximum interval between reviews of those levels (referred to in the Regulations as the 'maximum fares requirement period'). The interval must be no more than 12 months – i.e. maximum fares must be reviewed at least annually, as a matter of course. If an authority fails to review within the appropriate interval, any participating operator can request that they do so – and if they fail to start the review process within 14 days of that request, the maximum fare level lapses automatically.
- 9.13 There are also provisions for additional reviews to be carried out at any time during the appropriate interval in certain circumstances. The LTA may instigate a review of requirements:
- Where market conditions have changed 'materially' (see below) since the last review, or where the requirements are no longer consistent with its local transport policies.
- 9.14 In addition, where three or more participating operators whose services are affected by a particular set of requirements (or 50% of such operators, if fewer) request it, then the LTA must carry out a review of those requirements, unless it considers that since the last review market conditions have not materially changed.
- 9.15 The intention of these provisions, and the related provisions about frequency and timing discussed below, is to ensure that the LTA carries out an additional review of particular requirements where circumstances have genuinely and significantly changed, but equally to ensure that schemes cannot be subject to frivolous or vexatious requests for reviews. Accordingly, the Regulations place a duty on the LTA to review requirements where requested by the requisite number of operators, but also allow the LTA – in effect – to refuse to carry out a review where there has not been a change in market conditions that is sufficient to justify a review.
- 9.16 This judgement about 'material change' in market conditions will inevitably depend on the local circumstances. However, it is likely that a major change – for example the forthcoming closure of a substantial retail outlet, major employer, school, hospital etc. – is likely to constitute a material change in respect of requirements applying to services whose routes serves the facility being closed. Forthcoming changes in timetables on connecting rail, tram or other services are also likely to be 'material' in relation to any requirements about timings of connecting bus

services. However, a change in market conditions that has only a small impact on costs or patronage is unlikely to be 'material' in this context.

### **Maximum fares formulae, frequencies and timings**

9.17 The arrangements for reviewing maximum fares formulae, frequencies and timings are slightly different. In these cases there is no statutory requirement for the scheme to specify a maximum interval between reviews – though it may be good practice to do so. However, a review may be instigated by:

- The LTA, if market conditions have changed 'materially' (see above) or if existing requirements (e.g. the effect of the formula) are no longer consistent with its local transport policies; or
- by three or more participating operators whose services are affected by a particular set of requirements (or 50% of such operators, if fewer) requesting it, but only if market conditions have changed 'materially' (see above) or if it has been more than a year since the last review of the requirements or the formula in question was completed.

9.18 In other words, the requisite number of operators can insist on a review either if market conditions have materially changed, or if it has been more than a year since the last review of the requirements was completed. If neither of these two conditions are met, the LTA is not obliged to carry out a review even if requested to do so. Again, the purpose is to ensure that schemes are not undermined by unnecessary requests for reviews.

### **Reviews generally**

9.19 Whether instigated by the LTA or by a request from operators, the starting point for a review is a 'review notice' issued in writing by the LTA. This should set out clearly which requirements are being reviewed, and should set a deadline (of between 28 and 42 days) within which participating operators may make representations.

9.20 Having considered any representations, the LTA must then make a decision i.e. that the requirements should continue to have effect until the next review; cease to have effect; or be revised. The LTA could propose to treat different requirements in different ways: e.g. some could be left unchanged, but others modified. In any case, once the period for representations to be made has ended as stipulated in the review notice, the LTA must notify participating operators of its decision in writing within 35 days.

9.21 As when an AQPS is first being developed, the intention for reviews of requirements is that LTAs and operators should work together to identify a mutually acceptable set of requirements. As a last resort, however, the admissible objections procedure would apply to the outcome of a

review in the same way as it applies at the outset of the scheme. However, it is likely to be strongly in the interests of operators and LTAs to avoid recourse to these formal procedures.

### **How can a new operator join an existing AQPS?**

- 9.22 If a new operator wishes to use facilities provided or take advantage of measures under an AQPS that is already in force, either because they wish to register a service that is affected by it, or because they want to use facilities or benefit from measures from which they are excluded, they need to give a written undertaking to the traffic commissioner. It would also be appropriate for the operator to let the LTA know in advance of their intentions, so that the authority will be aware of their actions as regards monitoring or enforcement of the AQPS. There is nothing in the 2000 Act to limit this procedure to the time when the scheme first comes into force.
- 9.23 Where an AQPS includes registration restrictions, the traffic commissioner would need to consider whether, taking account of the registration criteria, the application to register the new service should be accepted.

