

Bus Services Bill: Consultation on Draft Regulations and Guidance

Moving Britain Ahead

February 2017

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Contents

1. Introduction	5
How to respond	7
Freedom of Information	8
Part A: Consultation proposals – Draft regulations	9
2. Advanced Quality Partnership Schemes	9
3. Franchising: Service permits	12
4. Franchising: Transitional provisions	16
5. Franchising and enhanced partnerships: Transfer of staff (Application of TUPE)	19
6. Franchising and enhanced partnerships: Pension protection	24
7. Franchising and enhanced partnerships: Information from operators	26
8. Enhanced partnerships: Operator objection mechanism	30
9. Information on varied or cancelled services	36
Part B: Consultation Proposals – Draft Guidance	41
10. Guidance for improving bus services	41
11. Franchising Guidance	43
Introduction	43
Assessment of a proposed franchising scheme	43
Role of the auditor	44
12. Enhanced Partnership Guidance	45
Introduction	45
Delivering an enhanced partnership	45
Competition considerations	46
What will happen next?	48
Annex A: Impact assessment	49
Annex B: Full list of consultation questions	50
Annex C: Consultation principles	55
Annex D: AQPS Regulations	56
Annex E: AQPS – Existing facilities regulations	70
Annex F: Franchising - service permit regulations	72
Annex G: Franchising - transitional provisions regulations	75
Annex H: Franchising and enhanced partnerships – Transfer of staff (Application of TUPE) regulations	81

Annex I: Franchising and enhanced partnerships – Pension protection regulations	87
Annex J: Franchising and enhanced partnerships – Information from operators	90
Annex K: Enhanced partnerships – Operator objection mechanism regulations	93
Annex L: Information on varied or cancelled services	97
Annex M: Guidance for improving bus services	100
Annex N: Franchising Guidance – Assessment of proposed franchising scheme (“Business Case” guidance)	110
Annex O: Franchising Guidance – Role of the auditor	120
Annex P: Enhanced Partnership Guidance	121
Annex Q: Enhanced partnership guidance – Competition issues	148

1. Introduction

- 1.1. This consultation is about the first tranche of regulations and guidance associated with the Bus Services Bill. We have focussed on those regulations and guidance that have the highest priority and on which we would welcome early feedback. Further regulations and guidance will follow later in 2017.
- 1.2. The aim of the Bill is to improve bus services for passengers. It provides local authorities and bus operators with a more effective toolkit to enable improvements to be made to bus services in their areas. The Bill will:
 - Strengthen arrangements for partnership working in the sector, enhancing existing partnership approaches and introducing new 'Enhanced Partnerships';
 - Introduce new franchising powers with decisions at a local level; and
 - Provide for a step change in the information available to passengers.
- 1.3. The Bill is currently subject to the Parliamentary process. It was introduced into the House of Lords on 19 May 2016. Further information about the Bill, including the latest version, can be found at:
<http://services.parliament.uk/bills/2016-17/busservices.html>
- 1.4. **Part A** of this document seeks views on the proposals for regulations associated with the Bill. There are a number of regulations that are required to help ensure the provisions of the Bill can be implemented effectively. We have identified nine regulations that will need to come into force as soon as possible after the Bill receives Royal Assent, in order for local authorities and bus operators to begin to make use of the tools in the Bill. These draft regulations are shown in the consultation document and cover the following topics:
 - Advanced Quality Partnership Schemes
 - Franchising: Service permits and transitional provisions
 - Franchising and enhanced partnerships: TUPE, pensions and information from operators
 - Enhanced partnerships: Operator objection mechanism
 - Information on varied or cancelled services
- 1.5. The draft regulations are set out at **Annexes D-L** of this consultation paper. These are initial drafts that have been developed following informal consultation with key stakeholders and are designed to show how the policy proposals might be reflected in regulations. The responses to this consultation will be used to help develop the final version of the regulations.
- 1.6. We will develop and consult on further regulations covering our open data

proposals, accessible information proposals and other regulations required in connected with enhanced partnership and franchising in due course.

- 1.7. **Part B** of this document seeks views on key aspects of draft guidance – those aspects of guidance that are likely to be of most use to anyone considering a franchising or enhanced partnership scheme. The intention is to issue more comprehensive guidance, when the Bill receives Royal Assent, to help local authorities and bus operators to use the tools set out in the Bill most effectively.
- 1.8. The draft guidance is set out in **Annexes M-Q** and covers: general guidance for improving bus services; guidance for authorities conducting an assessment of a proposed franchising scheme, further guidance on the role of the auditor in franchising; guidance for authorities and operators in relation to delivering an enhanced partnership; and competition consideration for enhanced partnerships.
- 1.9. The full list of consultation questions, for both regulations and guidance, is shown at **Annex B**.

Audience for consultation

- 1.10. It is anticipated that local transport authorities in England outside London, including their representative organisations, bus operators and passenger groups will have the strongest interest in the proposals. Other stakeholders, groups and individuals may also wish to respond.

How to respond

The consultation period began on 8 February 2017 and will run until 21 March 2017. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at <https://www.gov.uk/dft#consultations> or you can contact busbillconsultation@dft.gsi.gov.uk if you need alternative formats (Braille, audio CD, etc.).

To help us analyse the responses please use the online survey system wherever possible. The link to this consultation survey can be found at www.gov.uk.

If for exceptional reasons, you are unable to use the online system, please send consultation responses to:

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If you wish to respond via email, please send it to: busbillconsultation@dft.gsi.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

There will be alternative consultation events in February and March 2017. If you would be interested in attending these events, please contact Francesca.McMahon@dft.gsi.gov.uk

If you have any suggestions of others who may wish to be involved in this process please contact us.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Part A: Consultation proposals – Draft regulations

Part A covers nine key regulations that will need to come into force as soon as possible after the Bill receives Royal Assent, in order for local authorities and bus operators to begin to make use of the tools in the Bill. We plan to consult on further regulations later in 2017.

2. Advanced Quality Partnership Schemes

Introduction

- 2.1. The Quality Partnership Scheme (QPS) provisions were introduced in the Transport Act 2000 and allow local transport authorities and bus operators to work together to improve bus services for passengers. The Bus Services Bill builds on these arrangements, replacing the existing QPS arrangements in England with new Advanced Quality Partnership Scheme (AQPS) provisions. The Bill sets out what the authority and the bus operators can each undertake to provide as part of the scheme and provides for existing quality partnership schemes that are wholly in England to effectively become AQPSs.
- 2.2. In many regards, the AQPS provisions largely mirror the existing quality partnership provisions in the Transport Act 2000. However, there are some key differences – the provision of ‘facilities’ by an authority is no longer mandatory, an authority can take ‘measures’ that indirectly improve bus services, and the range of requirements that can be imposed on operators has been increased to include, for example, smart ticketing.
- 2.3. The ‘facilities’ the authority can provide as part of an AQPS have also been modified, compared to QPS. There will no longer be a limit on the age of the facilities that can be included in the scheme, although operators will retain their existing ability to object to the inclusion of facilities that are more than five years old.
- 2.4. The draft regulations for Advanced Quality Partnership Schemes are shown at **Annexes D and E**.

The purpose of these regulations

- 2.5. These regulations set out the processes by which bus operators can object to elements of an authority’s proposals for an AQPS and place some limitations on the facilities that an authority can provide as part of the scheme.

The content of these regulations

- 2.6. We are proposing to use the existing objection process contained in the Quality Partnership Schemes (England) Regulations 2009 (SI 2009/445) in the AQPS context, as it appears to remain fit for purpose. This is reflected in the draft Advanced Quality Partnership Schemes (England) Regulations 2017.
- 2.7. The existing Quality Partnership Schemes (Existing Facilities) Regulations allow an authority to include in a scheme any facilities that were provided within the past 5 years. They can also include facilities between 5 and 20 years old if operators using the facilities concerned do not object to their doing so. However, currently an authority cannot specify facilities which are more than 20 years old in a scheme, even if local bus operators want them to do so.
- 2.8. We propose to remove this upper age limit in the AQPS regulations and allow the authority to include any facilities that are more than 5 years old if no operator objects. This will allow existing QPS schemes which are based around older infrastructure to continue under the new regime, if operators are happy for them to do so. Authorities will also be able to agree new AQPS arrangements with operators that are based around the continued provision of existing infrastructure, whatever its age.

Relevant sections of the Bus Services Bill

- 2.9. The Bus Services Bill Clause 1 adds new sections to the Transport Act 2000:
 - Section 113K(1) – Replicates provisions currently found in section 119 of the Transport Act 2000 so that Secretary of State may make similar regulations, applying to England only, about the specifying in an Advanced Quality Partnership Schemes of facilities that were already being provided before the new schemes are proposed.
 - Section 113N(1) – Replicates provisions currently found in section 122 of the Transport Act 2000 so that Secretary of State may make similar regulations applying to England only about procedures for making, varying or revoking Advanced Quality Partnership Schemes including on how they operate, conditions to be complied with, notice periods and inquiries and objections.

AQPSs (Annexes D and E): Consultation Questions

1. Do you agree with the proposal to replicate, for an AQPS, the existing Quality Partnership Scheme regulations? Please explain your reasons.

2. Do you agree with the proposal to allow an authority to include, in an AQPS, any facilities that are more than 5 years old if no operator objects? Please explain your reasons.

3. Franchising: Service permits

Introduction

- 3.1. Sections 123P to T of clause 4 of the Bus Services Bill makes provision for bus operators to provide local bus services in franchised areas under service permits. Service permits can be used to enable operators to run services that cross the boundary of the franchising scheme area, and can also be used to enable operators to provide services which complement the franchised network of services, where there is a gap in service provision.
- 3.2. The regulations required to substantiate the service permit provisions in relation to franchising schemes are shown at **Annex F**.

The purpose of these regulations

- 3.3. The criteria which franchising authorities must apply when determining whether or not to grant a service permit are set out on the face of the Bill, together with the ability for the authority to charge a fee for issuing a service permit and the ability for the authority to attach conditions when issuing permits, for example to require the operator of the service to accept a certain type of ticket. The Bill also sets out the circumstances in which franchising authorities can revoke or suspend a service permit.
- 3.4. However, the majority of the detail regarding how service permits should work in practice will be set out in regulations, including fee levels, the conditions that authorities are able to attach to service permits and notice periods. The sections below provide further detail on the provisions included in the draft regulations.
- 3.5. The process through which a bus operator can appeal against the decision of a franchising authority will also be set out in regulations, however these have yet to be developed in detail. However, we are planning to consult on these regulations later in 2017.

The content of these regulations

Procedure authorities must follow before they can start to accept applications for service permits

- 3.6. The Bill explains that applications for service permits by bus operators must be made in such a manner as the authority operating the scheme may determine, and must be accompanied by such information as the authority may specify.
- 3.7. We want to ensure that franchising authorities openly and transparently set out the details of their 'service permit scheme', including the application procedure, associated time periods for dealing with applications and information that will be

required for an application for a service permit. The draft regulations therefore set out our proposals for the processes that authorities should follow before finalising the detail of their 'service permit scheme'.

- 3.8. The draft regulations require authorities to publish a consultation document setting out the key aspects of their proposed 'service permit scheme', including:
- The procedure that must be followed by operators when applying for service permits;
 - The information that operators must submit with their applications;
 - The fee that must accompany an application;
 - The period within which a franchising authority will take a decision regarding an application; and
 - The period that must expire before the permit becomes effective.
- 3.9. The draft regulations then require authorities to consult operators in the area together with anyone else they think appropriate. Following the consultation the regulations propose to require authorities to publish a response to the consultation and a notice setting out the final 'service permit scheme', covering the areas set out at paragraph 3.8.
- 3.10. This should ensure that operators are aware of the processes and requirements involved in both applying for a service permit, and potentially running a service under a service permit before they apply.

Conditions

- 3.11. We want to ensure that authorities can take reasonable steps to integrate services operated under service permits into the wider franchised network of services. The Bill introduces the concept of 'conditions' which can be attached to permits – such as requiring the operator of such a service to accept a particular ticket or display certain information on their buses.
- 3.12. The Bill explains that authorities can only attach conditions that they have consulted on and included in a published notice, and also that authorities may only attach conditions to service permits of a description set out by the Secretary of State in regulations. The draft regulations therefore propose a 'long-list' of categories of conditions that can be attached to a service permit by an authority. It will be down to each individual local authority to determine which, if any, of the conditions are relevant in their circumstances, and whether they intend to attach different conditions to different types of service permit.
- 3.13. The draft regulations therefore propose the following categories of conditions:
- the period for which a service permit will be valid;
 - requirements as to the ways in which tickets can be purchased or fares paid – for example via contactless technology;

- requirements as to the tickets to be accepted;
- requirements as to the price to be charged for tickets that operators are obliged to accept as a condition being imposed on their service permit;
- requirements as to discounted travel to be provided for specified groups;
- requirements for operators to publish specified information about the local services provided by them in the area;
- requirements for operators to publish specified information about fares; and
- requirements as to the standards of vehicles, customer service standards and operational standards.

Fees

3.14. The draft regulations propose that the level of fee that can be required by authorities to accompany an operator's permit application should be based on the cost incurred by the authority in processing the application. The draft regulations do not therefore set out minimum or maximum fee amounts as these will have to be set locally to reflect the costs of providing the service in those local circumstances.

Revocation and suspension of service permits

3.15. The Bill states that authorities may revoke or suspend service permits in certain circumstances and states that the periods of notice that should be provided to operators in these circumstances should be set out in regulations. The Bill also states that regulations may enable authorities to revoke a permit with immediate effect if the service in question poses a danger to the public.

3.16. We want to ensure that authorities have appropriate processes in place to resolve any issues that may arise with services operated under service permits, including the ability to revoke or suspend a permit in certain circumstances if this is necessary in order to deal with particular issues.

3.17. The draft regulations propose that authorities should be able to revoke or suspend service permits with immediate effect where there is a danger to the public, and also require authorities to provide a written notice to operators in the event that their service permit is suspended or revoked to explain:

- The grounds on which the permit is being suspended or revoked;
- The date on which the revocation or suspension takes effect; and
- The effect of the suspension or revocation.

3.18. Where a service permit is suspended, the draft regulations also propose that the authority should be required to set out the measures that the operator would be required to put in place to have the suspension lifted, the date on which the suspension would be lifted and any arrangements for the authority to

review the suspension. This should ensure that the operator is fully aware of the situation and able to take action where needed.

3.19. It is also important that operators are given sufficient notice of the authority's intention to revoke or suspend their permit, and the regulations propose that the authority should provide 56 days' notice, apart from in circumstances where there is a danger to the public.

Relevant sections of the Bus Services Bill

3.20. The Bus Services Bill Clause 4 adds new sections to the Transport Act 2000:

- Section 123Q(3) - specifying the fee that might accompany an application for a service permit. Regulations may specify the maximum amount of the fee.
- Section 123R(3) and (4) – the conditions that must be met if a service permit is granted – including a requirement for the holder of the service permit to participate in ticketing arrangements.
- Section 123S(3) – the period of notice required before a revocation or suspension takes effect and the grounds for immediate suspension of a service permit.

Franchising Permits (Annex F): Consultation Questions

3. Do you agree with the procedure that authorities must follow before they can start to accept applications for service permits? Please explain your reasons.
4. Do you agree with the categories of conditions (listed in paragraph 3.13) that can be attached to service permits? Please explain your reasons.
5. Should other conditions be added? If so, what should these be?
6. Do you agree with the procedure for revoking and suspending service permits? Please explain your reasons.
7. Do you have any further comments on the service permit regulations?

4. Franchising: Transitional provisions

Introduction

- 4.1. Where an authority chooses to implement franchising, the bus market in that area will need to transition from the status quo, where operators determine which routes they wish to operate, to a system whereby the franchising authority specifies the services to be delivered and bus operators bid to provide those services. Operators will no longer be required to register services with the Traffic Commissioner, and will instead operate services under contract to the authority or under service permits issued by the authority.
- 4.2. The draft regulations setting out the transitional provisions that should apply are shown at **Annex G**.

The purpose of these regulations

- 4.3. The transition period between the Mayor or authority deciding that they wish to pursue franchising, to franchising actually being implemented on the ground is likely to be uncertain for all parties involved. The aim of these draft regulations is to help minimise potential disruption to services during the transition period, and ensure that passengers are protected.
- 4.4. The draft regulations set out a number of practical and transparent arrangements and processes to assist in the transition from the current model of bus provision to franchising. This includes enabling authorities to extend the notice period which must elapse before a bus operator can cancel or vary a bus service in the area in which franchising is to be implemented – which should provide an authority with more time to make alternative arrangements to ensure services are retained for passengers in the event of an operator withdrawing their service. The draft regulations also include provisions to enable services to be registered at short notice in the event that the authority procures a service to replace, in whole or part, a service that has been withdrawn. Again – this should help authorities smooth the transition and take any remedial action necessary to protect passengers.
- 4.5. The draft regulations also set out provisions to deal with the registration of services if a franchising scheme is revoked, or varied so as to apply to a smaller area – so a situation where an area is transitioning from franchising back to the de-regulated market. The draft regulations make clear that services should again be registered, and specify that any applications for registration that are made by bus operators become effective at the point at which the franchising scheme is varied or revoked, which should help ensure that there is

continuity of service for passengers.

The content of these regulations

Registration during the transitional period

- 4.6. The draft regulations make special provision for short notice registration applications to be accepted during the transitional period where an authority has entered an agreement with an operator to provide a service which is the same or similar to a service which another operator has ceased providing – a ‘replacement’ service. The draft regulations allow for the operator of the replacement service to inform the Traffic Commissioner of the date from which they intend to start providing the service, and the registration will then have effect from that date.
- 4.7. The draft regulations are designed to be flexible to ensure that the authority can quickly put alternative arrangements in place to protect services should an operator cease providing a service before the introduction of franchising.

Applications to vary or cancel a service during the transitional period

- 4.8. The draft regulations set out the processes that authorities must follow before they can extend the notice period that must expire before a bus operator can vary or cancel a local bus service. This extended notice period can then be applied during the transitional period, from the point at which the authority has made its franchising scheme until franchising is introduced.
- 4.9. The draft regulations require authorities to publish a notice setting out revised notice period, which can be up to a maximum of 112 days. An authority cannot publish a notice until they have taken the decision to introduce franchising, and made and published their franchising scheme. The draft regulations explain that the authority may set out different notice periods in different circumstances, which is designed to provide the authority with freedom and flexibility to plan for different scenarios. It may be for instance that an authority decides to retain the 56 day notice period for services which only have limited stopping places within their area, whilst extending it for others.

Applications to register bus services when a franchising scheme is varied or revoked

- 4.10. Should a franchising scheme be revoked in its entirety or varied so as to apply to a smaller area, operators will need to register services with the Traffic Commissioner should they wish to operate them in the area to which the franchising scheme used to relate. The draft regulations explain that operators may register services from the point at which an authority has published a

notice setting out their intentions to vary or revoke their franchising scheme, and that the registration will become effective at the point at which the revocation or variation takes effect.

4.11. This should help ensure that there is continuity of service provision for passengers following the revocation or variation of a franchising scheme.

Relevant sections of the Bus Services Bill

4.12. The Bus Services Bill Clause 4 adds new sections to the Transport Act 2000:

- Section 123V(1) power to make transitional provisions in connection with:
 - the making of franchising schemes;
 - the application of 123J in relation to an area, which relates to bus registration; and
 - the variation and revocation of schemes.

- Section 123V(2) states that the regulations may in particular prescribe that in certain circumstances the legislation relating to the registration of local bus services and legislation relating to the obligation to invite tenders for subsidised local bus services do not have effect, or may have effect with modifications that may be prescribed.

- Section 123V(4) also states that regulations may also be made to allow franchising authorities to extend the de-registration and variation notice period for registered local bus services to a maximum period of 112 days, and the procedure to be followed when issuing a notice to that effect.

Franchising Transitional Provisions (Annex G): Consultation questions

8. Do you agree that the provisions to enable services to be registered at short notice during the transition period are useful? Please explain your reasons.

9. Do you agree with the processes that authorities must follow before they can extend the variation and cancellation notice periods? Please explain your reasons.

Where an authority decides to vary or revoke a franchising scheme so that it no longer applies in a particular area there will be a period of time before the variation or revocation takes effect. To ensure continuity of service, the draft regulations propose that applications for registration that are made by bus operators during that period should become effective at the point at which the variation or revocation takes effect.

10. Do you agree? Please explain your reasons.

5. Franchising and enhanced partnerships: Transfer of staff (Application of TUPE)

Introduction

- 5.1. Where franchising is introduced, incumbent bus operators will be required to cease providing services to enable the winning bidders to start operating services under contract to the authority. As part of an enhanced partnership, route requirements can be agreed which could, for example, place a limit on the number of services able to operate on a particular route. Should operators not be able to agree on which services should operate then the authority may be required to cancel registrations and award a contract or contracts for the services - although the likelihood of this situation arising is low.
- 5.2. To ensure that the employment rights of employees are protected and that there is continuity of service, the Bill provides that Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE) should apply to these scenarios. The Bill provides further regulation making powers that may be used in addition to the provisions under TUPE.
- 5.3. The draft regulations that will apply in these circumstances in relation to both franchising and enhanced partnerships are shown at **Annex H**.

The purpose of these regulations

- 5.4. The Bill sets out the circumstances in which staff should transfer under TUPE regulations, but the application of TUPE to either a franchising or enhanced partnership scenario is likely to be complex. The draft regulations therefore set out further detail regarding the application of TUPE and protection of the transferring employee's pension rights in this context with the aim of ensuring that the process can be conducted smoothly.
- 5.5. The policy intent of the draft regulations is to:
 - Set out a process that should be followed when determining whether a person's employment is principally connected with the provision of particular services, and whether that person should therefore transfer under TUPE;
 - Set out a process that should be followed when determining which new operator employees should transfer to; and
 - Require operators of local services to provide the franchising authority with certain information in relation to their employees.
- 5.6. Our approach has been to develop broadly similar regulations to those set out in: The Quality Contracts Schemes (Application of TUPE) Regulations 2009.
- 5.7. The sections below provide further detail on the provisions included in the draft regulations.

The content of these regulations

Determining whether a person's employment is principally connected with the provision of particular services

- 5.8. The Bill itself states that TUPE can be applied to franchising and enhanced partnership scenarios but leaves the issue of how to determine which staff should transfer over to new employers to be dealt with in regulations. The term used in the Bill and the draft regulations is 'principally connected' and only those employees that are judged as 'principally connected' to the services that will have to cease operating as a result of the franchising or enhanced partnership proposals will be included in the transfer arrangements.
- 5.9. The TUPE regulations prepared in relation to the Quality Contract Scheme legislation provided that a person was to be determined as being "principally connected" in accordance with whether they spent a fixed proportion of their activities connected with the provision of affected services, but we recognise that there may be a need for flexibility to ensure the transfer of staff can be implemented in ways that work at the local level.
- 5.10. The draft regulations therefore set out an approach whereby the authority can look to reach an agreement locally with operators and representatives of employees about the principles for determining whether a person is 'principally connected' with the affected services. The draft regulations requires the authority to consult with operators and employee representatives in an attempt to reach agreement about the most suitable way of determining whether staff should be considered as 'principally connected' to be used locally to suit local circumstances.
- 5.11. If agreement is reached locally, the draft regulations then require the authority to publish the details of the principles to be used when determining whether a person is 'principally connected' and then require the authority to notify operators and employee representatives accordingly.
- 5.12. We recognise however that it may be difficult to reach consensus locally, and the draft regulations also provide for the situation in which no agreement can be reached. Should that situation occur, the regulations set out a definition of 'principally connected' based on the time that an employee spends assigned to the provision of local services, or assigned to activities connected wholly or mainly to the provision of local services. We have provisionally drafted the regulations in such a way so that any person who spends at least 50% of their working time assigned to those local services or activities connected to those local services would be designated as 'principally connected' and therefore transfer under TUPE.
- 5.13. The draft regulations also propose that employees should have been in continuous employment for a designated period of time in order to be

considered as 'principally connected' for the purposes of their transfer to new employers.

Request for information

5.14. The draft regulations set out the categories of employee-related information that authorities can request of operators to help them in determining whether employees are 'principally connected' and how employees should be allocated to new employers.

5.15. The draft regulations recognise that authorities are likely to need this detailed information once they have made and published their franchising scheme or enhanced partnership scheme, and explain that authorities may only request information that they consider necessary to carry out their franchising or partnership functions. The draft regulations also provide that authorities must give operators at least 21 days' notice to comply with the request.

5.16. The draft regulations also set out the categories of information that authorities can request. These include:

- Particulars of employment;
- Information in relation to collective agreements;
- Information describing the services to which employee's employment is principally connected, including the proportion of their working time assigned to those services; and
- Any other information required for the purposes of calculating the costs and liabilities likely to arise from the application of TUPE to any transfer of staff.

5.17. This should ensure that the authority is able to take an informed view regarding which staff are considered 'principally connected' and should transfer under TUPE, and also the likely costs and liabilities involved in the transfer of staff to inform the procurement process.

Obligations on operators

5.18. The draft regulations state that operators must respond to information requests issued by the authority in accordance with the regulations. They also provide for the situation where the operator does not have the information requested or where it cannot be provided at reasonable cost. In this situation the draft regulations require operators to inform the authority within 14 days of the request for information being made, and explain why it is not possible to provide any or all of the information requested.

5.19. The draft regulations also explain that operators must provide revised information about employees should it change in the intervening period between the operator issuing their response to the request and the implementation of franchising or a contract in the context of an enhanced partnership. This should help ensure that the authority has up to date information at the time of transfer to ensure staff are transferred appropriately.

Allocation arrangements

5.20. Once the authority has determined which staff should transfer they will need to determine the new employer to which each employee should be transferred – or the ‘allocation arrangements’. The draft regulations therefore set out the process that should be followed when determining how to allocate transferring staff. Before a transfer of staff can take place, the draft regulation requires the authority to set publish the allocation arrangements describing:

- Organised groupings of employees or classes of employees; and
- The specific local service contracts to which each organised grouping or class of employee will be transferred.

5.21. The draft regulations then require the authority to consult and notify operators and employee representatives of the arrangements.

5.22. In addition, the draft regulations provide for the allocation arrangements to be updated where an operator ceases to provide a service in advance of a contract coming into force, and the authority intends to procure a replacement service, resulting in staff being transferred under TUPE.

Relevant sections of the Bus Services Bill

5.23. **For franchising:** The Bus Services Bill Clause 4 adds a new section to the Transport Act 2000:

- Section 123X allows further provisions to be made with respect to:
 - the application of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) where staff are transferred between bus operating companies as a result of local service contracts awarded under a franchising scheme.

5.24. **For enhanced partnerships:** The Bus Services Bill Clause 9 adds a new section to the Transport Act 2000:

- Section 138S allows further provisions to be made with respect to:
 - the application of TUPE in the context of enhanced partnerships when a contract is awarded as a result of the introduction of route-level requirements which cannot be met by operators voluntarily.

Franchising and Enhanced Partnerships: TUPE (Annex H) Consultation questions

In order for employees to transfer to new employers under TUPE, the Bill requires them to be designated as ‘principally connected’ with services that are subject to a contract or agreement. The draft regulations set out an approach whereby the authority should look to reach consensus locally with operators and representatives of employees about the principles for determining whether a person is ‘principally connected’. We recognise that this may not always be possible, and the draft

regulations also provide a definition of 'principally connected' that can be used as an alternative.

11. Do you agree with the process set out in the draft regulations for determining whether a person is 'principally connected' with services that are subject to a contract or agreement? Please explain your reasons.
12. Where agreement cannot be reached locally, do you agree that both the employee's time spent assigned to the affected local services and their time in continuous employment are the appropriate factors for determining whether they are 'principally connected'? Please explain your reasons.
13. If you agree that these are appropriate factors:
 - a) What minimum proportion of a person's time should be spent assigned to affected local services for them to be considered as 'principally connected' (40%, 50%, 60%, over 60%, or a different figure)?
 - b) What is the minimum time an employee should have spent in continuous employment for them to be considered as 'principally connected' (eg. 3 months, 6 months, 9 months, 1 year, greater than 1 year)?
14. Do you agree with arrangements to enable authorities to request employee-related information from operators?
15. Do you agree with the process for allocating transferring staff?
16. Do you have any further comments on the draft TUPE regulations?

6. Franchising and enhanced partnerships: Pension protection

Introduction

- 6.1. As set out in the previous section, staff may be transferred under TUPE as a result of either franchising or, in very limited potential circumstances, an enhanced partnership. TUPE does not however protect the pension entitlement of employees, and the Bill therefore makes clear that staff originally transferred when franchising is first introduced or as a result of the introduction of a contract in the enhanced partnership context should be provided with pension protection.
- 6.2. The draft regulations for pension protection in relation to both franchising and enhanced partnership proposals are shown at **Annex I**.

The purpose of these regulations

- 6.3. The draft regulations set out further details regarding the protection of an employee's pension rights. We have developed broadly similar proposals to those set out in The Quality Contracts Schemes (Pension Protection) Regulations 2009.

The content of these regulations

- 6.4. The draft regulations set out the authority's duty to ensure that pension protection is secured for every employee that is transferred at the time that franchising is introduced or a contract introduced in the enhanced partnership context, and explain that each relevant employee must receive either the same pension rights that they had as an employee of the original company, or pension rights that count as being broadly comparable to, or better than, those rights.
- 6.5. The draft regulations then go on to define the term 'broadly comparable' by explaining that pension rights count as being broadly comparable where employees do not suffer any material detriment in terms of their future accrual of pension benefit. The regulations then go on to explain an alternative scenario where there are exceptional circumstances which mean it would not be practical for a new operator to provide rights which do not result in any material detriment in terms of their future accrual of pension benefit. In this scenario the regulations require compensation to be paid to the employee to offset the material detriment.
- 6.6. The regulations then require the operators to which staff are to be transferred to obtain a pensions statement verifying that the pensions offered to staff meet the requirements of the regulations. The regulations also specify that staff are to be provided with a copy of the pensions statement and that it must be obtained

from a qualified actuary.

- 6.7. Work is ongoing with the Government Actuaries Department to ensure the content of this regulation is accurate and up to date.

Relevant sections of the Bus Services Bill

- 6.8. **For franchising:** Bus Services Bill Clause 4 adds a new section to the Transport Act 2000:

- Section 123X allows further provisions to be made with respect to the pension protection to be provided to employees of bus operators who transfer, under TUPE, to a new employer as a result of the introduction of franchising.

- 6.9 **For enhanced partnerships:** Bus Services Bill Clause 9 adds a new section to the Transport Act 2000:

- Section 138S allows provisions to be made about the pension protection to be provided to employees of bus operators who transfer, under TUPE, to a new employer in the context of an enhanced partnership scheme, when the contract is awarded as a result of the introduction of route-level requirements.

Franchising and enhanced partnerships: Pension protection (Annex I) Consultation questions

17. Do you agree with the proposals for protecting an employee's pension rights?
Please explain your reasons.
18. Do you have any further comments on the draft pensions regulations?

7. Franchising and enhanced partnerships: Information from operators

Introduction

- 7.1. The Bill provides authorities with new tools to help them improve local bus services, but in order to develop proposals which will improve the situation for passengers, and which are realistic and sustainable, authorities will need access to accurate information. The Bill therefore enables authorities to request certain information from bus operators in connection with their franchising and enhanced partnership functions respectively. The information required to inform a franchising proposal will necessarily be more wide-ranging than that required for an enhanced partnership bearing in mind the fact that, through franchising, the authority could take on full responsibility for bus services in the area.
- 7.2. The draft regulations covering information that bus operators may be required to provide to local authorities preparing franchising or enhanced partnership schemes are shown at **Annex J**.

The purpose of these regulations

- 7.3. The aim of the draft regulations is to set out categories of information that can be requested by an authority in connection with their franchising functions and enhanced partnership functions respectively. The Bill already lists a relatively long-list of information that can be requested in connection with franchising functions, but there is scope to define further categories in regulations. With respect to enhanced partnerships however, regulations are to be used to set out all the categories of information that can be requested.

The content of these regulations

- 7.4. **For franchising:** The Bill provides that a franchising authority may require information from operators in connection with their franchising functions, most notably to inform the authority's assessment of its proposed franchising scheme.
- 7.5. The Bill itself already sets out a list of information that can be requested by the authority, including information about journey numbers, fares, revenue and staff. The draft regulations therefore only set out a few other categories of information that can be requested by authorities. These include:
- Information about fixed and variable costs of operating services; and
 - Information about the vehicles used to provide services.
- 7.6. This should help ensure that authorities considering franchising can access the information they need to accurately assess their franchising scheme and make informed decisions on the basis of robust evidence and analysis.

- 7.7. **For enhanced partnerships:** The Bus Services Bill makes provision for authorities to prepare and make an Enhanced Partnership ‘Plan’ and ‘Scheme’.
- 7.8. The Bill places the responsibility on authorities to develop Enhanced Partnership plans and schemes, working in partnership with bus operators. Local bus operators in the proposed enhanced partnership area will hold most of the information about how passengers currently use bus services, and this information is likely to be required to develop effective proposals, inform the content of the plan and scheme and also to monitor the effectiveness of the enhanced partnership once it is in place.
- 7.9. We recognise that authorities are likely to require information from local bus operators both in connection with the preparation of enhanced partnership proposals, and also in connection with the ongoing operation of the enhanced partnership – for example to monitor its effectiveness or consider a modification. The draft regulations therefore enable authorities to request information in these circumstances.
- 7.10. The Schedule to the draft regulations sets out the information that authorities can require local bus operators to provide. In essence the relevant information requirements specified in the Schedule are the same in all circumstances except that information that can be sought in connection with preparing a proposal will be different from the information sought once the enhanced partnership plan or scheme is in place.
- 7.11. We are not currently proposing that authorities should be able to require operators to provide cost or revenue data in relation to an enhanced partnership scheme. This is because, unlike for franchising, the authority will not be taking on new financial risks that currently rest with bus operators. However, some authorities have suggested that they may need this power in order to assure themselves that operators will be able to deliver their commitments under a scheme, or to inform any multi-operator ticketing arrangements.
- 7.12. The draft regulations set out the following categories of information that can be requested in relation to enhanced partnership proposals:
- how and when a local service is used by passengers;
 - how and when the local service is likely to be used by passengers once the enhanced partnership plan or scheme has been made;
 - the structure of fares for journeys on the local service;
 - the types of tickets used by passengers, and by particular types of passenger, on the local service;
 - time taken for journeys, and parts of journeys, on the local service including information about adherence to timetables at all times or at certain times of the day;

- the total distance in miles, covered by all vehicles used by the operator in operating qualifying services;
- the vehicles used by the operator in providing the local service, including information about the age of those vehicles, emissions and types of fuel or power; and
- the result of any activities undertaken with a view to promoting increased passenger use of the local service.

Relevant sections of the Bus Services Bill

7.13. **For franchising:** The Bus Services Bill Clause 5 adds a new section to the Transport Act 2000:

- Section 143A enables authorities to request certain information in connection with their franchising functions. The Bill itself already sets out a long-list of information that can be requested, but also states that further categories of information can be set out in regulations.

7.14. **For enhanced partnerships:** The Bus Services Bill Clause 10 adds a new section to the Transport Act 2000:

- Section 143B a regulation making power to specify the relevant information that an operator may be required to provide to a local transport authority or authorities preparing an enhanced partnership plan and scheme.

Franchising and enhanced partnerships: Information from operators (Annex J) Consultation questions

19. Do you agree that authorities should be able to request the following types of information in connection with franchising functions:

- Information about fixed and variable costs of operating services?
- Information about the vehicles used to provide services?

20. Should other categories be added? If so, what should these be?

21. Do you agree that authorities should be able to request the types of information (listed in paragraph 7.12) in connection with enhanced partnerships?

22. Should other categories be added? If so, what should these be?

23. The draft regulations do not currently allow authorities to request revenue information in connection with an enhanced partnership scheme. Is revenue

information necessary to developing enhanced partnership proposals? Please explain your reasons.

24. If revenue information is necessary for developing enhanced partnership proposals, when should local authorities request this information from bus operators? Please explain your reasons.

8. Enhanced partnerships: Operator objection mechanism

Introduction

- 8.1. The Bill requires participating operators to be given an opportunity to object at a number of points during the development and life of an enhanced partnership plan or scheme, for example, when an enhanced partnership scheme is about to go out to consultation, or is made varied or revoked by the authority.
- 8.2. In developing the detail of how this mechanism would operate, we have sought to:
- (a) Provide a mechanism that is easily calculated and clearly understood by all parties;
 - (b) Ensure that any data used is publically or readily available;
 - (c) Provide each operator with a say that is proportionate – so that operators who would not bear the brunt of the costs of implementing an enhanced partnership cannot force it on others;
 - (d) Seek to prevent unwanted outcomes, such as an operator or group of operators seeking to manipulate the rules to unfair advantage;
 - (e) Avoid an impasse because participating operators cannot deliver a clear result from the objection mechanism.
- 8.3. The draft regulations that set out the objection mechanism and how it should be applied are shown at **Annex K**.

The purpose of these regulations

- 8.4. The Bill requires the objection mechanism to be used at two points in the process:
- (a) before public consultation on draft proposals; and
 - (b) before a the enhanced partnership proposals are formally ‘made’ by the authority.
- 8.5. The purpose of the regulations relating to the enhanced partnership objection mechanism is to define the objection mechanism to be used. It is the objection mechanism that formally enables operators to object to the enhanced partnership proposals.
- 8.6. A scheme may include alternative voting mechanisms that are used when that scheme is subsequently varied or revoked after introduction. If such a bespoke objection mechanism is not included in a scheme, the default approach will apply throughout.

The content of these regulations

- 8.7. The draft regulations propose two tests by which operator objections should be measured, with those tests based on a combination of two principle factors – market share and number of operators.
- 8.8. The two tests will be used to determine whether objections to the enhanced partnership proposals are sufficient to stop it from progressing. If either test is satisfied then the proposals cannot progress any further – unless the proposals are revised and bus operators are given an opportunity to object again.
- 8.9. The two factors that make up the tests are described in more detail below.

Market share

- 8.10. The first factor on which we propose to base the operator objection mechanism is the market share of operators. The draft regulations propose to base market share on the volume of vehicle miles operated by each bus operator in the enhanced partnership area.
- 8.11. The use of vehicle miles as a measure of market share does mean that operators carrying the most passengers may not have as much influence as those running the most mileage. This may be particularly the case in a rural area, where relatively popular low mileage services operating in or between towns may not run as much mileage as rural services that carry fewer passengers over a longer distance. However, using passenger data is more problematic because:
- (a) it is not readily available; and
 - (b) it skews the vote more in favour of larger operators who tend to operate on the more popular routes.
- 8.12. Using vehicle miles also has the added benefit of being a measure of an operator's financial commitment in the area – running mileage always costs money whereas passenger numbers can result in operators having high route loadings at relatively modest operating cost.
- 8.13. Mileage seems the most sensible proxy for market share and other mechanisms such as overall fleet in the enhanced partnership area may be difficult to calculate. But views are requested on whether mileage is appropriate and, if not, what the alternative should be.
- 8.14. Views are also sought on whether the measure of vehicle miles should be based on the mileage actually operated or whether it should be based on the miles that are required to be run by the local bus service registration – this will of course be a higher figure as operated miles takes into account mileage lost due to vehicle breakdown etc.

The number of operators

8.15. The second factor on which we propose to base the operator objection mechanism is the number of operators. The Competition and Markets Authority, in its recommendations to Government on the Bus Services Bill, recommended that:

“voting mechanisms for enhanced partnership plans and schemes should ensure that the views of smaller operators are sufficiently taken into account, and do not unnecessarily exclude contractors, community transport operators or other interested parties”.

8.16. This reinforces the view that the objection mechanism needs to take account of other factors in addition to market share to ensure smaller operators are sufficiently represented.

Proposed objection mechanism

8.17. Overall, the aim of the objection mechanism is to ensure individual bus operators get a fair say regarding enhanced partnership proposals. We want to ensure that we protect against either a number of small operators with little market share, or a single dominant operator being able to block proposals and halt progress in an area.

8.18. Given the varying bus markets that exist in England outside London, using one test which combines both factors - market share and number of operators - will be difficult to implement in practice as it would likely favour one end of that spectrum or potentially mean that near unanimity would be required for operators to successfully object to proposals. As such, we are proposing two separate tests, and if either of the tests are satisfied, the enhanced partnership proposal cannot progress. We hope this mechanism will take into account the different and varied bus markets that exist in England outside London.

8.19. **The first test proposes that operators representing W%^a of mileage should be able to object to proposals, with that W% being made up of at least X^b individual operators.** It is designed to ensure that operators with large market share are able to object to proposals, whilst also requiring that those objecting operators are made up of a minimum number of operators, so that a single operator cannot object to proposals on their own.

8.20. **The second test proposes at least Y%^c of operators must object and that together those objecting operators must represent more than Z%^d of operated mileage.** It is designed to ensure that smaller operators acting together are able to object to proposals, whilst also requiring them to have a

^a Views are requested on the minimum number of operators that need to object to satisfy this requirement. Our suggested value is 25%.

^b Views are requested on the minimum number of operators that need to object to satisfy this requirement. Our suggested range is 3.

^c Views are requested on the minimum percentage of operators that need to object to satisfy this requirement. Our suggested value is 50%.

^d Views are requested on the minimum level of operated mileage that objecting operators together need to satisfy to trigger this provision. Our suggested value is 4%.

minimum combined market share to ensure they have a real stake in the local bus market.

- 8.21. We think the above proposal is preferable to an alternative, more complex approach of setting different thresholds for different types of market. It would be very complicated, for example, to have one set of thresholds for urban areas and one for rural areas.
- 8.22. The draft regulations do not yet specify precisely the percentage of vehicle mileage or number of operators that must object to the proposals to stop them from being taken forward by the authority. Views are sought on what the appropriate figures should be.
- 8.23. Taking the first test, the draft regulations propose that objecting operators should represent W% of mileage, with that W% being made up of at least X individual operators. We have initially proposed that 25% of mileage might be appropriate as that would mean that only operators with a significant stake in the local bus market could object. However, to ensure that one single operator cannot block proposals, we have proposed that the number of operators required to make up that 25% should be 3 or more. We would welcome views on the appropriateness of these figures from your experience of local bus markets.
- 8.24. Taking the second test, the draft regulations propose that at least Y% of operators must object and that together those objecting operators must represent more than Z% of operated mileage. We have initially proposed that at least 50% of operators must object to ensure that a majority of operators would need to object. However, to ensure that those objecting operators have a real stake in the local bus market, we have proposed that the 50% of operators must, together, represent a minimum market share. We have initially proposed 4%. Again, we would welcome views on the appropriateness of these figures from your experience of local bus markets.

Exclusions from the operator objection mechanism

- 8.25. The draft regulations also propose that certain specified categories of local bus services should be excluded from the objection process. These include:
- Operators running services under 'gross cost' contracts. Local authorities have powers under sections 89-91 of the Transport Act 1985 to subsidise local bus services that they deem to be socially necessary but which are not commercially viable. The draft regulations propose that a service funded by these means (where the operator is paid a fixed contract price for operating the service with the authority retaining all the revenue) should not count as far as the objection mechanism is concerned. However, a 'net cost' contract – where the authority pays a fixed contract price with the operator retaining the revenue as part of the contract agreement – should count towards the objection mechanism as the operator bears some commercial risk (e.g. if

revenue falls). In addition, if a route is part commercial and part subsidised, then the mileage which is purely commercial will count for both elements of the objection system proposed here.

- Excursion or tour services that 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 enhanced partnership area, but may use bus stops. The draft regulations define these as services that cross the geographical boundary of a plan or scheme – where less than 10%^e is registered as a local bus service.

8.26. The draft regulations also set out how the operator objection mechanism applies when a plan or scheme is revoked or varied. It also specifies which operators will be eligible to object and the period and method of making objections. A scheme that has been made using the statutory objection mechanism may also, for example, include a different objection mechanism that is to be used instead of the statutory one when the scheme is varied or revoked. This is to allow the parties to a partnership to agree an objection mechanism that is better suited to that particular partnership. This alternative mechanism will however still be subject to the statutory mechanism when the scheme is made. However, any changes to the plan must always be subject to the statutory objection mechanism.

8.27. So, for example, an initial scheme could be made (using the statutory objection mechanism) that contains only ticketing requirements. However, that scheme may also contain an alternative bespoke objection mechanism that is used when the scheme is varied. So if, say, the authority wishes to subsequently add requirements about marketing and passenger information to that scheme the bespoke objection mechanism would be used instead of the statutory one. This could be useful, for example, where the statutory mechanism is not well suited to the mix of operators in a particular area.

Relevant sections of the Bus Services Bill

8.28. Bus Services Bill Clause 9 adds new sections to the Transport Act 2000:

- Section 138F(10) and 138G(9) regulations about preparing and making of an Enhanced Partnership Plan and Scheme, specifically on the description of services that are qualifying local services and the number of operators who would need to object for a plan and/or scheme not to proceed.
- Section 138L(8) – mechanism when proposing to vary a scheme

^e Views are requested on whether 10% is right or whether a different figure would be more appropriate.

- Section 138M(8) – mechanism when actually varying a scheme
- Section 138O(11) – mechanism when revoking a scheme

Enhanced partnerships: Operator objection mechanism (Annex K) Consultation questions

25. Do you agree that the following factors should be taken into account in the operator objection mechanism:

- Market share by mileage?
- Number of operators?

26. Should other factors be taken into account? If so, what should these be?

27. Do you agree that the operator objection mechanism should have two separate tests, with proposals unable to progress if either are satisfied? Please explain your reasons.

28. For test one, do you agree that:

- objecting operators should represent a minimum 25% of mileage?
- the 25% of mileage should be made up of at least 3 operators?

29. If not, what alternative values would you propose? Please explain your reasons.

30. For test two, do you agree that:

- At least 50% of operators would be required to object?
- Those 50% of operators should represent at least 4% of mileage?

31. If not, what alternative values would you propose? Please explain your reasons.

32. Do you think that the mileage measure should be based on:

- operated mileage; or
- registered mileage? Please explain your reasons.

33. Do you agree that the following types of services should be excluded from the operator objection mechanism?

- Operators running services under 'gross cost' contracts
- Excursion or tour services; and
- Services with less than 10% of mileage in the enhanced partnership area.

34. Should any other types of services be excluded? Please explain your reasons.

35. Do you have any further comments on the proposed operator objection mechanism?

9. Information on varied or cancelled services

Introduction

- 9.1. Clause 19 of the Bill enables regulations to be made to require bus operators to provide information when requested by a local authority, on the patronage and revenue of a service that they propose to cancel or vary in an area. This will allow local authorities to collect robust information about the revenue performance of a service and disclose it to potential bidders for subsequent tenders.
- 9.2. This implements a recommendation made by the Competition Commission (now Competition and Markets Authority) following its investigation in 2011 into the local bus services market. The Competition Commission recommended that authorities should have powers to request and make available information from operators about patronage and the likely revenue performance of a service, where an operator is withdrawing or reducing it, and a local authority intends to put the service out to tender. The aim is to facilitate healthy competition for replacement contracts by strengthening the ability of those operators that are not the incumbent to compete.
- 9.3. This Competition Commission recommendation has been around for some time. Government's response to the recommendations^f, published in March 2012, recognised that primary legislation would be needed to create the powers necessary to give effect to a change in policy. The Bus Services Bill presents the first opportunity to take this recommendation forward.
- 9.4. The draft regulations requiring operators to provide certain information when a bus service is cancelled or varied are shown at **Annex L**.