### **How can an operator leave an AQPS?**

- 9.24 Although an AQPS obliges a participating operator to comply with its terms when using any facilities provided or taking advantage of any measures under the scheme, it does not, and cannot, oblige operators to participate. A participating operator may leave an AQPS by three mechanisms only (other than by ceasing to trade): by cancellation of registration of the services subject to the AQPS (so that it is no longer providing a local bus service); by withdrawing its written undertaking to the traffic commissioner to provide the service to the specified standard; or by ceasing to meet its obligations in accordance with that undertaking. If any of these three conditions are met then the bus operator will no longer be entitled to use any facilities detailed in the scheme or take advantage of any measures taken by the LTA and will effectively have ended its participation in the scheme.
- 9.25 If there are reasons why an operator knows that it may not be able to meet its obligations because of temporary difficulties, then it would be good practice to report the issue to the LTA and indicate what action is being taken by the operator to restore services to the applicable standard. In the context of temporary and unavoidable failures, the LTA may well wish to work with the operator to put appropriate remedial measures in place.
- 9.26 Under the AQPS model there is no mechanism whereby an operator compensates a local authority if it ends its participation, though this may, of course, be covered in separate bilateral agreements between the parties.

## **What happens if an operator does not meet its AQPS obligations? What is the role of the traffic commissioners and what are their powers?**

- 9.27 Before any formal action is to be taken, the first step would be for the parties to engage to find a sensible compromise or even consideration given to amending the AQPS. If after such discussions an operator is still in breach, the LTA may wish to ask the traffic commissioner to intervene. In this case, the formal process is as follows: if an operator has given a written undertaking to the traffic commissioner to meet the service standards required by an AQPS, and subsequently fails without reasonable excuse to meet those standards, the traffic commissioner may either impose a financial sanction on that operator (under section 155 of the 2000 Act), or attach a condition to the operator's licence (under section 26 of the Transport Act 1985). Similarly, the traffic commissioner can penalise an operator that uses the scheme facilities without having given an undertaking to meet the required standard.
- 9.28 The penalties in either case are the same as those for failing to operate a local service in accordance with the registered particulars. The penalty may consist of:
- A financial penalty of up to £550 for every vehicle which the operator is licensed to use (this maximum can be varied by order made by the Secretary of State);
  - an order for the operator to invest a specified sum of money in particular local services or related facilities;
  - an order for the operator to compensate passengers of a specified description; or
  - a condition on the operator's licence under section 26 of the Transport Act 1985 prohibiting it from operating specified local services, or any local service (and the possible cancelling of the registrations of affected services).
- 9.29 Where a traffic commissioner orders an operator either to invest in particular local services, or to compensate passengers, and the operator fails to comply, the traffic commissioner may impose a financial penalty up to 110% of the maximum amount (currently £550 for every licensed vehicle).
- 9.30 Where a traffic commissioner attaches a condition to a bus operator's licence, those conditions may also be attached to other licences held by the same operator in another traffic area, or held by another undertaking within the same group. The traffic commissioner receiving then attaches the relevant licence condition, unless he considers there is a good reason not to do so.
- 9.31 In more serious cases, where a condition has been attached to a licence on the grounds that an undertaking to operate services to a particular standard has not been honoured, and that condition is subsequently breached, the traffic commissioner may decide to revoke, suspend or restrict the authorisation of the operator's licence.

9.32 Section 113J of the 2000 Act allows operators who have given a written undertaking to use the facilities provided or take advantage of measures under an AQPS while temporarily not adhering to the standard of services in situations where the operator is temporarily unable to do so owing to circumstances beyond its control.

### **What happens if a LTA does not meet its AQPS obligations?**

9.33 This could arise if the LTA fails to provide, maintain or enforce any facilities or continue to take any measures throughout the life of the AQPS, as required under section 113J of the 2000 Act. The LTA is under a statutory duty to provide, maintain and enforce any facilities or measures and failure to do so would amount to a breach of statutory duty. Where the statutory duty is breached, an operator should formally register their concerns with the LTA and seek to negotiate a mutually acceptable way forward. This approach is most likely to be conducive to maintaining a spirit of partnership and to securing a clear future for the scheme, which is likely to be in the interests of both the LTA and the operators concerned. However, if a mutually acceptable solution cannot be found, an operator may consider one or more of three actions, depending on the facts of the case:

- Withdrawal from the AQPS.
- Instigate legal proceedings to force the LTA to honour its responsibilities.
- Instigate legal proceedings to recover any damages from the LTA.
- However, to safeguard against unnecessary withdrawal, a legally binding voluntary agreement could be established with the operator(s).

9.34 Section 113J of the 2000 Act provides that the requirement to provide, maintain and enforce facilities and take or keep in effect measures does not apply where the LTA is temporarily unable to provide the facilities or take the measures owing to circumstances beyond their control. There is considerable scope for LTAs to postpone elements of an AQPS (though, as described in previous sections of this Guidance, the authority may need to review and if necessary revise the commitments expected of operators to ensure they remained proportionate to the facilities being provided or measures being taken).

### **Can an AQPS be revoked before the expiry date? What is the procedure?**

9.35 The authority that made the AQPS can revoke it provided that they have the consent of all the operators that have given undertakings to meet the AQPS standards. The operators must not unreasonably withhold that consent. Revocation is also subject to the same notification and consultation procedure as the making of a scheme.

## What happens at the end of the period of the AQPS?

- 9.36 If an AQPS has reached its end date, no less than five years since its implementation, without replacement by a successor, then the standard of services will no longer apply and it will no longer be possible to exclude operators that do not meet these standards from using the facilities or measures provided by the LTA. If it is desired that a Scheme should continue beyond the period originally specified it will be necessary either to vary the scheme (as mentioned earlier in this Guidance) or to establish a new scheme of a similar nature to commence on termination of the old one. Either would involve a repetition of the procedure for notification, consultation and making the Scheme described above (though there is a power for the Secretary of State to modify the procedure in regulations (see above)).
- 9.37 Variation of the scheme would need to be consistent with the competition test in Part 1 of Schedule 10 to the 2000 Act, and earlier references in this guidance to proportionality apply equally here. The benefits arising from some facilities or measures will diminish over time (e.g. conditions of physical infrastructure may deteriorate), but for other facilities or measures may increase (e.g. where traffic congestion is increasing, journey time savings arising from a bus lane may actually increase over time), and this may affect the overall judgement about proportionality. As with the making of the Scheme, the CMA may conduct an investigation if it considers that the competition test may not be met.



# 10. Annex A: Facilities

10.1 The definition given in section 113E of the 2000 Act provides guidance as to what may be included as a 'facility' in a Scheme. This indicates that to be included, the item concerned (be it a building, service, or piece of equipment) must be:

*...provided at specific locations along routes served...by local services within the area to which the scheme relates...*

10.2 Alternatively the building, service or piece of equipment can be 'ancillary' to a facility which is provided at a specific location along the route. In addition, section 113C(6) of the 2000 Act requires that the authority be satisfied that any facilities (and the provision of local services to the relevant standard) are likely to achieve the following outcomes:

- An improvement in the quality of local services that benefits persons using those services;
- a reduction or limitation of traffic congestion, noise or air pollution;
- an increase in the use of local services or an end to, or a reduction in, a decline in the use of local services.

10.3 Aside from this, any facility which fits into this description can be included if the local transport authority considers that it 'will contribute to the implementation of their local transport policies' (section 113C(1)). The local transport authority may wish to include work to be done to facilities that is outside its own powers to deliver, in which case it must secure this delivery through appropriate contractual or other arrangements. It will be particularly important to consider the role of the highway, traffic, planning and enforcement authorities if the local transport authority does not have these powers itself. These considerations have been developed at greater length in the body of this guidance.

10.4 The following checklist identifies examples of 'facilities' that a local transport authority may want to consider as part of an AQPS. Whilst the following checklist refers to the ability of a local transport authority (LTA) to make provision for inclusion of items in an AQPS, in all cases where the provision of facilities in the AQPS requires the making of a traffic regulation order in respect of a trunk road the Scheme will need to be made jointly with the Secretary of State (see paragraphs 5.23 to 5.25 of this Guidance).