The purpose of these regulations

- 9.5. Clause 19 of the Bill itself enables regulations to be made to require bus operators to provide information when requested by a local authority, on the patronage and revenue of a service that they propose to cancel or vary in an area – but the detailed process that authorities should follow when requesting the data, the types of service alterations for which data can be requested and the information that can be requested are all to be dealt with in regulations.
- 9.6. In order for authorities to be able to request this information in good time we are also proposing to use the regulations to require operators to notify local authorities in advance of registering, cancelling or varying their services so that the authority has time to take action – which we are terming as the 'pre-

^f https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31883/12-689-government-response-competition-commission-local-bus-services-investigation.pdf

notification period'. Introducing a 14 day 'pre-notification period' was also recommended by the Competition Commission.

9.7. The purpose of these draft regulations is therefore to:

- Require bus operators to notify authorities at least 14 days in advance of their application to the Traffic Commissioner to vary, cancel or register a service;
- Define the sorts of service variations for which an authority can request information;
- Set out the time periods within which authorities must notify operators of their request for information, and the periods within which operators must respond to those requests;
- Set out the types of information that can be requested; and
- Set out the situations in which information can be disclosed.

The content of these regulations

General principles

9.8. The draft regulations propose to amend the Public Service Vehicles (Registration of Local Services) Regulations 1986. The amendments provide that local authorities may only require operators to provide information where this is needed for the purposes of carrying out the local authority's transport functions under section 9A of the Transport Act 1968 or section 63(1) of the Transport Act 1985 and where any requirements that are needed would not otherwise be met. Our intention is to ensure that authorities can only request information to aid them in deciding whether or not to secure the provision of services which in their view would not be provided by commercial operators.

9.9. The draft regulations provide that such information should only be disclosed to operators for the purposes of inviting tenders for replacement services supported by the authority. This reflects the scope of the Competition Commission remedy, but we would welcome views on whether local authorities should also be able to disclose the information in other circumstances, for example to hold discussions with community transport operators on new alternative services.

Variations and cancellations that are caught by the requirements

9.10. The draft regulations set out the circumstances in which a local authority can request information from operators. In general, authorities can request information when a service is cancelled or varied, but there are exceptions which are set out in the draft regulations. Variations which are not caught are where an operator:

- a) increases the number of bus stops served;
- b) increases the frequency of the service;
- c) extends the period in any day for which the service operates; or

- d) a timetable adjustment that does not significantly affect the level of service and the adjusted timings are:
- No more than 10 minutes earlier or later than those registered in the timetable; or
 - Required to adapt the service to a variation in a connecting rail, ferry or air service.

Pre-notification period and time periods for issuing and responding to requests

- 9.11. The draft regulations introduce a requirement for bus operators to notify the relevant authority at least 14 days before they apply to the Traffic Commissioner to cancel, vary or register a service – the ‘pre-notification’ period. This should ensure that authorities have sufficient time to act to organise replacement services for example.
- 9.12. Without a ‘pre-notification’ period authorities will only become aware of the intention of an operator to vary or cancel a service at the point at which the application is made to the Traffic Commissioner, and will therefore only have the associated 56 days’ notice to request information from operators and use that information to arrange for a replacement service. Introduction of a ‘pre-notification period’ gives the authority extra time to decide whether or not they wish to request data from the relevant operator for the purposes of providing a subsidised service.
- 9.13. Government previously consulted on the ‘pre-notification’ measure in 2014, and a similar policy has been in place in Scotland for some time. However, in January 2016, Transport Scotland changed the pre-notification period from 14 days to 28 days to allow bus operators and the relevant local authorities more time to discuss the implications of any proposed changes to services.
- 9.14. Views are sought on whether a pre-notification period should be introduced as set out in the draft regulations, and whether it should be set at 14 or 28 days. We are clear however that the overall notice period should not be increased substantially, so as to not introduce significant new burden on operators. As such a 28 day pre-notification period would only be introduced on the basis that the existing 56 days’ notice period that must be given to the Traffic Commissioner would be reduced by 14 days to 42 days.
- 9.15. Based on implementing a 14 day ‘pre-notification period’, the draft regulations then go on to require authorities to request information from operators within 7 days of being notified of an operator’s intention to make an application to vary or cancel a service, and the regulations also place a requirement on operators to respond within 7 days of receiving the request.
- 9.16. In summary, the exchange of information between the local authority and the operator would be as follows:

- A complete draft of the proposed application is sent by the operator to the local authority 14 calendar days in advance of the date they intend to cancel or vary a service
- The local authority then has 7 calendar days to consider and contact the operator to request information if necessary;
- The operator then has 7 calendar days to supply the relevant information; and, finally
- The operator submits its application to vary or cancel a service to the Traffic Commissioner.

9.17. Whilst the Bill does allow for the regulations to provide that an application from an operator to vary or cancel a service can be refused if the operator does not provide the information if requested, we are not proposing to introduce this. Instead we intend to rely on the powers of the Traffic Commissioner to take the necessary enforcement action against operators.

Information that can be requested

9.18. The draft regulations propose that authorities should be able to request the following information from operators:

- The total number of journeys undertaken by passengers on the relevant service or on particular parts of the service.
- The number and types of passengers using the relevant service, the journeys made by those passengers, the types of fares paid by them and the types of tickets used by them, on the whole service or on parts of it.
- The revenue received from the service or parts of that service including information about revenue attributable to particular types of fares or journeys undertaken and to particular times of the day or week.

9.19. The regulations go on to state that information must be provided for the 12 month period before the date on which the information request is made or from the date on which the service started, whichever is the shorter. The operator is required to provide the information in any form it is reasonable to expect the operator to provide it which replicates the wording used in other sections of the Bill.

Disclosure of information

9.20. The draft regulations also deal with the disclosure of the information, stating that the information gathered from operators can be disclosed to other operators if the local authority decides to provide a subsidised service and tenders a route. However, the draft regulations state that patronage data must be aggregated on a monthly basis and revenue data on an annual basis. The draft regulations enable operators to request, when providing the information, that information not be disclosed on the basis that it would damage its commercial interests. However, the decision rests with the local authority. The

draft regulations allow data to be shared between local authorities in specific instances.

Relevant sections of the Bus Services Bill

9.21. Bus Services Bill Clause 19 adds a new section to the Transport Act 1985:

- Section 6(C) allows regulations to be made requiring operators to provide patronage and revenue information, if requested by the local transport authority, where a service is cancelled or varied.

Information on varied or cancelled services (Annex L) Consultation questions

Information to be provided and applications caught by the requirements

36. Do you agree that local authorities should only be able to request information in relation to varied or cancelled services in order to secure socially necessary services? Please explain your reasons.

The draft regulations set out exceptions from the circumstances in which a local authority can request information from operators when a service is cancelled or varied. These are listed in paragraph 9.10.

37. Do you agree with the list of exceptions?

38. Should other exemptions be added? If so, what should these be?

39. Do you agree with the disclosure provisions? Please explain your reasons.

40. Do you foresee any other circumstances in which authorities should be able to disclose this information? Please explain your reasons.

Pre-notification period and time periods for issuing and responding to requests

41. Do you agree that a pre-notification period should be introduced? Please explain your reasons.

42. If you agree that a pre-notification period should be introduced do you think it should be for 14 or 28 days? Please explain your reasons.

43. Is 7 days a reasonable amount of time for the local authority to decide whether to request the information? Please explain your reasons.

44. Is 7 days a reasonable amount of time for the operator to supply the relevant information to the local authority? Please explain your reasons.

Part B: Consultation Proposals – Draft Guidance

Part B sets out some initial draft guidance on key areas only. This is guidance that is likely to be of most use to anyone considering a franchising or enhanced partnership scheme and on which we would welcome early feedback. We plan to issue further guidance in 2017.

10. Guidance for improving bus services

10.1. Our aim is to produce comprehensive guidance to help local authorities and bus operators work together to deliver better bus services for passengers. The guidance should specifically address and explain the new provisions contained in the Bus Services Bill, such as the franchising, enhanced partnership and advanced quality partnership provisions, but also provide some wider suggestions for local authorities to bear in mind when considering how to improve their local bus services.

10.2. The aim of the guidance will therefore be to help local authorities and bus operators use the tools in the Bill most effectively and to set out any key considerations that should form part of a local authority's thinking on bus services.

10.3. The guidance is intended to include aspects such as:

- Detailed explanations of the provisions in the Bill and how to put them into practice;
- Approaches to improving rural transport – including consideration of the role of community transport providers;
- Bus services and the environment – including how the tools in the Bill can be used to help improve local air quality;
- How Total Transport principles can be used to improve efficiency in local bus service provision;
- Ticketing – including how the tools in the Bill can be used;
- And a number of other issues that authorities should have regard to when commissioning and considering their local bus services.

10.4. We intend to produce this comprehensive guidance as soon as possible once the Bill has received Royal Assent – but we have progressed certain aspects of the guidance more quickly where it was felt to be of most use to authorities in the shorter-term and where we would welcome early thoughts and feedback. The following sections set out the guidance that has been produced with respect to franchising schemes and enhanced partnerships and asks a number of consultation questions.

10.5. Additionally, during discussion of the Bus Services Bill in the House of Lords, Peers raised a number of issues which they proposed should be incorporated in the Bill or addressed in the guidance that will be produced after the Bill receives Royal Assent.

10.6. **Annex M** shows the draft guidance that was produced to help inform discussion of the Bill in the House of Lords. It covers those areas which were felt to be of most concern to Peers during Committee and was intended to outline some of the potential content of such guidance and to give an indication of the general approach to policy issues. It is likely that this draft guidance will be incorporated into a wider guidance document for publication.

10.7. It would be useful to gather views on those areas respondents would like to see covered in guidance for anyone seeking to improve local bus services.

Guidance for improving bus services (Annex M): Consultation question

45. Do you have any comments on the general guidance for improving bus services?

11. Franchising Guidance

Introduction

11.1. As discussed above, the intention is to issue comprehensive guidance in relation to franchising to help explain the provisions in the Bill more fully. The franchising guidance, once drafted, is likely to cover:

- How an authority should go about assessing its proposed franchising scheme;
- Requesting information from operators;
- The role of the auditor;
- The consultation process;
- Practical guidance for authorities when designing their franchising scheme;
- Practical guidance for authorities when procuring local service contracts; and
- Guidance for authorities in establishing their service permit scheme.

11.2. We have however identified key aspects of guidance on which we would welcome early feedback – in particular the guidance for authorities to follow when assessing their proposed franchising scheme and also guidance in relation to the role of the auditor.

11.3. Drafts of this guidance are set out at **Annexes N and O**, and further explanation is included in the paragraphs below.

11.4. The intention is to produce more comprehensive franchising guidance later in 2017.

Assessment of a proposed franchising scheme – (“Business Case” guidance)

11.5. Section 123B of clause 4 of the Bus Services Bill requires franchising authorities to conduct an assessment of their proposed franchising scheme. Authorities cannot implement franchising until this assessment has been completed and the other legislative requirements complied with, such as the need to consult. The Bill itself explains what the authority’s should consider as part of its assessment, but it is important to emphasise however that the legislation *does not* require the authority to pass a particular test or prove that franchising will deliver particular outcomes.

11.6. Sub-section 123B(5) of clause 4 of the Bill then states that the Secretary of State may issue guidance which authorities must have regard to when preparing their assessment of their proposed franchising scheme – a draft of this guidance is set out at **Annex N**.

11.7. The guidance has been drafted in such a way so as to include a relatively comprehensive list of the issues that authorities should consider whilst leaving it to individual authorities to make their own judgements about their particular approach. This should help ensure that authorities conduct a thorough assessment of their franchising scheme and think carefully about the impacts and risks.

11.8. Franchising authorities will have a statutory duty to have regard to this guidance, concerning the preparation of assessments of proposed franchising schemes. An auditor carrying out an audit of a franchising assessment will be required to state whether, in the auditor's opinion, the franchising authority had due regard to guidance in preparing the assessment.

Franchising: Assessment of a proposed scheme – (“Business case guidance”)
(Annex N): Consultation questions

46. Do you have any comments on the business case guidance?

Role of the auditor

11.9 Clause 4 of the Bill also states that an authority that wishes to proceed with franchising must obtain a report from an auditor on its assessment of its proposed franchising scheme. The Bill itself states what should be included in the auditor's report, including their opinion of the quality of the information relied on for the economic and financial cases of their assessment; the quality of the analysis of that information and whether the authority has had due regard to the guidance issued by the Department for Transport in preparing their assessment.

11.10 Draft guidance has been produced to provide more context and explanation as to the role of the auditor. This guidance is set out at **Annex O**.

11.11 The guidance details the sorts of activities the auditor should be conducting on behalf of the authority. It has been drafted – to provide more context and aid understanding of the activities the auditor is likely to carry out. This guidance is non-statutory and as such is not subject to the duty in section 123B.

Guidance in relation to the role of the auditor (Annex O): Consultation questions

47. Do you have any comments on the role of the auditor?

12. Enhanced Partnership Guidance

Introduction

12.1 As discussed above, the intention is to issue comprehensive guidance in relation to partnerships, and enhanced partnerships in particular, to help explain the provisions in the Bill more fully. The partnership guidance, once drafted, is likely to cover:

- The different partnership models available and what can be achieved through each;
- Further detail on how to establish both an advanced quality partnership scheme and an enhanced partnership scheme;
- How authorities should go about requesting information from operators to inform an enhanced partnership proposal;
- Competition considerations and the role of the Competition and Markets Authority; and
- Practical guidance for authorities when operating their partnership proposals.

12.2 We have however identified key aspects of guidance on which we would welcome early feedback – in particular the guidance for authorities and operators to follow when delivering an enhanced partnership proposal and also guidance in relation to competition considerations.

12.3 Drafts of this guidance are set out at **Annexes P and Q**, and further explanation is included in the paragraphs below.

12.4 The intention is to issue more comprehensive partnership guidance later in 2017.

Delivering an enhanced partnership

12.5 Draft guidance on delivering an enhanced partnership is shown at **Annex P**.

12.6 The tone of, and approach taken in the draft guidance reflects a desire from authorities and bus operators for a clear “step by step” guide to help them develop and implement an enhanced partnership. As a result only a relatively small proportion of the text is formal, statutory guidance issued under the new section 138R of the Transport Act 2000, and to which local transport authorities have to have regard. For clarity, the statutory guidance contained in Annex P is underlined.

12.7 The draft guidance covers a range of issues including:

- The key differences between advanced quality and enhanced partnership schemes;

- The process for preparing, making, varying and revoking enhanced partnership plans and schemes;
- How partnership working is achieved in practice, within a legislative framework which places formal responsibility for enhanced partnership plans and schemes with LTAs;
- The role of facilities and measures provided by an LTA in an EP scheme; and
- The requirements that operators and the LTAs can agree to include in an EP scheme – at either an area-wide or route-specific basis.

Guidance on delivering an enhanced partnership (Annex P): Consultation questions

48. Do you have any comments on the guidance for delivering an enhanced partnership?

Competition considerations

12.8 Draft guidance that sets out how competition should be considered in relation to enhanced partnerships is shown at **Annex Q**.

12.9 The development of enhanced partnership plans and schemes are subject to requirements in relation to competition. This guidance is designed to provide further explanation of the legal requirements and help authorities and operators develop enhanced partnerships that benefits passengers without adversely impacting on competition. This guidance covers aspects such as:

- The role of the local transport authority in ensuring that improvements for passengers are delivered in way which does not restrict competition unduly or is unfair to particular operators;
- How competition issues are covered in plans and schemes;
- The practical effect of competition law on enhanced partnership plans and schemes, particularly confirmation that operators complying with an EP scheme requirement in good faith are not at risk of financial penalties from the Competition & Markets Authority (CMA); and
- How operators can raise any concerns with the CMA.

12.10 As in Annex P, only some of this guidance would be formal, statutory guidance issued under the new section 138R of the Transport Act 2000. Proposed statutory guidance contained in Annex Q is underlined.

Competition issues (Annex Q): Consultation questions

49. Do you have any comments on the guidance concerning competition in an enhanced partnership?

What will happen next?

A summary of responses, including the next steps, will be published within three months of the consultation closing on the .GOV.UK website. Paper copies will be available on request.

Annex A: Impact assessment

- A.1 Rather than drafting individual impact assessments for each of the regulations included in this consultation, we have taken the approach of adding further detail and analysis associated with each of the regulations to the original Impact Assessment which set out the impacts of the Bus Services Bill proposal.
- A.2 The impacts of the regulations covering information on varied or cancelled services (Annex L) are set out in a separate triage assessment. A triage assessment was produced rather than a fuller impact assessment as the cost to business was assessed to be less than £1 million per annum.
- A.3 The updated Impact Assessment and the triage assessment have both been published on the .GOV.UK website.

Annex B: Full list of consultation questions

Part A: Draft regulations

AQPSs (Annexes D and E)

1. Do you agree with the proposal to replicate, for an AQPS, the existing Quality Partnership Scheme regulations? Please explain your reasons.
2. Do you agree with the proposal to allow an authority to include, in an AQPS, any facilities that are more than 5 years old if no operator objects? Please state your reasons.

Franchising: Service permits (Annex F)

3. Do you agree with the procedure that authorities must follow before they can start to accept applications for service permits? Please explain your reasons.
4. Do you agree with the categories of conditions (listed in paragraph 3.13) that can be attached to service permits? Please explain your reasons.
5. Should other conditions be added? If so, what should these be?
6. Do you agree with the procedure for revoking and suspending service permits? Please explain your reasons.
7. Do you have any further comments on the service permit regulations?

Franchising: Transitional provisions (Annex G)

8. Do you agree that the provisions to enable services to be registered at short notice during the transition period are useful? Please explain your reasons.
9. Do you agree with the processes that authorities must follow before they can extend the variation and cancellation notice periods? Please explain your reasons.

Where an authority decides to vary or revoke a franchising scheme so that it no longer applies in a particular area there will be a period of time before the variation or revocation takes effect. To ensure continuity of service, the draft regulations propose that applications for registration that are made by bus operators during that period should become effective at the point at which the variation or revocation takes effect.

10. Do you agree? Please explain your reasons.

Franchising and enhanced partnerships: Transfer of staff TUPE (Annex H)

In order for employees to transfer to new employers under TUPE, the Bill requires them to be designated as 'principally connected' with services that are subject to a contract or agreement. The draft regulations set out an approach whereby the authority should look to reach consensus locally with operators and representatives of employees about the principles for determining whether a person is 'principally connected'. We recognise that this may not always be possible, and the draft regulations also provide a definition of 'principally connected' that can be used as an alternative.

11. Do you agree with the process set out in the draft regulations for determining whether a person is 'principally connected' with services that are subject to a contract or agreement? Please explain your reasons.
12. Where agreement cannot be reached locally, do you agree that both the employee's time spent assigned to the affected local services and their time in continuous employment are the appropriate factors for determining whether they are 'principally connected'? Please explain your reasons.
13. If you agree that these are appropriate factors:
 - a) What minimum proportion of a person's time should be spent assigned to affected local services for them to be considered as 'principally connected' (40%, 50%, 60%, over 60%, or a different figure)?
 - b) What is the minimum time an employee should have spent in continuous employment for them to be considered as 'principally connected' (eg. 3 months, 6 months, 9 months, 1 year, greater than 1 year)?
14. Do you agree with arrangements to enable authorities to request employee-related information from operators?
15. Do you agree with the process for allocating transferring staff?
16. Do you have any further comments on the draft TUPE regulations?

Franchising and enhanced partnerships: Pensions (Annex I)

17. Do you agree with the proposals for protecting an employee's pension rights? Please explain your reasons.
18. Do you have any further comments on the draft pensions regulations?

Franchising and enhanced partnerships: Information from operators (Annex J)

19. Do you agree that authorities should be able to request the following types of information in connection with franchising functions:

- Information about fixed and variable costs of operating services?
- Information about the vehicles used to provide services?

20. Should other categories be added? If so, what should these be?

21. Do you agree that authorities should be able to request the types of information (listed in paragraph 7.12) in connection with enhanced partnerships?

22. Should other categories be added? If so, what should these be?

23. The draft regulations do not currently allow authorities to request revenue information in connection with an enhanced partnership scheme. Is revenue information necessary to developing enhanced partnership proposals? Please explain your reasons.

24. If revenue information is necessary for developing enhanced partnership proposals, when should local authorities request this information from bus operators? Please explain your reasons.

Enhanced partnerships: Operator objection mechanism (Annex K)

25. Do you agree that the following factors should be taken into account in the operator objection mechanism:

- Market share by mileage?
- Number of operators?

26. Should other factors be taken into account? If so, what should these be?

27. Do you agree that the operator objection mechanism should have two separate tests, with proposals unable to progress if either are satisfied? Please explain your reasons.

28. For test one, do you agree that:

- objecting operators should represent a minimum 25% of mileage?
- the 25% of mileage should be made up of at least 3 operators?

29. If not, what alternative values for test one would you propose? Please explain your reasons.

30. For test two, do you agree that:

- At least 50% of operators would be required to object?
- Those 50% of operators should represent at least 4% of mileage?

31. If not, what alternative values for test two would you propose? Please explain your reasons.
32. Do you think that the mileage measure should be based on:
- operated mileage; or
 - registered mileage? Please explain your reasons.
33. Do you agree that the following type of services should be excluded from the operator objection mechanism?
- Operators running services under 'gross cost' contracts
 - Excursion or tour services; and
 - Services with less than 10% of mileage in the enhanced partnership area.
34. Should any other types of services be excluded? Please explain your reasons.
35. Do you have any further comments on the proposed operator objection mechanism?

Information on varied or cancelled services (Annex L)

Information to be provided and applications caught by the requirements

36. Do you agree that local authorities should only be able to request information in relation to varied or cancelled services in order to secure socially necessary services? Please explain your reasons.

The draft regulations set out exceptions from the circumstances in which a local authority can request information from operators when a service is cancelled or varied. These are listed in paragraph 9.10.

37. Do you agree with the list of exceptions?
38. Should other exemptions be added? If so, what should these be?
39. Do you agree with the disclosure provisions? Please explain your reasons.
40. Do you foresee any other circumstances in which authorities should be able to disclose this information? Please explain your reasons.

Pre-notification period and time periods for issuing and responding to requests

41. Do you agree that a pre-notification period should be introduced? Please explain your reasons.
42. If you agree that a pre-notification period should be introduced do you think it should be for 14 or 28 days? Please explain your reasons.
43. Is 7 days a reasonable amount of time for the local authority to decide whether to request the information? Please explain your reasons.

44. Is 7 days a reasonable amount of time for the operator to supply the relevant information to the local authority? Please explain your reasons.

Part B: Draft guidance

General guidance for improving bus services (Annex M)

45. Do you have any comments on the general guidance for improving bus services?

Franchising: Assessment of a proposed scheme – (“Business case guidance”)
(Annex N)

46. Do you have any comments on the business case guidance?

Franchising: Guidance in relation to the role of the auditor (Annex O)

47. Do you have any comments on the role of the auditor?

Enhanced partnerships: Delivering an enhanced partnership (Annex P)

48. Do you have any comments on the guidance for delivering an enhanced partnership?

Enhanced partnerships: Competition considerations (Annex Q)

49. Do you have any comments on the guidance concerning competition in an enhanced partnership?

Annex C: Consultation principles

The consultation is being conducted in line with the Government's key consultation principles. Further information is available at

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/29 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk

Annex D: AQPS Regulations

DRAFT STATUTORY INSTRUMENTS

2017 No. xxxx

THE PUBLIC PASSENGER TRANSPORT, ENGLAND

Advanced Quality Partnership Schemes (England) Regulations 2017

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Transport, in exercise of the powers conferred by sections 113N and 160(1)(b) and (c) of the Transport Act 2000 (a) makes the following Regulations.

PART 1

General

1. Citation, commencement, extent and application

1.—(1) These Regulations may be cited as The Advanced Quality Partnership Schemes (England) Regulations 2017.

These Regulations come into force on xxxx.

These Regulations extend to England and Wales

These Regulations apply in England only.

2. Interpretation

2.—(2) In these Regulations—

“the Act” means the Transport Act 2000;

“the 1981 Act” means the Public Passenger Vehicles Act 1981(b);

“the 1985 Act” means the Transport Act 1985(c);

“admissible objection” has the meaning given in regulation 7;

“authority” means a local transport authority;

(a) 2000 c. 38. Section 113N was inserted by the Bus Services Act 2017 (c.).

(b) 1981 c. 14

(c) 1985 c. 67

“lead authority” means—

- (i) the authority which has made, or is proposing to make, a scheme; or
- (ii) where regulation 3 applies, the authority named as the lead authority in the notice of a proposed scheme given under section 113G(1) of the Act^(d);

“objector” means an operator who has made an objection in accordance with regulation 8;

“relevant operator” has the meaning given in regulations 5 and 6;

“scheme” means an advanced quality partnership scheme;

“traffic commissioner” means a commissioner appointed under section 4 of the 1981 Act^(e).

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

In these Regulations, where a person is required to consider whether an operator could be expected to secure an “appropriate rate of return” for operating services of a particular standard specified in any proposal or existing scheme, that person must have regard to the typical rates of return for operating local services of a comparable nature elsewhere in England.

3. Identification of lead authority

3.—(3) This regulation applies to any scheme containing a standard of services which includes requirements as to—

- (i) the frequency or timing of services,
- (ii) the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, or
- (iii) the ways in which passengers may pay for journeys.

which is made, or is proposed to be made, by two or more authorities acting jointly.

Where this regulation applies, the authorities referred to in paragraph (1) must specify in the notice of the proposed scheme given in accordance with section 113G(1) of the Act which of them is to act as the lead authority for the purposes of these Regulations.

Where this regulation applies, the lead authority must, before exercising powers in relation to any of the duties and responsibilities assigned by virtue of these Regulations—

- (iv) consult and seek representations from, and
 - (v) where appropriate, act in accordance with the representations of,
- the other authority or other authorities by whom the scheme is made, or is proposed to be made, jointly with the lead authority.

4. Services to be excluded from the application of section 113E(7) and (8) of the Act

4.—(4) This regulation applies where a local service is provided in accordance with a service subsidy agreement, or series of such agreements taken together, and that agreement or series of agreements has the effect described in paragraph (2).

The effect is that by virtue of a requirement of the agreement or series of agreements, an operator provides services which would meet one or more relevant requirements.

Where this regulation applies, the restrictions contained in section 113E(7) and (8) of the Act^(g) do not apply in respect of any relevant requirements.

For the purposes of this regulation—

^(d) Section 113G was inserted by the Bus Services Act 2017 (c.).

^(e) Section 4 was substituted by the 1985 Act.

^(f) 1971 c. 80

^(g) Section 113E was inserted by the Bus Services Act 2017 (c.).

- (i)a “service subsidy agreement” means an agreement made under section 9A(4) of the Transport Act 1968^(h) or section 63(5) of the 1985 Act; and
- (ii)a “relevant requirement” means a requirement specified in a scheme, or proposed scheme, as to the standard of services to be provided in relation to the frequency or timing of services, or as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.

PART 2

Determination of Relevant Operator and Admissible Objection

5. Definition of “relevant operator”

5.—(5) For the purposes of sections 113E(7) and (8) and sections 113N(4)(d) and (5)(b) of the Act⁽ⁱ⁾, “relevant operator” has the meaning given to it by this regulation and regulation 6.

Subject to paragraphs (3) and (4), a “relevant operator” is an operator who, on the day on which an authority or authorities first give notice under section 113G(1) of the Act of the proposal to make a scheme—

- (i) is operating one or more local services in accordance with the particulars registered under section 6 of the 1985 Act, or
- (ii) is eligible under section 6(4) of the 1985 Act to have an application for registration accepted, and has made such an application to a traffic commissioner to register the particulars of one or more local services,

and the local service to which the registration or, as the case may be, application relates has one or more stopping places in the area to which the proposed scheme relates.

Paragraph (2) does not apply to an operator when—

- (iii) the operator has, in respect of a local service to which paragraph (2)(a) applies, submitted an application to a traffic commissioner under section 6(7) of the 1985 Act to vary or cancel the registration of that local service, or

(iv) the operator has, in respect of an application to which paragraph 2(b) applies, withdrawn that application. and the effect of either sub-paragraph (a) or (b) is that the operator would not, at such time as the variation, cancellation or withdrawal takes effect, be operating any local services with one or more stopping places in the area to which the proposed scheme relates.

Paragraph (2) does not apply to an operator of local services if the only services which that operator provides, or proposes to provide, and to which that paragraph would otherwise apply are services which, under the scheme as proposed by the authority or authorities in the notice given under section 113G(1) of the Act, would be excluded from the scheme under section 113H(3) of the Act^(j).

6. Definition of “relevant operator” following modification of proposed scheme

6.—(6) This regulation applies where an authority or authorities, following consultation under section 113G of the Act, make a scheme under section 113H(1) of the Act with modifications and those modifications have the effect described in paragraph (2).

The effect is that an operator who did not, on the day referred to in regulation 5(2), satisfy the definition of a relevant operator in that paragraph would have satisfied that definition if the proposed scheme referred to in the notice given under section 113G(1) of the Act had instead been the scheme as modified.

Where this regulation applies, the lead authority must, as soon as reasonably practicable, serve notice on any operator to whom paragraph (2) may apply informing that operator of the modifications to the proposed scheme.

^(h) 1968 c. 73. Section 9A was inserted by the 1985 Act.

⁽ⁱ⁾ Section 113N was inserted by the Bus Services Act 2017 (c.).

^(j) Section 113H was inserted by the Bus Services Act 2017 (c.).

Regulations 8 to 15 apply to any operator on whom notice is required to have been served in accordance with paragraph 3 as if the reference in regulation 8(1) to the publication of a notice under section 113G(1) of the Act was a reference to the service of a notice under paragraph (3) of this regulation.

7. Definition of “admissible objection”

7.—(7) For the purposes of sections 113E(7) and (8) and sections 113N(4)(c) and (5)(b) of the Act “admissible objection” has the meaning given to it in this regulation.

An “admissible objection” is an objection—

- (i) made in accordance with the procedure prescribed in regulation 8; and
- (ii) which satisfies either or both of the grounds described in paragraph (3).

The grounds are that—

- (iii) for either or both of the reasons listed in paragraph (4), it would not be practicable for the objector to provide particular relevant services, or relevant services of a particular description, to a specified standard, including any requirements under section 113E(5)(b), which would apply to those relevant services if the scheme as proposed in the notice given under section 113G(1) of the Act were to be made; or
- (iv) taking into account the matters listed in paragraph (5), it would not be commercially viable for the objector, acting in a competent and efficient manner, to provide relevant services to a specified standard, including any requirements under section 113E(5)(b), which would apply to those relevant services if the scheme as proposed in the notice given under section 113G(1) of the Act were to be made.

The reasons referred to in paragraph (3)(a) are that—

- (v) additional vehicles or equipment would need to be procured by the objector, or existing vehicles or equipment upgraded, to provide the service to the particular standard specified in the proposed scheme and it would not be practicable for the objector to procure the additional vehicles, or to upgrade existing vehicles, by the date specified in the proposed scheme; or
- (vi) additional staff would need to be employed by the objector to provide the service to the particular standard specified in the proposed scheme and it would not be practicable for the objector to employ the additional staff by the date specified in the proposed scheme.

The matters referred to in paragraph (3)(b) are—

- (vii) the likely cost to the objector of providing relevant services to the particular standard which would apply to those services if the scheme as proposed in the notice given under section 113G(1) of the Act were to be made;
- (viii) the income which the objector would be likely to receive from operating the relevant services, taking into account any additional fare revenue which is likely to accrue as a result of the —
 - provision of facilities by the authority
 - measures taken, or to be taken, by the authority, and
 - improvements to the standard of services,if the scheme as proposed in the notice given under section 113G(1) of the Act were to be made; and
- (ix) whether, taking into account the matters described in sub-paragraphs (a) and (b), the objector could be expected to secure an appropriate rate of return from the operation of the relevant services in the area to which the proposed scheme relates.

Subject to paragraphs (7) and (8), for the purposes of this regulation “relevant services” means, in relation to a particular operator —

- (x) all local services registered under section 6 of the 1985 Act in the name of that operator which have one or more stopping places in the area to which the scheme relates and in respect of which, on the day on which the authority or authorities first gave notice under section 113G(1) of the Act, the registration was extant; or

(xi) all proposed local services with one or more stopping places in the area to which the scheme relates in respect of which the operator had made an application to a traffic commissioner to register particulars under section 6 of the 1985 Act, and that application was made on or before the day on which the authority or authorities first gave notice under section 113G(1) of the Act.

A local service is not a relevant service for the purposes of this regulation if, after the day on which the authority or authorities first gave notice under section 113G(1) of the Act—

(xii) in respect of a local service to which paragraph (6)(a) applies, the operator submits an application to a traffic commissioner under section 6(7) of the 1985 Act to vary or cancel the registration of the service, and the effect is as described in paragraph (8); or

(xiii) in respect of a proposed local service to which paragraph (6)(b) applies, the operator withdraws the application to register the service.

The effect is that, at such time as the variation or cancellation takes effect the local service or, as the case may be, proposed local service, which, but for paragraph (7) and this paragraph, would be a relevant service, has no stopping places in the area to which the scheme relates.

8. Procedure for making an objection

8.—(8) An operator who wishes to object to a requirement falling within section 113E(4)(a), 113E(4)(b), 113E(5)(a), or 113E(5)(b) of the Act must make the objection in writing and serve it on the lead authority within a period of 28 days beginning with the day on which the notice given under section 113G(1) of the Act in relation to that requirement is published.

A copy of the objection made under paragraph (1) must, at the same time as the objection is served on the lead authority, be sent by the objector to a traffic commissioner.

An objection made under paragraph (1) must contain—

(i) a statement describing the basis on which the objector considers that the objector is a relevant operator for the purposes of sections 113E(7) and (8) and sections 113N(4)(d) and (5)(b) of the Act;

(ii) a statement describing the basis on which the objector considers that either or both of the grounds specified in regulation 7(3) is or are satisfied; and

(iii) evidence to support the statements described in sub-paragraphs (a) and (b).

9. Request for further information by lead authority

9.—(9) Subject to paragraph (2), the lead authority may, within a period of 14 days beginning with the day on which an objection described in regulation 8 is received request such further information or evidence from the objector as that authority considers necessary in order to reach a decision as to whether the objection is an admissible objection or the objector is a relevant operator.

The lead authority may, with the written consent of the objector, extend the 14 day period specified in paragraph (1).

If the lead authority requests information or evidence in accordance with paragraph (1) the authority must specify the period within which such information or evidence is to be submitted by the objector and that period must—

(i) be of sufficient length, taking into account the nature and complexity of the request, to provide the objector with a reasonable period within which to respond; and

(ii) be not less than 14 days beginning with the day on which the request is issued by the authority.

If the objector fails to respond to a request under paragraph (1) within the period specified in the request in accordance with paragraph (3) the lead authority may nevertheless proceed to make a decision under regulation 10.

10. Decision of lead authority

10.—(10) Subject to paragraph (2), within a period of 28 days beginning with the day on which an objection is received or, as the case may be, the end of the period within which such further information or

evidence requested under regulation 9 must be submitted, the lead authority must make a decision as to whether—

- (i) the objector is a relevant operator, and
- (ii) the objection is an admissible objection,

and issue a written notice to inform the objector of that decision.

The lead authority may, with the written consent of the objector, extend the 28 day period specified in paragraph (1).

Where the decision of the lead authority is that—

- (iii) the objector is a relevant operator, and
- (iv) the objection is an admissible objection,

the written notice issued in accordance with paragraph (1) must satisfy the requirement described in paragraph (4).

The requirement is that the written notice must either—

- (v) describe the modifications that the lead authority proposes to make to the standard of services to be specified in the scheme as a consequence of the decision; or
- (vi) describe when and in what manner the lead authority will issue a supplementary notice to inform the objector of the proposed modifications.

The lead authority must send a copy of the written notice issued in accordance with paragraph (1) and, where appropriate, the supplementary notice issued in accordance with paragraph (4)(b) to a traffic commissioner.

11. Referral to a traffic commissioner

11.—(11) The objector may, within a period of 14 days beginning with the day on which the written notice is issued under regulation 10(1) or, where appropriate, the supplementary notice described in regulation 10(4)(b) is issued, refer either of the matters described in paragraph (2) to a traffic commissioner for a determination under regulation 14.

The matters are—

- (i) an objection to the decision of the lead authority under regulation 10(1) that an objector is not a relevant operator or that an objection is not an admissible objection; or
- (ii) an objection to the modified standard of service that the lead authority proposes to specify in the scheme as a consequence of a decision as described in regulation 10(3).

When a matter is referred to a traffic commissioner in accordance with this regulation the objector must at the same time send to the traffic commissioner—

- (iii) a copy of the objection as submitted to the lead authority;
- (iv) a copy of any further information or evidence submitted to the lead authority in response to any request under regulation 9(1);
- (v) where the matter is an objection described in paragraph (2)(a) a statement describing why, in the opinion of the objector, the decision of the lead authority made under regulation 10 is incorrect; and
- (vi) where the matter is an objection described in paragraph (2)(b) a statement describing why, in the opinion of the objector, either or both of the grounds specified in regulation 7(3) are satisfied in relation to the modified standard or service proposed to be specified in a scheme.

The objector must, at the same time as submitting the information described in paragraph (3) to the traffic commissioner, submit a copy of that information to the lead authority.

12. Provision of information to traffic commissioner

12.—(12) Where a matter is referred to a traffic commissioner under regulation 11 for a determination the lead authority must, within a period of 14 days beginning with the day on which the information provided by virtue of regulation 11(4) is received, submit to the traffic commissioner—

- (i) a statement describing the basis on which the decision under regulation 10 was taken; and
- (ii) any additional evidence or information which that authority considers to be relevant to the determination.

The lead authority must, at the same time as it submits the statement described in paragraph (1)(a), send to the objector a copy of that statement and such additional evidence or information which the lead authority is submitting to the traffic commissioner in accordance with paragraph (1)(b).

If the lead authority fails to submit the material described in paragraph (1)(a) and (b) within the period specified in that paragraph, the traffic commissioner may nevertheless proceed to make a determination under regulation 14.

The traffic commissioner may, within a period of 14 days beginning with the end of the period for the submission of the material described in paragraph 1(a) and (b), request such further information or evidence from the objector or the lead authority as the traffic commissioner considers necessary in order to make a determination.

Where such information or evidence is requested in accordance with paragraph (4) the objector or, as the case may be, the lead authority must submit that information or evidence within a period of 14 days beginning with the day on which the request is received.

The objector or, as the case may be, the lead authority must, at the same time as it submits any information or evidence requested under paragraph (4) to the traffic commissioner, send a copy of that information or evidence to the lead authority or, as the case may be, the objector.

If the objector or, as the case may be, the lead authority fails to respond to a request under paragraph (4) within the period specified in paragraph (5) the traffic commissioner may nevertheless proceed to make a determination under regulation 14.

In this regulation, “the traffic commissioner” means the traffic commissioner dealing with the referral in question.

13. Assessors to assist traffic commissioners

13.—(13) This regulation applies where a traffic commissioner, in considering any matter referred under regulation 11, is required to determine whether the ground specified in regulation 7(3)(b) has been satisfied.

In making such a determination the traffic commissioner may be assisted by an assessor selected from a panel of persons appointed by the Secretary of State for the purposes of section 17A of the 1981 Act^(k) (assessors to assist traffic commissioners).

Where a traffic commissioner seeks the assistance of a person described in paragraph (2), that person must be paid such remuneration as may be determined by the Secretary of State.

14. Determination of a traffic commissioner

14.—(14) Within a period of 28 days beginning with the date of the later of the following—

- (i) the end of the period for submission of the material described in regulation 12(1)(a) and (b), or
- (ii) the end of the period within which such further information or evidence requested under regulation 12(4) must be submitted,

a traffic commissioner must make a determination of the matter referred under regulation 11 and issue a written notice to the objector and the lead authority informing them of the determination.

Where the determination of the traffic commissioner is that the objection should be upheld, the traffic commissioner may recommend to the lead authority such modifications to the requirements specified in the proposed scheme as to frequencies, timings, maximum fares, or requirements as to the ways in which passengers may pay for journeys as the traffic commissioner considers appropriate.

Where the traffic commissioner makes recommendations to the lead authority in accordance with paragraph (2), and the authority either—

- (iii) modifies the scheme in accordance with those recommendations, or
- (iv) removes the requirement to which the admissible objection relates,

^(k) Section 17A was inserted by the 1985 Act.

the objection is no longer an admissible objection for the purposes of sections 113E(7) and (8) of the Act.

Where either—

- (v) the traffic commissioner does not make recommendations to the lead authority in relation to a determination described in paragraph (2), or
- (vi) the authority proposes modifications to the scheme which are different to those recommended by the traffic commissioner under paragraph (2),

paragraphs (5) to (9) apply.

Where this paragraph applies the lead authority must, within a period of 28 days beginning with the day on which the determination made under paragraph (1) is received, send a written notice to the objector describing the modifications that the authority proposes to make to the standard of services to be specified in the scheme as a consequence of a determination described in paragraph (2).

The lead authority may, with the written consent of the objector, extend the 28 day period specified in paragraph (5).

If within a period of 14 days beginning with the day on which the notice under paragraph (5) is received the objector has not withdrawn the objection, the lead authority may refer the matter back to a traffic commissioner for a determination.

Where any matter is referred back to a traffic commissioner by virtue of paragraph (7), the traffic commissioner dealing with the referral must make a determination within a period of 14 days beginning with the date on which the matter is referred.

Where the determination of the traffic commissioner in response to a referral under paragraph (7) is that the objection is not an admissible objection, the objection is no longer an admissible objection for the purposes of section 113E(7) and (8) of the Act.

15. Extension of time

15.—(15) Where a traffic commissioner considers it to be necessary in order for a particular case to be dealt with fairly and justly the traffic commissioner may, in accordance with paragraph (2), extend any of the periods described in paragraph (3).

A period described in paragraph (3) may only be extended for such period as the traffic commissioner considers appropriate in the circumstances of the case.

The periods are those specified in—

- (i) regulation 11(1);
- (ii) regulation 12(1);
- (iii) regulation 12(4);
- (iv) regulation 12(5);
- (v) regulation 14(1); and
- (vi) regulation 14(8).

PART 3

Review of Requirements as to Frequencies, Timings, Maximum Fares, or Ways in which Passengers may Pay for Journeys

Interpretation of Part 3

16. For the purposes of this Part—

- (i) a review is “completed” on the latest of the following dates—

where an objection to the whole or any part of the outcome of the review has been submitted by virtue of regulation 25(2), the date on which that objection is finally determined,

the date on which the time for the submission of an objection under regulation 25(2) expires without any such objection having been made, or

the date on which an objection made in accordance with regulation 25(2) is abandoned or withdrawn,

and “objection” includes a reference to any further referral to a traffic commissioner for a determination under regulation 11, as applied by regulation 25;

- (ii) a request for a review of a requirement as to frequencies, timings, maximum fares or ways in which passengers may pay for journeys is an “excepted request” if the lead authority is of the opinion that, since the relevant date, there has not been a change in market conditions which materially affects the ability of the operator or operators making the request, acting in a competent and efficient manner, to secure an appropriate rate of return from continuing to operate existing services to the standard specified in the scheme;
- (iii) “existing services” means, in relation to a particular operator, all local services registered under section 6 of the 1985 Act in the name of that operator—
 - which have one or more stopping places in the area to which the scheme relates; and
 - in respect of which, on the day on which the lead authority, without a request from a relevant participating operator, decides to start a review or, as the case may be, a request for a review is made by a relevant participating operator, the registration is extant;
- (iv) “maximum fares requirement period” has the meaning given in regulation 17(2);
- (v) “participating operator” means, in relation to a particular scheme, an operator—
 - who has given a written undertaking to a traffic commissioner in accordance with section 113J(4) or (5) of the Act⁽¹⁾ in respect of that scheme; and
 - who is, at the relevant time, operating local services in accordance with the terms of that undertaking;
- (vi) “relevant date”, in relation to a requirement as to frequencies, timings, maximum fares, or ways in which passengers may pay for journeys means either—
 - the date on which the requirement or, where a requirement as to maximum fares is varied in accordance with a formula, that formula was first introduced; or
 - where there has been a previous review of that requirement or formula, the date on which that review was completed;
- (vii) “relevant participating operator” means, in relation to any requirement as to frequencies, timings, maximum fares, or ways in which passengers may pay for journeys specified in a scheme, a participating operator to whom that requirement applies; and
- (viii) “review notice” means a notice issued by a lead authority to start a review of requirements as to frequencies, timings, maximum fares, or ways in which passengers may pay for journeys under these Regulations.

16. Review of requirements as to maximum fares by lead authority

17.—(16) Except where regulation 20 applies, where an authority or authorities make a scheme which specifies a standard of services which includes requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, that scheme must specify a maximum fares requirement period in accordance with paragraphs (2) and (3).

A maximum fares requirement period is, as the case may be, the period—

- (i) between the date on which the requirements as to maximum fares first come into effect, and the latest date by which it is specified that the first review of those requirements must start; or
- (ii) between the completion of a review of the requirements as to maximum fares, and the latest date by which it is specified that the next review of those requirements must start.

The maximum fares requirement period must be no greater than 12 months.

⁽¹⁾ Section 113J was inserted by the Bus Services Act 2017 (c.).

Prior to the end of the maximum fares requirement period the lead authority must start a review by issuing a written review notice to participating operators to whom the requirements as to maximum fares apply.

The review notice must propose —

- (iii) that requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, contained in the scheme, or any part of the scheme, should cease to have effect;
- (iv) that the existing maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, should continue to have effect until the next review; or
- (v) revised requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.

Provided the lead authority issues a review notice prior to the end of the maximum fares requirement period, the existing requirements as to maximum fares contained in the scheme continue to have effect, unless paragraph (7) applies, until that authority makes a decision in accordance with regulation 24(2).

Where the decision made in accordance with regulation 24(2) is that revised requirements as to maximum fares should be incorporated into the scheme, the existing requirements as to maximum fares contained in the scheme continue to have effect until such time as those revised requirements take effect in accordance with the timetable specified in accordance with regulation 24(5)(b).

If the lead authority considers that either or both of the conditions in paragraph (9) are met in relation to some or all of the requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, it may, at any time prior to the end of the maximum fares requirement period, start a review of those requirements by issuing a written review notice to relevant participating operators.

The conditions are that—

- (vi) there has, since the relevant date, been a change in market conditions which materially affects the ability of relevant participating operators, acting in a competent and efficient manner, to secure an appropriate rate of return from continuing to operate existing services in accordance with the requirements as to maximum fares specified in the scheme; or
- (vii) the existing requirements are no longer consistent with the local transport policies of the lead authority or of the other authority or of any of the other authorities (as the case may be) by whom the scheme is made.

17. Failure of lead authority to review requirements as to maximum fares

18.—(17) If a lead authority fails to issue a review notice before the end of the maximum fares requirement period, any participating operator to whom requirements as to maximum fares apply may request a review of the requirements.

An operator who wishes to make a request under paragraph (1) must make the request in writing and serve it on the lead authority within a period of 28 days beginning with the day on which the maximum fares requirement period ends.

A copy of the request made under paragraph (1) must, at the same time as the request is served on the lead authority, be sent to a traffic commissioner.

If, within a period of 14 days beginning with the day on which a request made in accordance with paragraph (1) is received, the lead authority has not issued a review notice, any requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, cease to have effect.

If a lead authority fails to issue a review notice before the end of the maximum fares requirement period, and no request is made under paragraph (1), any requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, remain in force until—

- (i) revised requirements come into effect following a subsequent review, or
 - (ii) the requirements cease to have effect following a subsequent review,
- whichever is earlier.