10.5 Among the facilities that are excluded from consideration are those to be provided under section 139 or section 140 of the 2000 Act. These are excluded by s113E(1)(B) of the 2000 Act. However, an AQPS may include as a facility an information service to the extent that it provides information additional to the requirements of sections 139 or 140. It is important to note that none of the following are mandatory (provision of facilities as part of a scheme is now optional), nor is the checklist intended to be exhaustive.

#### 10.6 Examples of 'Facilities' which might be included in an AQPS

Facility	Notes
<b>Bus facilities on a main carriageway</b>	
<b>Bus lanes and other priority lanes catering for buses</b>	There is only a duty to provide Facilities as specified in the Scheme. The Scheme may include facilities that are only available at certain times in the day or week. For example, a bus lane will only be in operation, and hence enforceable, at the times specified in the TRO. The Scheme should clearly set out any such restrictions on the time of operation.
<b>Bus stop clearways</b>	
<b>Bus access only restrictions - bus gates</b>	
<b>Bus only turning restrictions</b>	
<b>Parking, waiting and loading restrictions and parking management</b>	
<b>Guideways and tracking devices for buses</b>	
<b>Traffic signal-based vehicle detectors</b>	
<b>Enforcement equipment</b>	
<b>Specified Signal and Pedestrian Facilities</b>	
<b>Specified Boarding Facilities</b>	
<b>Urban Traffic Control (UTC) Priority Works</b>	
<b>Clearways</b>	
<b>Improved Lighting / Security Measures</b>	
<b>Footway (bus passenger facilities)</b>	
<b>Shelters/stops - including seating, lighting, security, information*, communication, litter management, ticket machines, clearways</b>	Only where provided by LTA either directly or through third party contract.

<b>Raised kerbs and boarders</b>	
<b>Bus Stop environment - lighting, security, crossing facilities, local pedestrian routes, surface treatment/paving</b>	
<b>Off-highway</b>	
<b>Bus stations Stand allocations Passenger facilities Staff facilities Layover provision</b>	Can be included as long as these services can be secured by the LTA for the duration of the AQPS. Depends on ownership of bus station, private highway etc.
<b>Private highway access - including retail parks, airports and interchanges, hospitals, park &amp; ride sites</b>	
<b>Turning areas for buses (outside public highway)</b>	
<b>Parking space for buses (for layover)</b>	
<b>Marketing &amp; information facilities</b>	
<b>Information based facilities*</b>	
<b>Real time/schedule adherence facilities Infrastructure - systems, displays, communications links On vehicle equipment, including funding Software Remote passenger access - web and phone based</b>	These might be included as a facility to the extent that they help to facilitate benefits on the routes served, e.g. electronic information boards at bus stops to show passengers how far away the buses are. If they only serve passengers on the buses themselves it might be more appropriate to include them as part of the service to be provided by operators.
<b>Printed displays at passenger facilities</b>	
<b>Branding materials - concept, area, corridor</b>	
<b>Timetable Information (bus guides)</b>	
<b>Interchange point signing</b>	
<b>Ticketing distribution and promotion</b>	
<b>Support packages</b>	

<b>Enforcement Actions in support of AQPS specified Facilities</b>	Needs prior contractual agreement if enforceable by a third party.
<b>Parking and Waiting Controls; other TRO enforcement</b>	Needs prior contractual agreement if enforceable by a third party.
<b>Interchange point signing</b>	
<b>Facility maintenance and cleaning service</b>	Can be included as long as these services can be secured by the LTA for the duration of the AQPS, i.e. will require contractual arrangement with facility provider, if a third party

\* Only eligible where facilities are additional to the requirements in sections 139 and 140 of the 2000 Act to provide local bus information about bus services.

# 11. Annex B: The new Advanced Quality Partnership Schemes introduced by the Bus Services Act 2017 introduced the concept of an LTA taking ‘measures’, in addition to, or instead of, the current ability to provide ‘facilities’.

11.1 The 2017 Act deliberately does not define what ‘measures’ can be taken by the LTA. Section 113E(2) of that Act simply requires that those measures must be taken for the purpose of:

*(i) Increasing the use of local services serving the routes to which the measures relate or ending or reducing a decline in the use of such services, or*

*(ii) Improving the quality of local services serving the routes to which the measures relate,*

*but may not include the provision of ‘facilities’ or facilities that are required to be provided as a result of section 139 or 140 of the 2000 Act.*

11.2 Other than these requirements, the ‘measures’ taken by a local authority can be anything that is within their power to deliver. Nor do measures need only relate to or benefit bus services that are included in the scheme. For example, the LTA may include a ‘measure’ that reduces the provision of car parking in a defined area of a city centre or increases car parking charges there. Arguably, this could benefit all bus services in that area, even ones that are not part of the scheme. However, this should not deter LTAs from taking this sort of measure, even if it also provides ‘free’ benefits to bus services that are outside the scheme. Another ‘measure’ could be a commitment not to allow non-emergency roadworks on key bus corridors to occur more than a specified number of times a year - and where those works do occur to give the affected bus operators an agreed period of prior notice.