18. Request for review of requirements as to maximum fares by operator

19.—(18) At any time prior to the end of the maximum fares requirement period a review of any requirement or requirements as to maximum fares may be requested by—

- (i) three or more relevant participating operators, or
 - (ii) at least 50% of relevant participating operators,
- (whichever is the lesser).

Where a review is requested in accordance with paragraph (1) the operator or operators making the request must—

- (iii) specify to which requirement or requirements as to maximum fares the request relates;
- (iv) submit representations and evidence in support of the request; and
- (v) propose revised requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.

Except where the request for a review is an excepted request the lead authority must, within a period of 28 days beginning with the day on which a request submitted in accordance with paragraph (1) is received, issue a written review notice to relevant participating operators.

19. Review of formula for varying maximum fares by lead authority

20.—(19) This regulation applies where a scheme includes requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, and that scheme includes a mechanism under which those maximum fares are varied at least every 12 months in accordance with a formula.

If the lead authority considers that the conditions in paragraph (3) are met in relation to any or all of the requirements as to maximum fares that may be charged for particular journeys, or for journeys of a particular description, which are varied in accordance with a formula the lead authority may, at any time, start a review of that formula by issuing a written review notice to relevant participating operators in accordance with paragraph (4).

The conditions are that—

- (i) there has, since the relevant date, been a change in market conditions which materially affects the ability of relevant participating operators, acting in a competent and efficient manner, to secure an appropriate rate of return from continuing to operate existing services in accordance with the requirements as to maximum fares specified in the scheme if the fares are varied in accordance with the formula; or
- (ii) the effect of the formula is no longer consistent with the local transport policies of the lead authority or of the other authority or of any of the other authorities (as the case may be) by whom the scheme is made.

The review notice must propose—

- (iii) that the requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, contained in the scheme, or any part of the scheme, should cease to have effect;
- (iv) one or more revisions to the formula referred to in paragraph (1); or
- (v) replacing the formula with specified maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.

20. Request for review of formula varying maximum fares by operators

21.—(20) At any time during a period in which a formula described in regulation 20(1) applies a review of the formula may be requested by—

- (i) three or more relevant participating operators, or
- (ii) at least 50% of relevant participating operators,

(whichever is the lesser).

Where a review of the formula is requested in accordance with paragraph (1), the operator or operators making that request must—

- (iii) specify to which part of the formula the request relates;
- (iv) submit representations and evidence in support of the request; and
- (v) propose a revised formula for the variation of maximum fares.

Except where paragraph (4) applies the lead authority must, within a period of 28 days beginning with the day on which the request submitted in accordance with paragraph (1) is received, issue a written review notice to relevant participating operators.

The obligation in paragraph (3) does not apply where the request submitted in accordance with paragraph (1)—

- (vi) is received less than 12 months after the relevant date; and
- (vii) is an excepted request.

21. Review of requirements as to frequencies, timings, or ways in which passengers may pay for journeys, by lead authority

22.—(21) Where an authority or authorities make a scheme which specifies a standard of services which includes requirements as to the frequency or timing of services or the ways in which passengers may pay for journeys, the lead authority may, if it considers that either or both of the conditions in paragraph (2) are met in relation to any or all of those requirements, start a review of those requirements by issuing a written review notice to relevant participating operators.

The conditions are that—

- (i) there has, since the relevant date, been a change in market conditions which materially affects the ability of relevant participating operators, acting in a competent and efficient manner, to secure an appropriate rate of return from continuing to operate existing services in accordance with the requirements as to the frequency or timing of services or the ways in which passengers may pay for journeys specified in the scheme; or
- (ii) the existing requirements are no longer consistent with the local transport policies of the lead authority or of the other authority or of any of the other authorities (as the case may be) by whom the scheme is made.

The review notice must propose either—

- (iii) that the requirements as to the frequency or timing of services or ways in which passengers may pay for journeys contained in the scheme, or any part of the scheme, should cease to have effect; or
- (iv) that those requirements should be revised.

22. Request for review of requirements as to frequencies and timings, or ways in which passengers may pay for journeys, by the operator

23.—(22) At any time a review of any requirement or requirements as to the frequency or timing of services, or the ways in which passengers may pay for journeys, may be requested by—

- (i) three or more relevant participating operators, or
 - (ii) at least 50% of relevant participating operators,
- (whichever is the lesser).

Where a review is requested in accordance with paragraph (1) the operator or operators making that request must—

- (iii) specify to which requirement or requirements as to the frequency or timing of services, or the ways in which passengers may pay for journeys, the request relates;
- (iv) submit representations and evidence in support of the request; and

(v) propose revised requirements as to frequencies and timings or the ways in which passengers may pay for journeys.

Except where paragraph (4) applies the lead authority must, within a period of 28 days beginning with the day on which the request submitted in accordance with paragraph (1) is received, issue a written review notice to relevant participating operators.

The obligation in paragraph (3) does not apply where the request submitted in accordance with paragraph (1)—

(vi) is received less than 12 months after the relevant date; and

(vii) is an excepted request.

23. Procedure for reviews

24.—(23) A review notice must specify the last date for the receipt of representations from relevant participating operators in response to that notice, and that date must be—

(i) not less than 28 days, and

(ii) not more than 42 days,

after the date on which the review notice is issued.

The lead authority must, within a period of 35 days beginning with the date specified in the review notice in accordance with paragraph (1), decide whether the requirements as to frequencies, timings, maximum fares, the ways in which passengers may pay for journeys or, as the case may be, the formula used to vary maximum fares, should—

(iii) continue to have effect until the next review,

(iv) cease to have effect, or

(v) be revised.

The lead authority must, once a decision is made by virtue of paragraph (2), issue a written notice to all relevant participating operators.

The lead authority may, with the written consent of all of the relevant participating operators, extend the period specified in paragraph (2).

Where the decision referred to in paragraph (2) is that the requirements as to frequencies, timings or maximum fares, or the formula used to vary maximum fares, or the ways in which passengers may pay for journeys, should be revised, the notice issued under paragraph (3) must—

(vi) set out the details of the proposed revisions; and

(vii) subject to paragraph (6), set out the timetable for the proposed implementation of the revisions.

The timetable specified in accordance with paragraph (5)(b) must—

(viii) provide for any revision of requirements as to maximum fares, or the formula used to vary maximum fares, to take effect as soon as reasonably practicable after the review is completed;

(ix) provide for any revision of requirements as to frequencies or timings to take effect as soon as reasonably practicable after the review is completed, taking into account the need for operators, as appropriate, to register a new local service, or vary or cancel the registration of an existing local service, in accordance with section 6 of the 1985 Act;

(x) provide for any revision of requirements as to the ways in which passengers may pay for journeys to take effect as soon as reasonably practicable after the review is completed, taking into account the need for operators to take steps to comply with any new arrangements including the procurement of new equipment or systems, the improvement or adaptation of existing equipment or systems, the recruitment of additional staff, or the need to provide training to existing staff; and

(xi) take into account, where the lead authority is aware that a relevant participating operator is party to a voluntary partnership agreement, as defined in section 153(2) of the Act, or any other agreement with operators of local services, any conditions which that agreement might contain restricting the implementation of changes to requirements as to frequencies, timings or maximum fares to particular dates or times in the year.

24.Objections to the outcome of a review

25.—(24) Revised requirements as to frequencies, timings, maximum fares (including any revision to a formula described in regulation 20(1)), or the ways in which passengers may pay for journeys, may come into effect only if there are no admissible objections to the revised requirements from relevant participating operators.

Where, following receipt of the notice described in regulation 24(3), a relevant participating operator wishes to submit an objection to the whole or any part of the outcome of the review, the procedures in regulations 8 to 15 apply as if the reference to a notice given under section 113G(1) of the Act was a reference to a notice given under regulation 24(3).

Signed by authority of the Secretary of State

Date

Name
Parliamentary Under Secretary of State
Department for Transport

DRAFT

Annex E: AQPS – Existing facilities regulations

DRAFT STATUTORY INSTRUMENTS

2017 No. xxxx

PUBLIC PASSENGER TRANSPORT, ENGLAND

Advanced Quality Partnership Schemes (Existing Facilities) (England) Regulations 2017

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Transport, in exercise of the powers conferred by section 113K of the Transport Act 2000^(a), makes the following Regulations:

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Advanced Quality Partnership Schemes (Existing Facilities) Regulations 2017.

(2) These Regulations come into force on [].

(3) These Regulations extend to England and Wales.

(4) These Regulations apply in England only.

Interpretation

2. In these Regulations—

“the Act” means the Transport Act 2000; and

“scheme” means an advanced quality partnership scheme.

Specification of existing facilities

3. An existing facility which was first provided before the beginning of a period of five years ending on the date on which notice is given under section 113G(1)^(b) of the Act may not be specified in a scheme if any person who, on that date, relies upon that facility in the provision of a local service has objected to it being specified, and that objection has not been withdrawn.

Objections

4.—(1) Any objection given pursuant to regulation 3 must be made in writing and served on—

^(a) 2008 c. 38. Section 113K was inserted by the Bus Services Act 2017 (c.).

^(b) Section 113G was inserted by the Bus Services Act 2017 (c.).

- (a) the local transport authority giving the notice under section 113G(1), or
- (b) where two or more authorities propose to make the scheme, either the authority specified in the notice for that purpose or (where no such authority is specified) on any one of them.

(2) Any objection given pursuant to regulation 3 may be withdrawn by notice in writing served on the authority upon whom the objection was served pursuant to regulation 4(1).

(3) The scheme shall state that no objection to the specifying of an existing facility has been received and not withdrawn.

5. Where a proposed scheme specifies one of more existing facilities then, in addition to the requirements set out in section 113G, the notice to be given under subsection (1) of that section will—

- (a) state when the authority or authorities believe that each such facility was first provided, and where two or more authorities propose to make the scheme then the authority in whose area the existing facility is situated shall be responsible for making that statement, and
- (b) specify the date by which an objection to the specifying of an existing facility must be made, such date to be not less than 42 days from the date on which the notice is published.

Signed by authority of the Secretary of State

Date

Name
Parliamentary Under Secretary of State
Department for Transport

DRAFT

Annex F: Franchising - service permit regulations

DRAFT STATUTORY INSTRUMENTS

2017 No. 0000

PUBLIC PASSENGER TRANSPORT, ENGLAND AND WALES

The Franchising Schemes (Service Permits)(England) Regulations 2017

<i>Made</i> - - - -	2017
<i>Laid before Parliament</i>	2017
<i>Coming into force</i> - -	2017

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 123Q(3), 123R(3) and (4), 123S(3) and (4), 123U(3) and 160(1) of the Transport Act 2000^(a).

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Franchising Schemes (Service Permits)(England) Regulations 2017.

- (2) These Regulations come into force on [day/month] 2017.
- (3) These Regulations extend to England and Wales.
- (4) These Regulations apply in respect of England only.

Procedure

2.—(1) Before a franchising authority or authorities accept any application for a service permit made pursuant to section 123Q of the Transport Act 2000 they must have complied with the conditions set out at paragraph (2).

- (2) The conditions referred to in paragraph (1) are that the franchising authority or authorities must—
 - (a) publish a consultation document which satisfies the requirements set out in paragraph (3);
 - (b) consult relevant persons;
 - (c) publish a response to any consultation responses; and
 - (d) publish a notice which satisfies the requirements set out in paragraph (3) (“the service permit notice”) no earlier than the date on which decision to make a franchising scheme is published pursuant to section 123H(1) of the Transport Act 2000.
- (3) The requirements referred to in paragraph (2)(a) and (d) that the document must—
 - (a) describe the procedure that must be followed by a person applying for a service permit (“the application procedure”);

^(a) 2000 c.38. Sections 123Q, 123R, 123S, 123T and 123U are inserted by section 4 of the Bus Services Act 2017 (c.)

- (b) describe the information that a person applying for a service permit must submit with the application (“the required information”);
- (c) specify the fee that must accompany the application;
- (d) specify the period of time within which the franchising authority or authorities will take a decision on an application for a service permit; and
- (e) specify the period of time that will expire, if a service permit is granted, before the service permit is effective such period starting with date on which the service permit is granted.

(4) In this regulation—

“proposed franchising scheme” means the franchising scheme which is the subject of the consultation published by the franchising authority or authorities pursuant to section 123E(2) of the Transport Act 2000.

“relevant person” means—

- (a) all persons operating local services in the area or areas to which the proposed franchising scheme relates, and
- (b) such other persons as the franchising authority or authorities think fit.

(5) If a person applying to a franchising authority or authorities for a service permit does not follow the application procedure set out in the service permit notice, or does not provide the required information, the franchising authority or authorities need not consider the application.

Fees

3.—(1) If a franchising authority or authorities require a fee to accompany an application for a service permit, the authority or authorities need not consider the application if the fee does not accompany the application.

(2) The maximum amount a franchising authority or authorities may require an applicant to pay as a fee for processing an application for a service permit is the reasonable cost of processing that application.

Conditions

4.—(1) The description of conditions specified for the purposes of section 123R(3) of the Transport Act 2000 are conditions—

- (a) as to the period for which a service permit will be valid for the purposes of section 123J(3) of the Transport Act 2000;
- (b) that make provision about enabling tickets to be purchased or fares to be paid for in particular ways;
- (c) that operators of local services must accept tickets of a specified description;
- (d) that operators of local services comply with requirements as to the price to be charged for tickets they are obliged to accept pursuant to a condition being imposed on their service permit;
- (e) that operators of local services offer discounted travel for specified groups of persons;
- (f) that operators of local services publish specified information about the local services provided by them in the area to which the franchising scheme relates and about other local services in that area;
- (g) that operators of local services publish specified information about fares of operators of local services in the area to which the franchising scheme relates and ticketing arrangements in that area;
- (h) that operators of local services provide the service to which the application relates with vehicles that comply with specified standards;
- (i) as to customer service standards;
- (j) as to operational standards.

(2) In paragraph (1)(c), and (e) to (h) of this regulation, “specified” means specified by the franchising authority or authorities in the notice it publishes pursuant section 123R(1) of the Transport Act 2000.

Revocation and suspension

5.—(1) Where a franchising authority or authorities decide to suspend or revoke a service permit granted by them, the authority or authorities must give written notice of their decision to the holder of the service permit.

(2) A franchising authority or authorities may revoke or suspend a service permit with immediate effect on the ground that the public would be endangered if the service continued to operate.

(3) The notice of suspension or revocation must be in writing and must set out—

- (a) the ground or grounds on which the service permit is being suspended or revoked,
- (b) the date on which the suspension or revocation of the service permit is to take effect, and
- (c) the effect of the suspension or revocation.

(4) Where a service permit is suspended, the notice must also set out—

- (a) the measures the holder of the service permit would need to take to have the suspension revoked;
- (b) the date on which the suspension will cease to have effect;
- (c) any arrangements for the suspension to be reviewed.

(5) Subject to paragraph (6), where a service permit is suspended or revoked, the date on which the suspension or revocation is to take effect must be no earlier than 56 days after the date on which the notice is issued.

(6) Where a service permit is revoked or suspended with immediate effect pursuant to paragraph (2), the service permit has no effect for the purposes of section 123J(3) of the Transport Act 2000 from the day after the date the notice is issued.

(7) If a service permit is revoked, the holder of the permit may re-apply.

Signed by authority of the Secretary of State

Date

Name
Parliamentary Under Secretary of State
Department for Transport

Annex G: Franchising - transitional provisions regulations

DRAFT STATUTORY INSTRUMENTS

2017 No. 0000

PUBLIC PASSENGER TRANSPORT, ENGLAND AND WALES

Public Service Vehicles (Registration of Local Services)(Franchising Schemes Transitional Provisions)(England) Regulations 2017

<i>Made</i>	- - - -	2017
<i>Laid before Parliament</i>		2017
<i>Coming into force</i>	- -	2017

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 6(3)(a), (8)(a) and (9)(b), (c), (d) and (h) of the Transport Act 1985^(a) and section 123V(1) to (6) of the Transport Act 2000^(b).

Representative organisations have been consulted in accordance with section 61(2) of the Public Passenger Vehicles Act 1981^(c)

PART 4 GENERAL

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Public Service Vehicles (Registration of Local Services)(Franchising Schemes Transitional Provisions)(England) Regulations 2017.

(2) These Regulations come into force on [day/month] 2017.

(3) These Regulations extend to England and Wales, and apply in relation to England.

Interpretation

2. In these Regulations—

“the 1985 Act” means the Transport Act 1985;

“the 2000 Act” means the Transport Act 2000;

^(a) 1985 c.67.

^(b) 2000 c.38.

^(c) 1981 c.14; section 61(2) was amended by section 135(1) and 139(3) of, and Schedule 8 to, the Transport Act 1985. By virtue of section 134(1) and 135(1) of the Transport Act 1985, sections 60 and 61 of the Public Passenger Vehicles Act 1981 have effect as if Parts I and II of the Transport Act 1985 were contained in the Public Passenger Vehicles Act 1981.

“an affected local service” means a service which the person providing the service would be required to cease to provide by virtue of section 123J(3) of the 2000 Act;

“exempt service” means—

- (a) local service which is excepted from regulation arising because of the franchising scheme by any provision of the scheme that is made under section 123H(5) of the 2000 Act’, and
- (b) the use of a vehicle under permit granted under section 22 of the 1985 Act

“notice” means a notice issued by a franchising authority or authorities under regulation 9;

“registration authority” means an authority or lead authority (as the case may be) if the relevant registration functions have been delegated to it under section 6G(4) or (6) of the 1985 Act or in all other circumstance a Traffic Commissioner;

“scheme” means a franchising scheme, as defined in section 123A(3) of the Transport Act 2000;

“transitional period” means the period starting with the day on which the scheme was published in accordance with section 123H of the 2000 Act and ending at the beginning of the day on which the prohibition set out in sections 123J(3) or section 123J(4) of the Transport Act 2000 applies.

PART 5 REGISTRATION DURING TRANSITIONAL PERIOD

Applications to which this Part applies

3.—(1) — This Part applies to any application to register a local service, other than an exempt service, made under section 6 of the 1985 Act (registration of local services) in the circumstances described in paragraph (2).

(2) The circumstances are that—

- (a) the service to which the application relates has a stopping place in an area or sub area to which a transitional period relates and that period has not expired when the application is made; and
- (b) (i) the application is to register particulars of a local service (“new local service”) which is the same or similar to an affected local service; or
(ii) the new local service will be provided under an agreement entered into by an authority responsible for expenditure on public passenger transport services by reason of the impending cessation of an affected local service.

(3) Where this Part applies regulations 5 to 8 of the Public Service Vehicles (Registration of Local Services) Regulations 1986 do not apply.

Period of notice for new registration during transitional period

4. Where an application is made to which this Part applies, section 6(3) of the 1985 has effect as if “the period of notice” means “the period beginning with the registration and ending with the date given to the registration authority by the operator as the date on which the service will begin.”

Interpretation of Part 2

5. For the purposes of this regulation—

“authority responsible for expenditure on public passenger transport services” has the meaning give in section 88(8) of the 1985 Act.

PART 6 APPLICATIONS TO VARY OR CANCEL IN A TRANSITIONAL PERIOD

Applications to which this Part applies

6.—(1) This Part applies to any application to vary or cancel any registration of a local service made under section 6 of the 1985 Act (registration of local services) in the circumstances described in paragraph (2).

(2) The circumstances are that the application—

- (a) relates to a local service which has one or more stopping places in any area or sub-area to which a scheme relates;
- (b) is made during the transitional period which relates to the scheme area or scheme sub-area; and
- (c) the franchising authority or authorities operating the scheme have issued a notice pursuant to regulation 9.

(3) Paragraph (1) does not apply to any application in relation to—

- (a) a local service which is excepted from regulation arising because of the proposed scheme by any provision of the scheme that is made under section 123H(5) of the 2000 Act, or
- (b) the use of a vehicle under a permit granted under section 22 of the 1985 Act.

(4) Where this Part applies regulations 5 to 8 of the Public Service Vehicles (Registration of Local Services) Regulations 1986 do not apply.

Period of notice for variation or cancellation of registration during transitional period

7.—(1) Subject to regulation 8, the variation or cancellation of a service registration to which this Part applies becomes effective, for the purposes of section 6(8)(a) of the Transport Act 1985, on the expiry of the period specified in a notice.

Circumstances in which no period applies

8.—(1) In respect of an application to which this Part applies, in the circumstances described in paragraph (2), section 6(8) of the 1985 Act, where it applies, has effect as if paragraph (a) and the words “if later” at the beginning of paragraph (b) of that section were omitted.

(2) The circumstances are—

- (a) where the application is to vary a registration only to enable the operator of the service to comply with a traffic regulation condition or any other provision made by or under an enactment prohibiting or restricting the use of any road by vehicular traffic;
- (b) where the application is to vary a registration only in respect of a change in the operator’s address.

Notice

9.—(1) A franchising authority or authorities may publish a notice setting out the period in section 6(8)(a) of the 1985 Act for applications to vary or cancel the registration of services that have one or more stopping places in the area to which the scheme relates.

(2) A franchising authority or authorities must not publish a notice before a franchising scheme is published.

(3) A notice must include—

- (a) the date after which applications received by the registration authority to cancel or vary a registration will be subject to the notice period set out in the notice;
- (b) the period that must expire before a variation is effective, beginning with the day after the application has been accepted by the registration authority;
- (c) the time period that must expire before a cancellation is effective, beginning with the day after the application has been accepted by the registration authority.

(4) A franchising authority or authorities must not specify a period of time under paragraph 3(b) or (c) that is longer than 112 days.

(5) A franchising authority or authorities may make different provision in paragraph 3(b) and (c) for different types of local services.

PART 7 APPLICATION TO REGISTER WHEN A FRANCHISING SCHEME IS VARIED OR REVOKED

Applications to which this Part applies

10.—(1) This Part applies to any registration of a local service other than the type set out in paragraph (2) made under section 6 of the 1985 Act (registration of local services) in the circumstances described in paragraphs (3) and (4).

(2) Local services referred to in paragraph (1) are—

- (a) local services which are excepted from regulation arising because of the franchising scheme by any provision of the scheme that is made under section 123H(5) of the 2000 Act; and
- (b) the use of a vehicle under permit granted under section 22 of the 1985 Act.

(3) The circumstances referred to in paragraph (2) are that the application to register is made after a franchising authority or authorities have published a notice of their decision to—

- (a) vary a franchising scheme under section 123M(2)(a) of the 2000 Act so that the area to which the scheme will relate after the variation is smaller than the area to which the scheme relates prior to the variation; or
- (b) revoke a franchising scheme under section 123N(3) of the 2000 Act.

(4) The circumstances referred to in paragraph (2) are that the registration relates to an area to which, before it was varied or revoked, a scheme related.

(5) The “period of notice” referred to in section 6(3) of the 1985 Act, in relation to a registration to which this Part applies, is the period ending with the date upon which the scheme is varied in the way described in paragraph (3)(a) or revoked.

(6) Local services referred to in paragraph (1) are—

- (a) local services which is excepted from regulation arising because of the franchising scheme by any provision of the scheme that is made under section 123H(5) of the 2000 Act; or
- (b) the use of a vehicle under permit granted under section 22 of the 1985 Act.

(7) Where this Part applies, regulations 5 to 8 of the Public Service Vehicles (Registration of Local Services) Regulations 1986 do not apply.

PART 8 CONSEQUENTIAL AMENDMENTS

Consequential amendments

11.—(1) The Public Service Vehicles (Registration of Local Services) Regulations 1986^(d) are amended to the extent specified in the Schedule.

(2) The Schedule shall have effect.