# 12. Annex C - Standard of Services

12.1 The AQPS needs to specify the 'standard of services' required from operators providing services that may make use of any facilities provided or measures taken under the scheme. As explained in the guidance, different standards of services might be applied in relation to different facilities or measures, different routes or services, or different days or times of day.

12.2 A checklist of potentially eligible 'standard of services' features is set out below. It is important to note that none of the following are mandatory (other than the need to specify a standard of services), nor is the checklist intended to be exhaustive.

12.3 Examples of 'standards of services' which might be included in an AQPS:

Standard of Service	Notes
Vehicle	But only where there are no 'admissible objections' from 'relevant operators'
Design characteristics	With legal advice to ensure such specification is not anti-competitive
Accessibility	
Provision of sufficient vehicle capacity for anticipated demand	
Passenger facilities - seating, security, lighting, luggage space	
Emissions, noise and types of fuel or power.	For example, targets could be specified as % to Euro x/% to maximum y dB (A) at start, % to Euro x/% to maximum y dB(A) in 1 yr etc. Or it could specify certain types of fuel – e.g. biomethane  But only where there are no 'admissible objections' from 'relevant operators'
On vehicle AVL (Automatic Vehicle Location) equipment & transponder devices	

<b>Timetabling</b>	
<b>Service frequencies</b>	But only where there are no 'admissible objections' from 'relevant operators'
<b>Service timings</b>	
<b>Driver and other staff</b>	
<b>Training and qualifications</b>	
<b>Development, behaviour, disciplinary code</b>	
<b>Uniform and appearance</b>	
<b>Relevant accident record</b>	
<b>Customer care package</b>	
<b>Performance in delivery</b>	
<b>Punctuality, Reliability, excess wait time</b>	Though not penalties, as these are in the remit of the Traffic Commissioner. A time-based - e.g. peak/off-peak differential may be appropriate
<b>Customer satisfaction monitoring including mystery shopper</b>	
<b>Vehicle appearance - internal and external cleaning</b>	But only where there are no 'admissible objections' from 'relevant operators'
<b>Vehicle breakdown rate</b>	
<b>Delivery against customer service agreement</b>	
<b>Adherence to service standard</b>	
<b>Customer care</b>	
<b>Required effort to enforce no-smoking policy</b>	
<b>Information on how to access customer services</b>	
<b>Agreed protocol / adherence to Charter / standards for customer service</b>	
<b>Customer comment/complaints procedure</b>	
<b>Customer code of behaviour and implementation plan</b>	
<b>Service stability (service stability code of conduct)</b>	