^(d) S.I. 1986/1671, as amended by S.I. 2009/3245; there are other amending instruments but none is relevant.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

SCHEDULE

Regulation 11

Amendments

12. The Public Service Vehicles (Registration of Local Services) Regulations 1986 are amended as follows.

<i>Regulation to be amended</i>	<i>Amendments to be made</i>
Regulation 2(1)	After the definition of “operator” insert the following— “registration authority” means a traffic commissioner or, if the relevant registration functions have been delegated to a local transport authority pursuant to section X or section 7 of the Bus Services Bill 2017, the authority to whom the functions have been delegated;”. For the definition of “relevant authority” insert— “relevant authority” means, in relation to a local service either— (a) any Passenger Transport Executive or county, regional or islands council, within whose area there will be a stopping place for the service if the registration authority is a traffic commissioner, or (b) any Passenger Transport Executive or county, regional or islands council, within whose area there will be a stopping place for the service if the registration authority is a local transport authority but not a county council is that authority is the registration authority”. For the words “traffic commissioner”, in each place they occur, substitute “registration authority”. In paragraph (3) for the words “the commissioner such information as he shall reasonably require”, substitute “the registration authority such information as the authority shall reasonably require”.
Regulation 3	Regulation 4A is renumbered as paragraph (1) of that regulation. After paragraph (1) as so renumbered, insert— “(2) Regulations 5 to 8 do not apply to any application to which Parts 2 to 4 of the Public Service Vehicles (Registration of Local Services)(Franchising Scheme Transitional Provision)Regulations 2017 apply.
Regulation 4A	

Regulation 9A

For the words “traffic commissioner”, in paragraphs 1 to 3, substitute “registration authority”.

In paragraph (1) omit the words “of the Transport Act 2000” and the words following them and substitute “(prohibition on provision of local services other than under a quality contract) or section 123J(3)(prohibition of provision of certain local services in an area to which a franchising scheme relates) of the Transport Act 2000, the authority shall cancel the registration of that service.”

In paragraph 3(c) omit the words “of the Transport Act 2000” and the words following them and substitute “(prohibition on provision of local services other than under a quality contract) or the person is required to cease providing the service by virtue of section 123J(3) of the Transport Act 2000.”

In paragraph (4) Omit the words “A traffic commissioner” and substitute “If a traffic commissioner is the registration authority, the commissioner shall”.

DRAFT

Annex H: Franchising and enhanced partnerships – Transfer of staff (Application of TUPE) regulations

DRAFT STATUTORY INSTRUMENTS

2017 No.

PUBLIC PASSENGER TRANSPORT, ENGLAND

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

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 123X(6) and (7)(a) to (d), 138S(6) and (7)(a) to (d) and 160(1) of the Transport Act 2000(a).

Citation, commencement and extent

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

- (2) These Regulations come into force on [Day/ Month/ 2017].
- (3) These Regulations extend to England and Wales.
- (4) These Regulations apply to England only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Transport Act 2000;

“the 1985 Act” means the Transport Act 1985(b);

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006(c);

“affected local services”—

- (a) in relation franchising schemes, means local services(d) which, on the coming into force of a local service contract, the relevant operator would be required by virtue of section 123J(3)(a) and (b) of

(a) 2000 c.38. Sections 123X and 138S were inserted into the Transport Act 2000 by section 4 and section 9 respectively of the Bus Services Act [2017] (c.).

(b) 1985 (c.67).

(c) S.I. 2006/246 as amended.

(d) By virtue of section 162(3) of the Transport Act 2000, the term “local service” has the meaning given in section 2 of the Transport Act 1985.

the Act (prohibition on provision of local services other than under a franchising scheme) to cease providing;

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

“authority” means a local transport authority(f);

“awarded contract” has the meaning given in section 138S(11)(g) of the Act;

“local service contract” has the meaning given in section 123A(5)(h) of the Act;

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

(c) from those data; or

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

“principally connected” has the meaning determined under regulation 3;

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

“relevant information” has the meaning given in regulation 4;

“relevant operator” means an operator of affected local services;

“scheme” means a franchising scheme or an enhanced partnership scheme(i); and

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

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

(a) assigned;

(b) appropriate representatives; and

(c) employee.

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

Determination of “principally connected” persons

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

(2) Where a local authority, or authorities, that have made a franchising scheme under section 123H or an enhanced partnership scheme under section 138G have decided to determine whether a person’s employment is “principally connected” by agreement, they must issue a consultation notice to—

(a) operators of affected local services, and

(e) Section 6E is inserted by the Bus Services Act [2017], section 12.

(f) By virtue of section 162(1) of the Transport Act 2000, the term “local transport authority” has the meaning given in section 108(4) of that Act. Section 108(4) is amended by: the Local Transport Act 2008, section 77(5) and Schedule 4, Part 3, paragraphs 41 and 42; the Local Democracy, Economic Development and Construction Act 2009 (c.20), Schedule 6, paragraphs 95 and 96.

(g) Section 138S was inserted by the Bus Services Act [2017], section 9.

(h) Section 123A was inserted by the Bus Services Act [2017], section 4.

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

(j) Regulation 2 of TUPE contains definitions of the terms “assigned” and “employee”, and the definition of “appropriate representatives” is contained in regulation 13(3) of TUPE.

(k) 1971 (c.80).

- (b) appropriate representatives of employees working in those affected local services.
- (3) Any notice issued for the purposes of paragraph (2) must set out—
- (a) the proposed criteria for determining if a person’s employment is principally connected;
 - (b) the consultation process and agreement sought;
 - (c) the parties involved in the consultation process;
 - (d) what constitutes agreement between the parties.
- (4) Once there is agreement between the parties for the purposes of paragraph (1), the local authority, or authorities, that have made the scheme must publish the details and notify the other parties.
- (5) If there is no agreement for the purposes of paragraph (1), a person’s employment is treated as “principally connected” with the provision of affected local services if that person—
- (a) spends, on average, at least [half] of their working time—
 - (i) assigned to the provision of affected local services; or
 - (ii) assigned to activities connected wholly or mainly to the provision of affected local services; and
 - (b) they have been in that employment for a continuous period of [3/6/9/12] months on the coming into force of a local service contract or an awarded contract.
- (6) In this regulation “the parties” means—
- (a) local authority, or authorities, that have made a franchising scheme or an enhanced partnership scheme;
 - (b) operators of affected local services; and
 - (c) appropriate representatives of employees working in those affected local services.

Meaning of “relevant information”

- 4.—(1) For the purposes of these Regulations, “relevant information” means—
- (a) relevant employee information; and
 - (b) information about the identity of appropriate representatives of relevant employees.
- (2) For the purposes of this regulation “relevant employee information”, in relation to a relevant employee, means—
- (a) such of the particulars of employment that an employer is obliged to give to an employee by virtue of section 1 of the Employment Rights Act 1996^(l),
 - (b) such information about any collective agreements, as defined in section 178(1) of the Trade Union and Labour Relations (Consolidation) Act 1992^(m), in respect of a relevant employee,
 - (c) such information describing the affected local services with which a relevant employee’s employment is principally connected, including the proportion of a relevant employee’s working time assigned to those affected local services, and
 - (d) such other information, as the authority or authorities making the request consider necessary in order to enable any person considering entering into a local service contract, an awarded contract, or any other agreement for the provision of local services, to calculate the costs and liabilities likely to arise from the application of TUPE to such a quality contract or agreement.

Request for information

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

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

^(l) 1996 (c.18).
^(m) 1992 (c.52).

- (a) must specify the date by which the relevant operator is to respond to the request, which must be not less than 21 days beginning with the date on which the request is issued;
 - (b) must contain sufficient information about the proposed scheme to enable a relevant operator to determine which of their employees would be relevant employees for the purposes of that request;
 - (c) must only request such information as the authority or authorities consider necessary in order to carry out their functions in relation to the proposed scheme; and
 - (d) must not include a request for personal data, except to the extent that such a request is for information about the identity of appropriate representatives.
- (3) If a relevant operator in receipt of a request for information made by virtue of paragraph (1) is of the opinion that the requirement specified in paragraph (2)(b) has not been satisfied, the relevant operator must—
- (a) notify the authority or authorities of that opinion within 14 days of receipt of the request made by virtue of paragraph (1); and
 - (b) describe the information which, in the opinion of the relevant operator, is required in order to satisfy the requirement in paragraph (2)(b).
- (4) If the authority or authorities receive a notice in accordance with paragraph (3)(a) the authority or authorities must—
- (a) supply to the relevant operator such information as seems to the authority or authorities to be necessary, taking into account the description of information supplied in accordance with paragraph (3)(b), in order to enable the relevant operator to respond to the request made by virtue of paragraph (1); and
 - (b) specify a revised date by which the relevant operator is to respond to the request made by virtue of paragraph (1), which must be not less than 21 days beginning with the date on which the information described in sub-paragraph (a) is received by the relevant operator.

Obligation on relevant operator in receipt of request for information

6.—(1) Subject to paragraphs (2) and (3), a relevant operator must respond to a request for information made in accordance with regulation 5 within the period which applies by virtue of regulation 5(2)(a) or 5(4)(b).

(2) Paragraph (3) applies where an authority or authorities make a request for information by virtue of regulation 5 and either—

- (a) the operator does not have any or all of the information requested, and is unable to obtain the information at a reasonable cost; or
- (b) the operator is unable, by virtue of the prohibition contained in paragraph (6)(b), to respond to the request.

(3) In either of the circumstances described in paragraph (2)—

- (a) the operator must, within 14 days beginning with the date on which the request is received, give notice in writing to the authority or authorities that the operator is unable to respond to the request, explaining why it is not possible to provide any or all of the information requested;
- (b) the obligation imposed by virtue of paragraph (1) no longer applies to the operator in respect of any of the information in relation to which the operator has given notice under sub-paragraph (a).

(4) If, having received notice by virtue of paragraph (3)(a), the authority or authorities issue a revised request for information—

- (a) this regulation applies to the revised request as if it had been a request made by virtue of regulation 5; and
- (b) the revised request must specify the date by which the relevant operator is to respond to the request, which—
 - (i) must be not less than 21 days beginning with the date on which the revised request is received by the operator; or
 - (ii) must be, in a case where either of the circumstances described in paragraph (2) applied to the request made by virtue of regulation 5, but the operator failed to inform the authority or

authorities of that fact within the period specified in paragraph (3)(a), not less than 21 days beginning with the date on which the period specified in paragraph (3)(a) expired.

(5) The obligation on a relevant operator to provide information about the identity of appropriate representatives in response to a request made by virtue of regulation 5 includes an obligation to provide revised information to the authority or authorities if that information changes after the response is provided in accordance with paragraph (1) and before the scheme or (in the case of a scheme which provides for different provisions to come into operation on different dates) the relevant provision of the scheme comes into force.

(6) In responding to a request for information made by virtue of regulation 5 a relevant operator—

- (a) must take such steps as are reasonable in the circumstances to ensure that the information provided is complete and accurate; and
- (b) must not disclose personal data, except to the extent necessary in order to satisfy a request for information about the identity of appropriate representatives.

Allocation arrangements

7.—(1) After making the scheme under section 123H or 138G of the Act the authority, or authorities, must consult the—

- (a) relevant operators, and
- (b) appropriate representatives of relevant employees,

about the proposed allocation arrangements.

(2) After the end of the consultation required under paragraph (1), the authority, or authorities, must publish details about the allocation arrangements made in accordance with this regulation and notify the—

- (a) relevant operators, and
- (b) appropriate representatives of relevant employers.

(3) The allocation arrangements must—

- (a) identify organised groupings of relevant employees, or classes of relevant employees within such organised groupings; and
- (b) identify for each organised grouping of relevant employees or, as the case may be, class of relevant employees within such organised groupings, the local service contract or the awarded contract to which each organised grouping or class of relevant employees is to be assigned.

(4) For the purposes of this regulation a class of relevant employees is to be defined with reference to one or more of—

- (a) the identity of the relevant operators by whom relevant employees are employed;
- (b) the organised grouping to which the relevant employees belong;
- (c) any identifiable sub-groups to which the relevant employees belong, in a case where the organised grouping is divided into sub-groups by the relevant operator for the purpose of organising the responsibilities of relevant employees;
- (d) the characteristics of the work undertaken by relevant employees when working for a relevant employer, including in particular—
 - (i) the nature of the duties undertaken;
 - (ii) the times and the places at which those duties are normally undertaken.

Additional provisions where situation in section 123X(2) or 138S(2) arises

8.—(1) This regulation applies if—

- (a) at any time after a scheme is made but before the scheme or (in the case of a scheme which provides for different provisions to come into operation on different dates) the relevant provision of the scheme comes into force, an application is made to a traffic commissioner for the cancellation or

variation of a registration made under section 6 of the 1985 Act with respect to services which are affected local services;

- (b) the effect of the application described in sub-paragraph (a) is that affected local services would cease to be provided before the coming into force of the quality contract under which services similar to, or the same as, those which are to cease to be provided would in future be provided (“the relevant quality contract”); and
- (c) the authority or authorities who made the scheme propose to enter into an agreement with a person, by reason of the cessation of local services described in sub-paragraph (b), to provide replacement local services in the period between the cessation of those services and the coming into force of the relevant quality contract.

(2) As soon as reasonably practicable after the authority or authorities have received a copy of the application⁽ⁿ⁾ described in paragraph (1)(a), the authority or authorities who made the scheme must consult—

- (a) relevant operators, and
- (b) appropriate representatives of relevant employees,

about the revised allocation arrangements which the authority or authorities propose to make in respect of an organised grouping of relevant employees, or classes of relevant employees within such an organised grouping, affected by the circumstances described in this regulation.

(3) The authority or authorities who made the scheme must finalise and publish the revised allocation arrangements before—

- (a) issuing invitations to tender in accordance with section 89(1) of the 1985 Act (obligation to invite tenders for subsidised services), or
- (b) entering into an agreement by virtue of section 91(2) of the 1985 Act,

to operate replacement local services.

(4) For the purposes of this regulation “revised allocation arrangements” means allocation arrangements described in regulation 7 revised to take account of the circumstances described in paragraph (1).

Signed by the authority of the Secretary of State

Date

Name
Parliamentary Under Secretary of State
Department for Transport

⁽ⁿ⁾ By virtue of regulation 3(4) of the Public Service Vehicles (Registration of Local Services) Regulations 1986 (S.I. 1986/1671), the person making such an application is required to deliver a copy to any authority within whose area there are stopping places for the service. There are amendments to these Regulations but none is relevant.

Annex I: Franchising and enhanced partnerships – Pension protection regulations

DRAFT STATUTORY INSTRUMENTS

2017 No.

PUBLIC PASSENGER TRANSPORT, ENGLAND

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

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 123X(6) and (7)(e) and 138S(6) and (7)(e) and 160(1) of the Transport Act 2000(a).

The making of these Regulations fulfils the obligation imposed on the Secretary of State by section 123X(9) and 138S(9) of the Transport Act 2000(b).

Citation and commencement

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

- (2) These Regulations come into force on [Day/Month/2017].
- (3) These Regulations extend to England and Wales.
- (4) These Regulations apply to England only.

Interpretation

2. In these Regulations—

“the Act” means the Transport Act 2000;

“relevant employee” means a transferring original employee who, as an employee of the original operator, had rights to acquire pension benefits(c); and

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

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

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

“scheme” means a franchising scheme or an enhanced partnership scheme^(d).

Duties to secure pension protection

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

- (a) enter into a local service contract^(e) or an awarded contract^(f) with a person under the scheme; or
- (b) enter into, in the circumstances described in section 123X(2) or 138S(2) of the Act, any other agreement with a person for the provision of local services in the area to which the scheme relates.

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

- (a) that require the person to secure pension protection^(h) for every relevant employee,
- (b) that, where there are relevant employees, require the person—
 - (i) to procure a pensions statement which satisfies the requirements prescribed in regulation 6, and
 - (ii) to provide every relevant employee with a copy of any part of the statement which relates to that employee, and
- (c) that, so far as relating to—
 - (i) the requirement to secure pension protection described in sub-paragraph (a), and
 - (ii) the requirement to procure and provide the statement described in sub-paragraph (b),

are enforceable against the person by every relevant employee.

Rights to acquire pension benefits

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

- (a) are the same as the rights the relevant employee had as an employee of the original operator; or
- (b) count, by virtue of regulation 5, as being broadly comparable to, or better than, those rights.

Broadly comparable

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

- (a) if the rights satisfy the condition prescribed in paragraph (2); or
- (b) if, in the situation described in paragraph (3), the rights satisfy all of the alternative conditions prescribed in paragraph (4).

(2) The condition is satisfied if the rights to acquire pension benefits that the relevant employee would have as an employee of the new operator mean that the employee would suffer no material detriment overall in terms of the employee’s future accrual of pension benefits.

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

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

^(f) The term “awarded contract” is defined in section 138S(11) of the Transport Act 2000.

^(g) The term “transferring employee” is defined in section 123X(8)(a) and 138S(8)(a) of the Transport Act 2000.

^(h) The term “pension protection” is defined in section 123X(8)(b) and 138S(8)(b) of the Transport Act 2000.

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

(3) The situation is that there are exceptional circumstances which mean that it would not be reasonably practicable for the new operator to grant rights to the relevant employee which satisfy the condition prescribed in paragraph (2).

(4) The alternative conditions are satisfied if—

- (a) the rights to acquire pension benefits granted to the relevant employee include arrangements to pay compensation to the relevant employee; and
- (b) the arrangements to pay compensation described in sub-paragraph (a) are such that the compensation is sufficient to offset the material detriment which would otherwise be suffered by the relevant employee.

Pension statement

6.—(1) The pensions statement procured by a person entering into an agreement or contract, under a requirement specified in accordance with regulation 3(2)(b)(i), must be obtained in writing from—

- (a) an individual appointed as actuary under section 47(1)(b) of the Pensions Act 1995(j) for the relevant pension scheme;
- (b) a Fellow of the Faculty of Actuaries; or
- (c) a Fellow of the Institute of Actuaries.

(2) The statement must certify—

- (a) that, to the extent that the principles can be applied, the person making the statement has formed the opinion contained in the statement having had regard to the relevant actuarial and financial documents published by the Government Actuary; and
- (b) that, in the opinion of the person making the statement, every relevant employee will, as an employee of the new operator, have the rights to acquire the pensions benefits prescribed in regulation 4.

(3) For the purposes of this regulation, the “relevant pension scheme” means the pension scheme to which the relevant employee, as an employee of the new operator, will have a right to belong.

Signed by the authority of the Secretary of State

Date

Name
Parliamentary Under Secretary of State
Department for Transport

(j) 1995 (c.26). Section 47 has been amended by other provisions but none are relevant.

Annex J: Franchising and enhanced partnerships – Information from operators

DRAFT STATUTORY INSTRUMENTS

2017 No. 0000

PUBLIC PASSENGER TRANSPORT, ENGLAND

The Bus Services (Provision of Information for Franchising Schemes and Enhanced Partnership Plans and Schemes) Regulations 2017

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - ***

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by sections 143A(3)(g) and 143B(11) of the Transport Act 2000(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Bus Services (Provision of Information for Franchising Schemes and Enhanced Partnership Plans and Schemes) Regulations 2017 and come into force on [] April 2017.

(2) In these Regulations, “plan” means an enhanced partnership plan (b).

(3) References to sections are to sections of the Transport Act 2000.

Relevant information for the purpose of section 143A

2. The following information about the local services operated by an operator is relevant information for the purposes of section 143A (power to obtain information: franchising schemes)—

- (a) information about the fixed and variable costs incurred by the operator in operating the local services in the franchising authority’s(c) area;
- (b) information about the vehicles used by the operator in operating those local services, including information about the age of those vehicles, emissions and types of fuel or power.

Relevant information for the purpose of section 143B(1)

3.—(1) Information is relevant information for the purposes of section 143B(1) (power to obtain information about local services: preparation of enhanced partnership plans and schemes) if it—

(a) 2000 c.38. Section 143A is inserted by section 5 of the Bus Services Act 2017 (c.) and section 143B is inserted by section 10 of that Act.

(b) See section 138A(3) inserted by section 9 of the Bus Services Act 2017.

(c) See section 123A(4) inserted by section 4 of the Bus Services Act 2017.

- (a) is information relating to a local service specified in the Schedule but only to the extent that the service is operated in the area covered by the proposed enhanced partnership plan or scheme in connection with which the demand is made under that subsection; and
- (b) relates to a period specified in the demand.

(2) In paragraph (1)(a), “proposed enhanced partnership plan or scheme” means a plan or scheme in respect of which a local transport authority or authorities have given notice under section 138F(1)(a)(d) (notice of intention to make plan and scheme).

(3) A period specified in a demand as mentioned in paragraph (1)(b) must not include any period which falls more than five years before the date of the demand.

Relevant information for the purpose of section 143B(2)

4.—(1) Information is relevant information for the purposes of section 143B(2) (power to obtain information about local services: exercise of relevant functions) if it—

- (a) is information relating to a local service specified in the Schedule (other than paragraph 2) but only to the extent that the service is operated in the area covered by the plan or scheme in connection with which the demand is made under that subsection; and
- (b) relates to a period specified in the demand.

(2) A period specified in a demand as mentioned in paragraph (1)(b) must not include any period which falls more than five years before the date of the demand.

(3) In paragraph (1), “scheme” means an enhanced partnership scheme (e).

Relevant information for the purpose of section 143B(3)

5.—(1) In any case where a notice has been given under section 138L(1)(a)(f) in respect of a proposal to vary an enhanced partnership plan to include another local transport authority, information is relevant information for the purpose of section 143B(3) if it—

- (a) is information relating to a local service specified in the Schedule but only to the extent that the service is operated in the area covered by the plan in connection with which the demand is made under that subsection; and
- (b) relates to a period specified in the demand.

(2) A period specified in a demand as mentioned in paragraph (1)(b) must not include any period which falls more than five years before the date of the demand.

Signed by authority of the Secretary of State

Date

Name
Parliamentary Under Secretary of State
Department for Transport

^(d) Section 138F is inserted by section 9 of the Bus Services Act 2017.
^(e) See section 138A(5) inserted by section 9 of the Bus Services Act 2017.
^(f) Section 138L is inserted by section 9 of the Bus Services Act 2017.

SCHEDULE Regulations 3(1)(a), 4(1)(a) and 5(1)(a)

RELEVANT INFORMATION

- 1.** How and when a local service operated by an operator is used by passengers.
- 2.** How and when the local service is likely to be used by passengers once the enhanced partnership plan or scheme has been made or, as the case may be, varied.
- 3.** The structure of fares for journeys on the local service.
- 4.** The types of tickets used by passengers, and by particular types of passenger, on the local service.
- 5.** Time taken for journeys, and parts of journeys, on the local service including information about adherence to timetables at all times or at certain times of the day.
- 6.**—(1) The total distance, in miles, covered by all vehicles used by the operator in operating qualifying local services.
(2) In this paragraph, “qualifying local services” has the meaning given in regulation 5 of the Bus Services (Objections to Enhanced Partnership Plans and Schemes) Regulations 2017.
- 7.** The vehicles used by the operator in providing the local service, including information about the age of those vehicles, emissions and types of fuel or power.
- 8.** The result of any activities undertaken with a view to promoting increased passenger use of the local service.

Annex K: Enhanced partnerships – Operator objection mechanism regulations

Draft Order laid before Parliament under section 160(2A) of the Transport Act 2000 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2017 No.0000

PUBLIC PASSENGER TRANSPORT, ENGLAND

The Bus Services (Objections to Enhanced Partnership Plans and Schemes) Regulations 2017

Made - - - - *April 2017*

Coming into force - - *April 2017*

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by sections 138F(10) and (11), 138G(9) and (10), 138M(8)(a) to (d) and (9), 138O(11)(a) to (d) and (12) and 138P(1)(a) and (2) of the Transport Act 2000^(a).

Citation and commencement

1. These Regulations may be cited as the Public Service Vehicles (Objections to Enhanced Partnership Schemes and Plans) Regulations 2017 and come into force on April 2017.

Interpretation

2.—(1) In these Regulations—

“the 1985 Act” means the Transport Act 1985^(b);

“the 2000 Act” means the Transport Act 2000;

“authority” means a local transport authority whose area is in England^(c);

“local service” has the meaning given in section 2 of the 1985 Act;

“objector” means an operator who makes an objection in accordance with regulation 3(3)(e), 4, 5, 6, 7 or 8;

“operator” means an operator who provides a local service in the relevant area (but see regulation 11(3));

“plan” means an enhanced partnership plan^(d);

“relevant area”, in relation to a plan or scheme, means the area to which the plan or scheme relates or is to relate;

^(a) 2000 c.38. Sections 138A to 138S are inserted by section 9 of the Bus Services Act 2017 (c).

^(b) 1985 c.67.

^(c) See section 108(4).

^(d) See sections 138A(3) and 162.

“scheme” means an enhanced partnership scheme^(e);

“working day” means any day other than a Saturday, a Sunday or a public holiday in England and Wales.

(2) References to sections are, unless the context otherwise requires, to sections of the 2000 Act.

Meaning of “qualifying local service”

3.—(1) For the purposes of regulations 4 and 5, “qualifying local service” ^(f) means a local service which operates entirely in, or which passes through, the relevant area, other than one mentioned in paragraph (3).

(2) For the purposes of regulations 6 to 8, “qualifying local service” means—

- (a) where the scheme provides that an operator of local services specified in the scheme may make objections to any proposed variation or revocation of the scheme, those local services;
- (b) in any other case, a local service which is entirely in, or which passes through, the relevant area, other than one mentioned in paragraph (3).

(3) Those local services are—

- (a) a service or any part of a service provided under arrangements made under sections 89 to 91 of the 1985 Act in any case where the authority retains all the revenue from that service;
- (b) a service which is registered as a local service under section 6 of the 1985 Act but which would otherwise be an excursion or tour within the meaning in section 137(1) of that Act;
- (c) a service which has [10]% or less of its distance required to be operated as a local service determined in accordance with the registration of that service under section 6 of the 1985 Act.

Objections to proposal to make a plan and scheme

4.—(1) This regulation applies where an authority, or two or more authorities acting jointly, have—

- (a) prepared a plan and scheme under section 138F(1)(b); and
- (b) given notice of that plan and scheme to persons who on the relevant day ^(g) are operators of qualifying local services in the relevant area.

(2) Any operator to which notice is given under paragraph (1)(b) may send objections in writing to the plan or scheme—

- (a) within the period specified in the notice for the making of objections; and
- (b) to the address given in the notice.

Objections to the making of a plan and scheme with modifications

5.—(1) This regulation applies where an authority, or two or more authorities acting jointly, have given notice, under section 138G(2), of their intention to make a plan and scheme with modifications to one or both of them, to persons who on the relevant day ^(h) are operators of qualifying local services in the relevant area.

(2) Any operator to which notice is given under paragraph (1) may send objections in writing to the making of the plan or scheme—

- (a) within the period specified in the notice for the making of objections; and
- (b) to the address given in the notice.

Objections to proposal to make changes to a plan or scheme

6.—(1) This regulation applies where an authority, or two or more authorities acting jointly, have—

- (a) prepared changes to a plan or scheme under section 138L(1)(b); and

^(c) See sections 138A(5) and 162.

^(f) See section 162(3) and section 2 of the 1985 Act.

^(g) See section 138F(12).

^(h) See section 138G(11).

(b) given notice of the changes prepared to persons who, on the relevant day⁽ⁱ⁾, are operators of qualifying local services to which the plan (or the plan as proposed to be varied) relates.

(2) Any operator to which notice is given under paragraph (1)(b) may send objections in writing to the changes to the plan or scheme prepared—

- (a) within the period specified in the notice for the making of objections; and
- (b) to the address given in the notice.

Objections to the variation of a plan or scheme

7.—(1) This regulation applies where an authority, or two or more authorities acting jointly, have given notice, under section 138M(3), of their intention to vary a plan or scheme, to persons who are operators of qualifying local services to which the plan or scheme relates at the qualifying time.

(2) Any operator to which notice is given under paragraph (1) may send objections in writing to the making of the plan or scheme—

- (a) within the period specified in the notice for the making of objections (but see paragraph (4)); and
- (b) to the address given in the notice.

(3) In paragraph (1), “qualifying time” means the working day immediately before the day on which the notice is sent under section 138M(3).

(4) The period mentioned in paragraph (2)(a) must not be less than [28] days from the day on which the notice is sent.

Objections to the revocation of a plan or scheme

8.—(1) This regulation applies where an authority, or two or more authorities acting jointly, have given notice, under section 138O(6), of their intention to revoke a plan or scheme, or both, to persons who are operators of qualifying local services to which the plan or scheme relates at the qualifying time.

(2) Any operator to which notice is given under paragraph (1) may send objections in writing to the revocation of the plan or scheme—

- (a) within the period specified in the notice for the making of objections (but see paragraph (4)); and
- (b) to the address given in the notice.

(3) In paragraph (1), “qualifying time” means the working day immediately before the day on which the notice is issued under section 138O(6).

(4) The period mentioned in paragraph (2)(a) must not be less than [28] days from the day on which the notice is sent.

Notification of mileage by objectors

9.—(1) Where an objector has operated qualifying local services in the relevant area for 12 months or more before making the objection, it must, when making the objection notify the authority or authorities of the total distance, in miles, covered by vehicles used by the objector in operating qualifying local services in the period of 12 months immediately before the day on which it makes the objection.

(2) Where an objector has operated qualifying local services in the relevant area for less than 12 months before making the objection, it must, when making the objection notify the authority or authorities of the total distance, in miles, covered by vehicles used by the objector in operating qualifying local services as at the day on which it makes the objection.

Publication of names of objectors

10.—(1) The authority or authorities must publish the names of any objectors under regulations 4 to 8 within [] days of the last day of the period during which objections may be made.

⁽ⁱ⁾ See section 138L(10).

(2) The name of any objector to be published under paragraph (1) must be the name in which the local service operated by the objector is registered with the traffic commissioner by virtue of section 6 of the 1985 Act.

Sufficient number

11.—(1) This regulation applies for determining whether a sufficient number of persons—

- (a) have objected for the purpose of regulation 3(3)(e);
- (b) who, on the relevant day are operators of qualifying local services in the relevant area, have objected in accordance with regulations 4, 5 and 6;
- (c) who, at the qualifying time, are operators of qualifying local services in the relevant area, have objected in accordance with regulations 7 and 8.

(2) This regulation does not apply where a scheme makes provision for determining whether a sufficient number of persons have objected in accordance with regulation 6, 7 or 8.

(3) Where—

- (a) one or more operators are subsidiaries of another operator in the relevant area;
- (b) two or more operators are subsidiaries of the same operator in another area,

within the meaning in section 1159 of the Companies Act 2006(j), both or all of those operators are to be treated as one operator for the purposes of this regulation.

(4) Where this regulation applies, a sufficient number of persons are deemed to have objected in accordance with the regulation concerned where either paragraph (5) or (6) applies.

(5) This paragraph applies where—

- (a) the total distance, in miles, [required to be operated][covered] by vehicles used by all objectors in operating qualifying local services in the relevant area is at least [25] % of the total distance required to be operated by vehicles used by all operators in operating qualifying local services in that area; and
- (b) the number of objectors referred to in sub-paragraph (a) amount to at least [] % of the total number of all operators of qualifying local services in the relevant area.

(6) This paragraph applies where—

- (a) the number of objectors amount to at least [50] % of the total number of all operators of qualifying local services in the relevant area; and
- (b) the total distance in miles, [required to be operated][covered] by vehicles used by all objectors in operating qualifying local services in the relevant area is at least [4] per cent. of the total distance, in miles, required to be operated by vehicles used by all operators in operating qualifying local services in that area.

(7) For the purposes of paragraphs (5) and (6), the total distance required to be operated is to be determined in accordance with the registration of the local service under section 6 of the 1985 Act.

Signed by authority of the Secretary of State for Transport

Name
Parliamentary Under Secretary of State
Department for Transport

Date

Annex L: Information on varied or cancelled services

DRAFT STATUTORY INSTRUMENTS

2017 No. 0000

PUBLIC PASSENGER TRANSPORT, ENGLAND

The Public Service Vehicles (Registration of Local Services) (Amendment) Regulations 2017

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by section 60(1) of the Public Passenger Vehicles Act 1981^(k) and sections 6(9)(k) and 6C of the Transport Act 1985^(l).

Representative organisations have been consulted in accordance with section 61(2) of the Public Passenger Vehicles Act 1981.

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Public Service Vehicles (Registration of Local Services) (Amendment) Regulations 2017 and come into force on April 2017.

(2) These Regulations extend to England and Wales.

(3) These Regulations apply in respect of England only.

Amendment of the Public Service Vehicles (Registration of Local Services) Regulations 1986

2.—(1) The Public Service Vehicles (Registration of Local Services) Regulations 1986^(m) are amended as follows.

(2) In regulation 3 (applications for registration), after paragraph (3) insert—

“(3A) Before making an application for registration or for the variation or cancellation of a registration, the applicant must provide a draft of the proposed application to each relevant authority at least 14 days before the date on which the application is made to a traffic commissioner.

(3B) Paragraph (3A) applies only to an application for registration, or for variation or cancellation of a registration, made on or after [] 2017.

^(k) 1981 c.14 (“the 1981 Act”). Section 61(2) was amended by sections 135(1) and 139(3) of, and Schedule 8 to, the Transport Act 1985.

^(l) 1985 c.67. In relation to England and Wales, section 6(9) was amended by section 65(2) and (3) of the Local Transport Act 2008 (c.26). Section 6C was inserted by section 19 of the Bus Services Act 2017 (c.). By virtue of sections 134(1) and 135(1), sections 60 and 61 of the 1981 Act have effect as if Parts 1 and 2 of the 1985 Act were contained in the 1981 Act.

^(m) S.I. 1986/1671. Relevant amendments are made by S.I.

(3) After regulation 3 insert—

“Information to be provided in connection with a variation or cancellation of a registration

3A.—(1) This regulation applies where the operator of a service has provided a draft of an application under regulation 3(3A) for—

- (a) variation of the registration of a service (“relevant service”) other than an excluded variation; or
- (b) cancellation of the registration of a relevant service.

(2) The following are excluded variations—

- (a) a variation which increases the number of bus stops served by the relevant service;
- (b) a variation which increases the frequency of the relevant service;
- (c) a variation which extends the period in any day for which the relevant service operates; or
- (d) a variation which adjusts the timetable of the service without significantly affecting the level of the service provided and the adjusted timings are—
 - (i) in no case more than 10 minutes earlier or later than those in the registered timetable; or
 - (ii) required to adapt the service to a variation in a connecting rail, ferry or air service.

(3) Where this regulation applies, a relevant authority may require the information specified in paragraph (5) but only for the purpose of the exercise of any functions it has under—

- (a) section 9A of the Transport Act 1968⁽ⁿ⁾ (general functions of authorities and executives); or
- (b) section 63(1) of the 1985 Act^(o) (functions of local councils with respect to passenger transport etc.).

(4) In any case where the relevant authority requires any of the information specified in paragraph (5) in connection with an application, it must notify the operator within 7 days of receiving the draft mentioned in paragraph (1) that it requires that information.

(5) That information is information as to—

- (a) the total number of journeys undertaken by passengers on the relevant service or on particular parts of the relevant service specified in the notice;
- (b) the number and types of passengers using the relevant service, the journeys made by those passengers, the types of fares paid by them and the types of tickets used by them, on the whole service or on particular parts of it specified in the notice; and
- (c) the revenue received from the relevant service or parts of that service including information about revenue attributable to specified types of fares or journeys undertaken and to specified times of the day or week.

(6) Information mentioned in paragraph (5) must relate to the period—

- (a) of 12 months ending with the date on which the information is requested; or
- (b) beginning with the date on which the relevant service started and ending with the date on which the information is requested,

whichever is the shorter.

(7) Where the operator is required to provide a relevant authority with the information mentioned in paragraph (5)—

- (a) the information must be provided within 7 days of the receipt of the notification under paragraph (4); and

⁽ⁿ⁾ 1968 c.73. Section 9A was inserted by section 57 of the 1985 Act. It was amended by sections 161 and 274 of, and paragraph 3 of Schedule 11 and paragraph 1 of Schedule 31 to, the Transport Act 2000 (c.38), sections 10, 67, 77 and 131 of, and paragraph 3 of Schedule 4 and paragraph 1 of Schedule 7 to, the Local Transport Act 2008 (c.26) and by S.I.2014/866 and S.I.2016/653.

^(o) Section 63 was amended by paragraph 11 of Schedule 11 and paragraph 1 of Schedule 31 to, the Transport Act 2000 (c.38), section 68 of, and paragraph 4 of Schedule 4 and paragraph 1 of Schedule 7 to, the Local Transport Act 2008 (c.26) and by S.I.2009/3294.

- (b) the operator may provide the information in any form in which, having regard to the manner in which the information is kept, it is reasonable to expect the operator to provide it.

Disclosure of information provided under regulation 3A

3B.—(1) A relevant authority must not disclose information provided by an operator under regulation 3A (“relevant information”) except in accordance with this regulation.

(2) A relevant authority may, subject to paragraphs (3) to (5), disclose relevant information to other operators in connection with inviting tenders in accordance with section 89(1) of the 1985 Act.

(3) An operator may, when providing information under regulation 3A, request that relevant information is not to be disclosed to other operators under paragraph (2) on the basis that it would damage its commercial interests and may submit evidence in connection with that request.

(4) Where the relevant authority is satisfied, on considering any evidence submitted under paragraph (3), that disclosure of relevant information to other operators would damage the operator’s commercial interests, it must not disclose that information under paragraph (2) to other operators.

(5) Where paragraph (4) does not apply, information provided—

- (a) under regulation 3A(5)(a) and (b) may only be disclosed under paragraph (2) to other operators where it has been aggregated on a monthly basis;
- (b) under regulation 3A(5)(c) may only be disclosed under paragraph (2) to other operators where it has been aggregated on an annual basis.

(6) Relevant information provided to a relevant authority (“the lead authority”) may be disclosed to another relevant authority in any case where—

- (a) there is more than one relevant authority; and
- (b) each other relevant authority has agreed that only the lead authority will receive the information from the operator.

(7) Where another relevant authority has received relevant information by virtue of paragraph (6), that authority must not disclose that information.”.

Signed by authority of the Secretary of State

Date

Name
Parliamentary Under Secretary of State
Department for Transport

Annex M: Guidance for improving bus services

GENERAL GUIDANCE FOR AUTHORITIES CONSIDERING HOW BEST TO IMPROVE THEIR LOCAL BUS SERVICES

1. The guidance set out below should be considered by any local authority that is considering ways to improve its local bus services, is looking to improve local air quality, or is considering how to better integrate or co-ordinate local bus services with other public transport.

IMPROVING RURAL BUS SERVICES

Rural Bus Services – the challenges

2. Local buses help people get to work, school and ensure they can access a wide range of services and leisure opportunities. The loss of a local bus service, particularly in rural areas, can leave people isolated or dependent on friends and family to help them travel. But it can also be in rural areas that commercial services are most difficult to provide, because the critical mass of passengers required for a regular service can be difficult to achieve.

3. Where bus services are not provided commercially by bus operators, local authorities are able to step in and subsidise additional services. Local authorities are best placed to decide which services are needed in their local areas, reflecting local needs and the available budget. In England, local authorities have spent an average of £330 million a year over the past three years supporting bus services.

4. The Department is aware of the many challenges facing local authorities in ensuring rural communities have access to regular bus services - including the concentration of amenities in town and cities and ongoing financial pressures – and it is important that authorities are able to get the most out of the funding that is available to ensure the needs of local communities can be met.

5. Through the provisions in the Bus Services Bill, the Total Transport initiative and its support for community transport, the Department provides a range of tools and options to help local authorities deliver better local bus services, particularly in rural areas, and more detail on these tools is set out below. In addition, the sections below highlight the methods that local authorities can use to consider and take account of the impacts of their policy choices on rural areas.

Rural proofing

6. In deciding how to support rural bus services, or when considering the impact of potential policy choices on rural areas, local authorities should undertake a rural proofing exercise. The Department recommends this is done not only when areas are considering implementing franchising or the partnership provisions in the Bill, but for any area reviewing its transport provisions. Where franchising or partnership approaches are considered rural proofing should be undertaken both at an early stage, to shape the proposals, and before the final arrangements are implemented.

7. Rural proofing of new policies has been applied across central government for over a decade. It requires policy-makers to consider the rural impacts of their policies and programmes and, where necessary, to make adjustments to achieve equally effective and successful outcomes for

individuals, communities and businesses in rural areas. Consideration was given to the rural impact when developing the provisions of the Bus Services Bill.

8. Rural proofing does not require exactly the same outcome, or the provision of exactly the same level of service, in rural as in urban locations. This would not be practical in many cases, as the costs would be prohibitive. Rural communities should, however expect government policies and programmes to be sufficiently flexible to apply fairly in their areas and to deliver quality services that meet their everyday needs.

9. We therefore strongly recommend that local authorities undertake a rural proofing exercise when they are reviewing their transport provisions or considering using the new powers available to them under the provisions of the Bus Services Bill, and adapt their policies as necessary following the exercise to ensure their approach achieves equally effective and successful outcomes for individuals, communities and businesses in rural areas. Further information on rural proofing can be found at: <https://www.gov.uk/guidance/rural-proofing-guidance>.

How the Bus Services Bill can be used to improve rural bus services

10. The Bus Services Bill provides a wide range of tools for local authorities to use to help improve bus journeys for local passengers in a way that meets the needs of their local communities. These powers include the ability to work more effectively with bus operators through advanced quality partnerships or enhanced partnership schemes, and the potential to establish a system of franchising.

11. The powers contained in the Bill have been designed for use across England – in both rural and urban areas. Partnership arrangements are available for any area to take up, and a number of predominantly rural areas, including Cornwall and Greater Lincolnshire, have agreed bus franchising as an element of their devolution deals.

12. It will be up to local areas to decide whether and how to use the powers in the Bill. No area will be forced to pursue a particular approach. However, when considering the most appropriate approach, we recommend that local authorities give full consideration to the needs of rural areas.

Franchising

13. Franchising powers allow local authorities to determine and specify the local bus services that should be provided in their area. Through the implementation of bus franchising, authorities will be able to determine:

- which buses services run and when;
- the types of ticket available;
- the fares that should be charged;
- the types of payment that must be accepted;
- the information that is available to passengers; and
- the standard of bus that must be used – including their emissions standards or fuel technologies.

14. Under a franchising scheme local authorities can design the procurement process in a way that makes the most out of the existing resources. This could, for example, involve packaging some less profitable routes in rural areas together with those which are likely to be more

commercially viable, but it will be down to each authority to determine the most effective way of delivering the local services.

15. Franchising could be used by an authority to help balance-out the provision of services across the area, potentially diverting some services from more urban areas, where the authority may consider that there is over-provision of services, to rural areas.

Partnerships

16. The advanced quality partnership and enhanced partnership provisions in the Bill enable local authorities and bus operators to work together to set out and deliver improvements to local bus services in the area. Through partnership working, authorities and operators can agree standards for local bus services – including vehicle specifications, branding, ticketing and service frequencies.

17. Partnership working provides the opportunity for authorities and bus operators to work together to identify the bus services needed in an area, including thinking about the best mix of services to meet the needs of passengers throughout the area, including in rural communities.

18. Again, partnerships provide a useful mechanism through which to discuss and determine the optimum network of services for the area, and it may be that there are efficiency savings that could be made, or a re-deployment of existing resources.

19. The Department would encourage any authority considering how best to target support for local bus services in their area, particularly in rural areas, to engage with local bus operators to discuss what might be possible, either through a statutory partnership, or a voluntary approach.

Other options that can be used to improve rural bus services

20. Whilst the Bill provides some useful tools, there are other ways that local authorities can look to make the most out of their resources and deliver more efficient bus services in rural areas. Alongside, or together with, the tools available in the Bill, the Department strongly recommends that local authorities consider the opportunities offered by encouraging the local community transport sector and through the application of Total Transport principles.

Community transport

21. Community transport operators can play a major role in the solution to transport issues in rural areas. Community transport operators run Demand Responsive Services and also operate scheduled services on fixed routes. They provide crucial services that both encourage growth and reduce isolation by linking individuals and communities to existing transport networks, work, education, shops and services. Where commercial bus services are not viable, the community transport sector can offer bespoke services that address local needs, and the sector is well placed to serve more isolated communities, with approximately 8 million passenger trips taking place in rural areas^p.

22. The Department is helping more than 300 local groups across England to offer vital services to their local communities by providing them with new minibuses through the £25 million Community Minibus Fund. There are also many good examples of community transport organisations working with local authorities and commercial bus operators to deliver new or

^p <http://tinyurl.com/ojppgym>

additional services, supporting local groups and organisations, and those who have difficulty using other forms of transport.

Community transport: Case studies

South Somerset Community Accessible Transport

South Somerset Community Accessible Transport provides a demand-response 'Ring & Ride' service as well as a social car scheme using volunteer drivers in their own cars. The service received a new minibus through the Department for Transport Community Minibus Fund in November 2015. The new minibus will be used to provide transport for people without access to health care, day care, shopping or leisure activities.

Wyre Forest Dial-a-Ride

Wyre Forest Dial-a-Ride provides door to door transport services in the Worcestershire area. It uses accessible minibuses for those who are unable to use public transport due to disability and where there is no public transport available. Worcestershire County Council has been instrumental in supporting their operation for a number of years and is valued both by Wyre Forest Dial-a-Ride and other community transport operators in the county.

Cuckmere Buses

Cuckmere Buses has been operating in East Sussex since 1976, providing transport links to many villages and taking people to their nearest towns for shopping, medical appointments and recreation and work closely with commercial operators in their areas: Brighton & Hove, Compass and Stagecoach.

23. When reviewing the provision of local bus services in rural areas, the Department recommends that authorities consider how best to encourage and integrate community transport services into the wider network of commercial and supported services. The Community Transport Association is a good source of practical advice and help on how to achieve this.

24. This applies equally when authorities are considering introducing a franchising scheme or a partnership approach, as community transport can be used effectively to complement the wider network under any of the models available through the Bill.

Total Transport

25. In most areas, particularly rural ones, the transport mix includes a variety of public sector funded transport services that cater for a range of transport needs. These can include:

- non-emergency patient transport;
- adult social care transport;
- school bus services;
- community transport services, such as dial-a-ride; and
- subsidised local bus services.

26. All of these services can overlap and it is important that they are provided in a joined-up way, especially in rural areas where they often provide a vital link to those who would otherwise have little or no access to transport.

27. The Total Transport concept seeks to achieve this by developing more effective joint-commissioning of public-sector funded transport, avoiding unnecessary duplication and providing a better overall services to passengers.

28. In April 2015, DfT allocated £8m to 37 English rural local authorities for a 2-year trial of Total Transport in their areas. The pilots have shown that integration is possible and has the potential to result in the following benefits to passengers:

- The creation of a ‘one-stop shop’ – avoiding the need for passengers to deal separately with different service providers that have inconsistent and confusing processes and restrictions.
- Better management of transport availability so that passengers receive a more responsive service that is better suited to their needs – for example, some areas are considering integrated IT for journey booking. This has the potential to open up the transport options for individual passengers due to a wider fleet of vehicles being available.
- A single and consistent standard of service – for example, eligibility for dial-a-ride, adult social care transport or patient transport.
- The scope for efficiency savings through better use of existing drivers and vehicle fleet.

29. In rural areas particularly, feeder services and interchange with this sort of transport and ‘mainstream’ local bus services can play a part in maintaining and developing effective and viable rural public transport services. There is potential, for example, for a public-sector funded demand responsive service to carry passengers from a series of villages to a bus stop or interchange where they could use a commercial local bus service to complete their journey, say, into the centre of a market town.

30. This arrangement has the potential to keep the running costs of the demand responsive service down as well as helping to maintain the commercial viability of the connecting commercial local bus service.