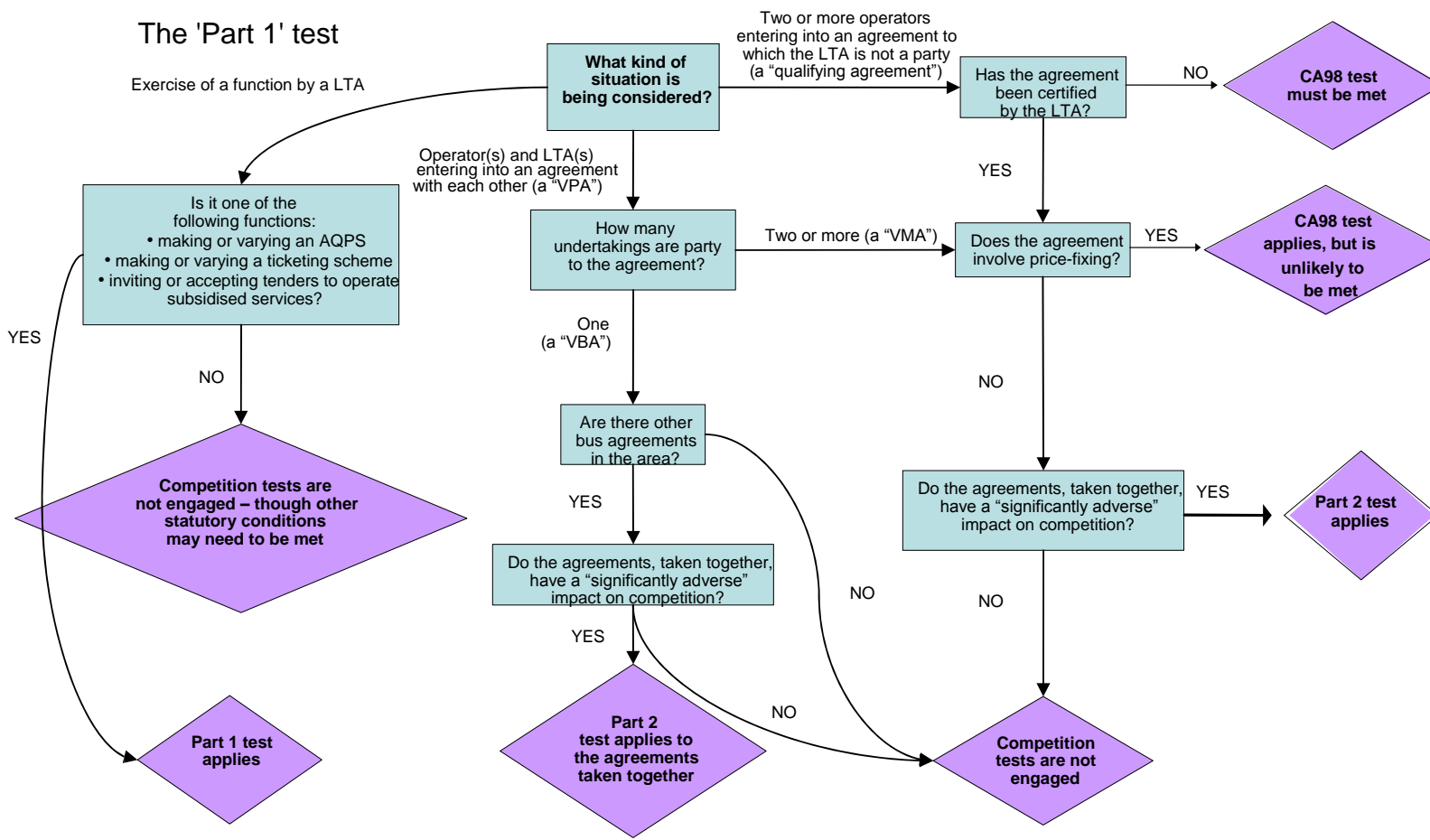
<b>Passenger notification period for service and fares changes</b>	
<b>Staff presence (supervisory and customer care)</b>	
<b>Fares and ticketing</b>	
<b>Maximum fares</b>	But only where there are no 'admissible objections' from 'relevant operators'
<b>Equipment and systems characteristics</b>	
<b>Payment options</b>	Through particular outlets or portals – operator websites, apps, newsagents (by agreement), on-road ticket machines etc.  But only where there are no 'admissible objections' from 'relevant operators'
<b>Ticket types</b>	Single and multi-operator tickets, day, week, month, annual.  But only where there are no 'admissible objections' from 'relevant operators'
<b>Type of ticketing technology</b>	Smartcard, mobile, barcode.  But only where there are no 'admissible objections' from 'relevant operators'
<b>Information and Publicity/ marketing</b>	
<b>General content of publicity/ marketing material – either for all local bus services or defined descriptions</b>	
<b>Provision of fares and timetabling information</b>	
<b>Requirements on appearance and layout of publicity/ marketing material</b>	
<b>Use of logos</b>	Taking into account operator logos

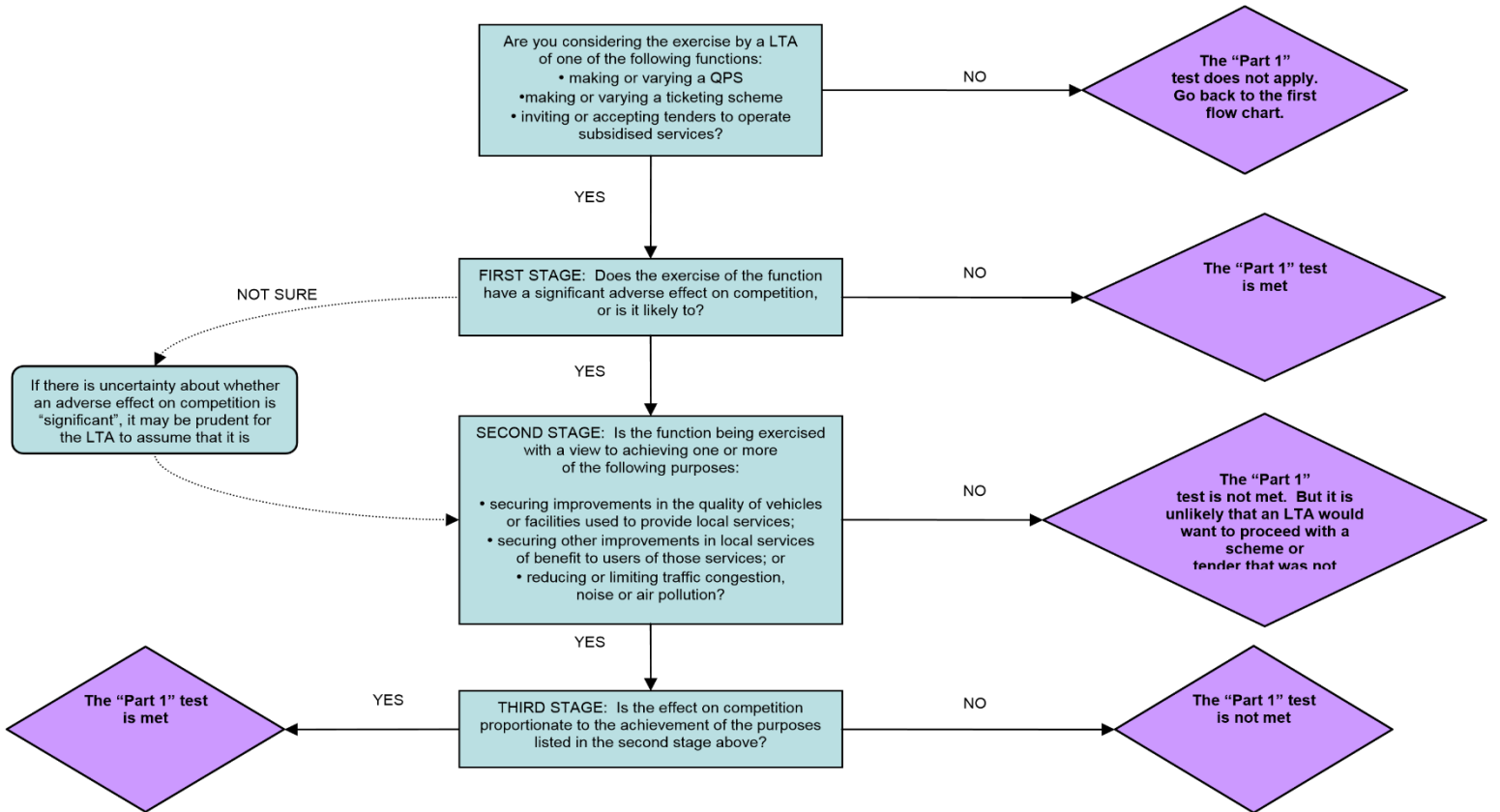


<b>Branding requirements</b>	Taking into account operator branding
<b>Information to be displayed on vehicle</b>	
<b>Provision of information on ticketing to Local Authority</b>	
<b>Data</b>	So long as relevant to standard of service perceived by customer
<b>Aggregate patronage data for AQPS services</b>	
<b>Supply of performance data - format, summaries and timeliness</b>	Subject to data sharing agreement
<b>Audit arrangements relating to performance</b>	
<b>Miscellaneous</b>	
<b>Specification of excluded services</b>	

# 13. Annex D – Competition Tests that may be relevant in connection with Advanced Quality Partnership Schemes and Related Voluntary Agreements

The following summary flow charts, which also appear in the Competition and Market Authorities' (formerly the Office of Fair Trading) guidance on the application of competition law in the bus market, provide a helpful overview of the competition tests that might apply in connection with an AQPS.





## The 'Part 2' test