31. Total Transport has the potential to greatly improve the services that are provided to passengers of public sector funded transport – such as non-emergency patient transport and adult social care transport – and also result in cost savings to those that fund this type of transport – resulting in even better services to passengers. The Government will continue to engage with the pilot areas to determine how best to take forward Total Transport principles in the future.

Total Transport: Case Study

Devon County Council has an established Transport Coordination Service which manages public transport support, the National Bus Pass, education transport, adult and child social care transport and an in house fleet.

As part of the Total Transport trials the council has recently added non-emergency patient transport to this service, providing an integrated model for managing non-emergency patient transport, working closely with its local clinical commissioning group. The Council is also providing a Patient Transport Advice Service on behalf of the local clinical commissioning group, assessing eligibility for patient transport and signposting non-eligible patients to other options including the community and voluntary sector.

BUS SERVICES AND THE ENVIRONMENT

Background

32. Whilst buses have a vital role to play in getting people to where they need to go, they also have a huge part to play in addressing some of the country's air quality problems and combating global warming.

33. Low emission buses – such as electric or bio-methane vehicles – offer significant carbon dioxide savings and improved air quality. However, diesel buses, which still make up the majority of bus fleets, contribute to the UK's air quality problems and the level of carbon emissions.

34. We want to create a healthy and growing market for low and ultra-low emission buses in this country, speeding up the eventual transition to an entirely ultra-low emission bus fleet. At present these buses only represent around 9% of buses in service in England. However, we are determined to increase that share, and for the UK to be at the forefront of the design, development and manufacturing of these buses.

35. Under the Green Bus Fund, Government funding has helped put over 1,200 low emission buses on our roads since 2009. Building on that success, the current £30 million Low Emission Bus Scheme should deliver hundreds more such buses over the next three years.

Recent successes

In 2013 Reading Buses introduced 20 bio-methane powered Compressed Natural Gas buses. These are self-funded as part of the company's ongoing commitment to environmental improvement.

Green bus funding later allowed a further 14 buses to be added, along with a considerable upgrade to the gas infrastructure at the depot. The company gained international media coverage with its efforts to raise the profile of bio-methane gas buses with its 2015 'fastest bus in the world – BusHound' project.

The company's 'planet Reading' sustainability strategy includes behind the scenes activities such as solar panels on the roof of its depot, rainwater harvesting for bus washing and employee travel to work initiatives including priority parking for car sharers and a cycle to work scheme.

How the Bill can help drive up emission standards and improve air quality

36. The Department would encourage authorities to think about how they can use the tools in the Bill to improve bus services in their area, and whether measures can be introduced to help improve the emission standards of the vehicles used and therefore local air quality.

37. Any authority developing a franchising proposal or an advanced or enhanced partnership scheme should consider whether their proposed approach could be used to improve local air quality. The authority's view on the suitability, or otherwise, of attempting to improve local air quality through the implementation of their franchising or partnership approach should be recorded in consultation materials. As well as the benefits offered, this might include consideration of the cost effectiveness of such an approach and the potential implications for bus operators and service provision.

Partnership-working

38. Through partnership approaches, authorities can work with bus operators in its area to deliver a set of agreed outcomes. One of the areas that local authorities can look to improve through partnerships is that of the quality of the bus fleet used in the area and associated emission standards.

39. If, working with operators, an authority is of the opinion that they want to improve the emission standards of the buses used in their area they can establish either an advanced quality partnership scheme or enhanced partnership to help deliver those outcomes. An authority could, for example, specify that all buses used in the partnership area must comply with certain international engine emission standards, which would require bus operators to either purchase newer, less polluting vehicles, or retro-fit their existing vehicles with technologies to help improve the emission standards. This could help authorities improve air quality in their towns and cities, and provides a useful tool for tackling problem areas.

40. It is important to remember however that these tools are designed to help authorities work together with operators in partnership – not dictate standards. Purchasing newer, cleaner vehicles or retrofitting vehicles with new technologies will be costly, and authorities may find that the best way forward is to begin by discussing with operators options to deliver better outcomes. It may be for example that the authority could agree to provide funding towards delivering the higher standards, or determine realistic timescales with bus operators for implementation.

Franchising

41. Franchising provides another mechanism through which authorities can look to improve the emission standards of the bus fleet in the area. Through franchising, local authorities can take full responsibility for the local bus services that operate in their area, determining which services run, at which times of day and frequency, and other aspects such as the fares and tickets available and the standards of vehicles to be used. Authorities will be able to set certain standards as part of the contracts that they would issue to bus operators, and they would need to consider whether the

standards set in those contracts were achievable and affordable.

Standards

42. Where an authority chooses to set vehicle emission standards as part of a franchising or enhanced partnership proposal, with the aim of improving local air quality, they should use standards or thresholds that already exist internationally or are otherwise recognised by the bus manufacturing or emissions reduction sector.

How the Bill interacts with other Government initiatives

43. As set out above, we recognise that there can be a cost associated with improving the emission standards of bus fleets across the country, and Government has provided funding streams in the past such as the Green Bus Fund and Low Emission Bus Scheme to help local authorities increase the uptake of low and ultralow emission buses, speeding up the full transition to an ultralow emission bus fleet and supporting the improvement of local air quality.

44. The Department would encourage authorities to proactively work with operators in their area to determine whether improvements can be made and how the tools set out in the Bill can be used, and also to develop future plans and strategies which could potentially be part-funded by Government should future funds become available.

45. Government has also recently announced plans to improve air quality in cities through the introduction of Clean Air Zones to discourage the use of older, more polluting vehicles. Clean Air Zones are being required in five cities in England outside London, and any local authority already has the power to introduce zones voluntarily should they choose to.

46. The Government will shortly be consulting on a Framework for Clean Air Zones in England. This will include the important principles that need to be consistent in how the zones operate from city to city, for example which vehicle standards to apply. The framework is likely to encourage local authorities to work with bus operators using, where appropriate, advanced quality partnerships, enhanced partnerships and the ability to franchise local bus services to ensure buses within the zones meet minimum emission standards.

DRIVER DISABILITY AWARENESS TRAINING

At committee stage Peers proposed that this issue should be addressed in guidance. When the Department issues final guidance, it is intended that this section will be included as part of the wider guidance on accessibility issues.

47. In order to respond to the needs of disabled people and those with reduced mobility, bus drivers should be adequately trained. The Department is fully supportive of the principle of all drivers being trained in disability awareness and the majority already receive such training as part of their Certificate of Professional Competence.

48. Article 16(1)(b) of Regulation (EU) 181/2011 requires all member states to ensure that bus drivers undertake mandatory disability awareness training, however, the UK has opted to exempt the application of this Article for five years, through to March 2018. Britain will in due course be leaving the EU, but until we do so we will meet

our legal obligations. The Government will continue to prepare to implement Article 16 of Regulation (EU) 181/2011 in anticipation of the exemption ending in March 2018, and will work with the bus industry and disabled people to develop and embed the use of best practice guidance on providing disability awareness training in the transport sector.

49. The Government's intention, which will be reflected in the Great Repeal Bill (that will remove from the statute book the European Communities Act), is that the body of existing EU law will be converted into UK law when we leave. So the provisions of Article 16 of Regulation (EU) 181/2011, setting out the requirement for mandatory disability awareness training for bus drivers, will be the starting point for any future consideration of this question.

50. Many local bus operators already provide training of this nature on a non-statutory basis recognising the benefits it brings to passengers and their own businesses. We would encourage all franchising authorities to consider whether such training should be a requirement of their franchise contract requirements. Local transport authorities pursuing partnership arrangements would benefit from discussing current provision and the potential for improvements with local bus operators and representatives of bus users.

APPLICATION OF THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012 WHEN TENDERING FOR LOCAL BUS SERVICES

At committee stage Peers proposed that local authorities should take account of the Public Services (Social Value) Act 2012 when tendering for local bus services, and draft guidance on this issue is set out below. When the Department issues final guidance, it is intended that this section will be included as part of the wider guidance on tendering or procurement of local bus services.

51. The Public Services (Social Value) Act 2012 requires authorities who commission public services to think about how they can also secure wider social, economic and environmental benefits. Authorities commissioning public services should think about whether the services they are going to buy, or the way they are going to buy them, could secure these benefits for their area and for local people.

52. The Act is a tool to help get more value for money out of procurement. It also encourages those who commission public services to talk to their local providers and communities to design better services, with the aim of finding new and innovative solutions to difficult problems.

53. Local authorities regularly commission and procure local bus services where they feel that the needs of the local community are not being met by the existing services. In addition, any authority that pursues franchising will be responsible for commissioning and procuring all local bus services in their area. The Department would encourage local authorities who are commissioning and procuring local bus services, be that through franchising or by tendering for supported services, to consider the provisions in the Act and the steps they could take to secure wider social, economic and environmental benefits for their local area. Even where the provisions of the Act do not apply because the procurement value falls below relevant thresholds, local authorities should still look to apply the core principles of the Act when procuring services.

54. In 2015 Lord Young conducted a review of the Act. His report contains a number of useful case studies, practical guidance on how to apply the Act, and a framework and principles for measurement. The report is published on the GOV.UK website and can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403748/Social_Value_Act_review_report_150212.pdf

55. Again, the Department would encourage authorities to consider this report when applying the principles of the Act when procuring local bus services.

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Annex N: Franchising Guidance – Assessment of proposed franchising scheme (“Business Case” guidance)

Introduction

1. Section 123B of clause 4 of the Bus Services Bill requires franchising authorities to conduct an assessment of their proposed franchising scheme. Authorities cannot implement franchising until this assessment has been completed and the other legislative requirements complied with, such as the need to consult. This section provides authorities with guidance concerning the preparation of that assessment, or “business case”.
2. Section 123B provides that an authority’s assessment of their proposed franchising scheme must describe the likely effects of the scheme and compare the proposed scheme to one or more other courses of action.
3. Section 123B then goes on to provide that the assessment must also include consideration of:
 - Whether the proposed scheme would contribute to the implementation of:
 - the authority’s local transport plan policies made under section 108(1)(a) of the Transport Act 2000, and
 - other policies affecting local services that the authority has adopted and published.
 - Whether the proposed scheme would contribute to the implementation by neighbouring local authorities of:
 - those authorities’ policies under section 108(1)(a), and
 - other policies affecting local services that those authorities have adopted and published.
 - How the authority would make and operate the scheme
 - Whether the authority would be able to afford to make and operate the scheme
 - Whether the proposed scheme would represent value for money
 - The extent to which the authority is likely to be able to secure that local services are operated under local service contracts.
4. Any decision to change the model of bus service delivery is significant, and will impact the authority proposing the scheme, neighbouring local authorities, bus operators, both incumbent and those not currently operating services in the area at the time the decision is made, and most importantly passengers.
5. The decision however is one which has been devolved to franchising authorities. The ultimate responsibility therefore lies with local decision-makers to ensure that the assessment of the proposed scheme contains sufficient detail to enable them to take an informed decision.

6. This guidance is designed to help franchising authorities prepare a robust assessment, and take decisions that are in the interests of passengers. It draws from Government's business case guidance^a and the Department's guidance on developing transport business cases^b.

Overview of assessment process

7. The diagram below sets out an overview of the process that an authority should follow when developing their assessment. It starts with establishing a compelling 'case for change, then the setting of objectives and consideration of options, followed by the more detailed assessment stage.
8. The purpose of the assessment is to ensure that an authority has thoroughly thought through the impacts, risks and practical implications of its proposal to introduce franchising. The assessment requires an authority to compare its franchising proposal against other courses of action, and consider the benefits, impacts, costs and risks. Following the preparation of the assessment and the other steps in the process, including consultation, the authority will then be well placed to take their own decision on whether or not to proceed. The legislation sets out a number of factors that must be considered as part of an authority's assessment of its proposed franchising scheme. Authorities can take other factors into account, provided that these are clearly set out and explained as part of the assessment itself.
9. It is important to note that the legislation does not require the authority to pass a particular test or prove that franchising will deliver particular outcomes. It is for the Mayor or authority to decide, based on the assessment of the proposed franchising scheme and results of the consultation, whether franchising is the right course of action. That decision can be subject to legal challenge through judicial review, as is the case for any local authority decision.
10. The level of detail that should be included in an assessment is the same as the level of detail that would usually be included in an Outline Business Case^c. The assessment should include a detailed assessment of the options together with full economic and financial appraisals, including appropriate sensitivity tests. The assessment should also include detail regarding how the preferred option would be procured and how risks to the delivery of the project will be managed. The options, including the proposed franchising scheme, will need to have been developed in some detail to be able to accurately assess their impacts.

a

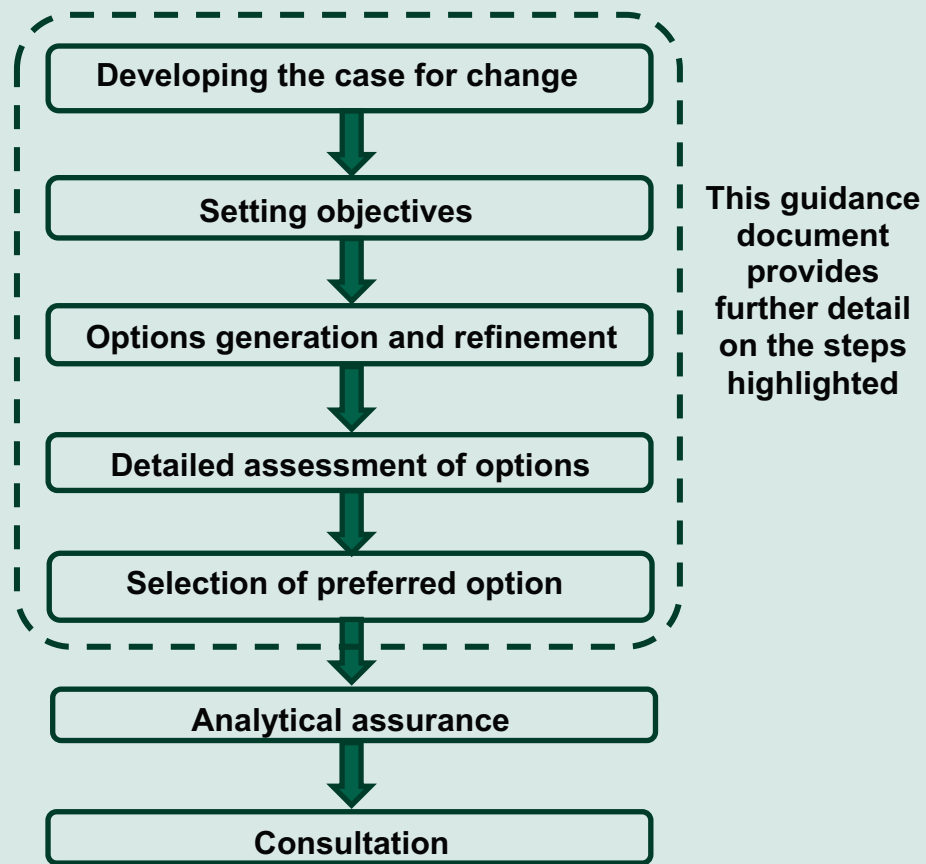
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469317/green_book_guidance_public_sector_business_cases_2015_update.pdf

^b https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85930/dft-transport-business-case.pdf

c

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469317/green_book_guidance_public_sector_business_cases_2015_update.pdf

Overall process diagram



Developing the case for change

11. The first step for any authority conducting an assessment should be to set the context for the assessment by describing the overall aims and objectives of the authority and the role that transport, and bus services in particular, play in relation to those aims and objectives. The authority's objectives may include, but not be limited to, economic growth, housing, social mobility, skills, employment and environmental objectives. The authority should then set out how local bus services fit into the transport system of the area, how they contribute to the authority's overall objectives, what challenges have been identified and how changes to the provision of local bus services could help address these challenges.
12. Authorities will also need to gather information about the current and predicted future performance of local bus services. This should include consideration of trends in patronage, journey speeds and reliability, the fares charged and tickets available and any relevant data about the environmental performance of the local bus fleet. The authority should also look to establish a strong understanding of the needs and opinions of passengers in the area and their views on the provision of local services – what passengers are looking for from bus services and public transport more generally, to what extent they are

satisfied with current services, and where they would like to see improvements made.

13. In developing the case for change, authorities should ensure that they specifically consider:
 - information about local travel patterns and demand for travel in the local area;
 - the geography of the area in which they are proposing to make changes and the reasons why such change is appropriate;
 - current levels of competition in the local bus market and the impacts that may be having on the offering to passengers;
 - any external or wider trends (such as technological developments and innovation in smart cities or personal travel) which could impact on local bus services in the area and the potential implications.
14. Using the information gathered about current and likely future trends in performance and considering passenger views, the authorities should then clearly identify the challenges that they are looking to address and develop a strong 'case for change' that justifies the need for intervention.
15. The 'case for change' should set out the issues that passengers are currently facing – which could, for example, be related to fares or service coverage for example, and the core drivers of those issues – which could include a lack of competition in the area, or poor integration between bus services and other transport options for example. When considering this case for change, authorities should rely on evidence and set out the market failures or inefficiencies that they are looking to address. Any particular drivers for change, such as legislative requirements, ongoing trends, economic opportunities or demographic factors, which have led to the assessment being undertaken at this point in time should also be explained clearly.

Setting objectives

16. Following on from the 'case for change', the authority should clearly set out the objectives it is trying to achieve before it starts to consider the options available to help achieve those objectives.
17. The authority should set out specific, measurable, achievable, realistic and time-bound objectives for local bus services in the relevant geographical area, which will contribute to achieving the authority's overall local transport policies and other relevant and published policies. It is for the authority to determine how many objectives are appropriate, but there should be a focus on delivering improved services for bus passengers. There should also be specific objectives concerning the affordability of the proposal and the value for money to be achieved. Each objective should be supported by specific measures of success which could be used to identify whether or not it had been, or was likely to be, achieved.

Options generation and refinement

18. Once the 'case for change' has been established and clear objectives have been set, the authority should complete an options assessment exercise, identifying a number of options that have the potential to achieve the objectives. The authority should then consider, at a high level, the extent to which each of the options is likely to achieve the desired outcomes and meet the authority's objectives. As a result of that analysis, the authority should focus in on a small number of options for further detailed assessment.
19. Identifying realistic options should not be a desk exercise however, and authorities should engage with bus operators in the area and explore whether, for example, there is a realistic partnership proposition or ticketing solution that should be considered and assessed alongside the franchising proposition.
20. The assessment of any proposed franchising scheme must compare making the proposed scheme to one or more other courses of action, so the authority should not dismiss realistic alternative options to franchising at an early stage without further detailed assessment.

Detailed assessment of options

21. Once a shortlist of options has been identified, the next stage in the process is to conduct a detailed assessment of those options to determine the benefits, impacts and costs, and further determine the extent to which each option would meet the objectives.
22. The Bill sets out the factors which an authority must consider as part of its assessment of its proposed franchising scheme. The factors that the Bill requires authorities to consider reflect, broadly, the Treasury five case business case model. The sections below set out guidance, presented under headings that correspond to the five case model, to help authorities meet their statutory obligations and develop a robust assessment.

Strategic case

23. Section 123B requires authorities to consider, as part of their assessment, the extent to which the proposed franchising scheme would contribute to the implementation of their local transport plan policies and any other of their published and adopted policies that affect local bus services, for example an environmental policy. Similarly, the authority is required to consider whether the proposed scheme would contribute to the implementation of neighbouring authorities local transport policies and other policies which affect their local bus services.
24. In order to meet this requirement the authority should explain fully the extent to which each of the options considered will help achieve their policy objectives, and should similarly list the neighbouring authorities that are likely to be affected by the proposed franchising scheme and consider the extent to which the options would help in the delivery of their policy objectives. Authorities should proactively engage with neighbouring authorities to ensure they fully

understand their policy objectives and the impacts that the proposed options could have on bus services and transport in their areas.

25. This assessment will be central to the final decision on which option the authority should select.

Economic case

26. Section 123B requires authorities to consider, as part of their assessment, whether the proposed scheme would represent value for money.
27. The authority should think carefully about the economic case in terms of impacts of the proposed franchising scheme, together with the other options being considered, on wider society. Authorities should assess the economic, social and environmental costs and benefits, rather than solely focussing on the transport impacts.
28. The options should be considered against a counterfactual – what is the realistic ‘do nothing’ scenario? The counterfactual should take account of any business as usual improvements or plans that the authority would put in place regardless of the proposed scheme, such as continuing to subsidise certain services. The counterfactual should also include any improvements or changes that operators in the area have planned, where this is known, and project forward any previous trends – such as fares increases or changes in passenger journeys – unless there is reason to believe that this is not a realistic projection.
29. This aspect of the authority’s assessment should clearly explain the impacts of the options on different groups in society. This should include passengers, the authority, wider society and bus operators – with both the potential impacts on incumbent operators and the potential benefits to new entrants considered. Particular consideration should be given to small and medium sized operators, and the potential impacts of the options on that group. Similarly, particular consideration should be given to the impacts of the options on passengers in neighbouring areas that could be affected by the changes.
30. Authorities should conduct a thorough assessment of which operators in the area they consider to be small and medium sized, and a summary of this assessment should be included in the assessment. Authorities should, amongst other things, take account of the overall nature of their market, the operator’s fleet size and consider the turnover of the operator – where necessary including its parent structures – as a whole.
31. When conducting the assessment, the authority should identify the nature and scale of the impacts that each proposal would bring, specifically stating where options are likely to bring benefits to certain groups and where there are likely to result in disbenefits or costs. Benefits could include, for example, the benefits to existing bus passengers as a result of more frequent services or reduced fares, to local people due to improved air quality, or to users of other transport modes who benefit from greater transport choice or reduced congestion for example.
32. In addition, the authority should also assess the impacts of the transition period for introducing the options, particularly on passengers, as it is likely that some options will involve more disruption for passengers than others. Authorities should think in particular about the likelihood of disruption to services or the

withdrawal of services during the transition from the current model of bus services delivery to the new options, and the disbenefits to local passengers that could arise. Authorities should also consider the impacts of the proposed scheme on competition, and any risks associated with moving competition from 'on the road'. The Competition and Markets Authority is willing to provide advice on the potential competition implications of franchising proposals. Authorities should also consider any mitigation plans or strategies that they would put in place.

33. In considering the impacts of the options the authority should think about the distribution of revenue and costs, and whether they would be distributed to the local authority or to bus operators. With respect to franchising proposals, the authority should ensure they have considered:
 - Fare-box revenue – whether a gross cost or net cost franchising model is being proposed;
 - BSOG payments – these will be devolved to any authority that pursues franchising and thought need to be given to how this funding would be used;
 - Operating costs – such as costs for leasing assets, staff, training, marketing and branding for example;
 - Capital costs – such as investments in depots or buses for example;
 - Bidding and administration costs – how much will it cost operators to bid for contracts, and authorities to manage the franchise bidding process, any costs that the operation of partnership arrangements would incur for all parties;
 - Implementation costs – including additional staff required or expert advice to put the scheme into practice;
 - Operator margins – based on evidence from existing franchising and contractual arrangements. The authority should consider whether margins are likely to change, potentially as a result of changes in the competitive environment, between the first and subsequent franchise periods.
34. With respect to enhanced partnership proposals in particular, the authority should ensure they have considered:
 - The costs of administering bus registrations – under an Enhanced Partnership with “route” level requirements, local transport authorities will take on responsibility for registering bus services; and
 - Ongoing management costs for the authority and for local bus operators.
35. This aspect of the assessment should include sufficient so that the scale of the benefits and impacts on the different groups highlighted in paragraph 29 can be understood. Much of this will require the authority to make certain assumptions about the likelihood of certain events occurring based on the nature of their proposed options. For example, bus operators currently running services in the area will incur certain costs if they are unsuccessful in winning future contracts under a franchising model. The likelihood of this happening however will be dependent on the nature of the franchising scheme put forward by the authority.

36. Authorities should look to quantify in monetary terms as many of the costs and benefits as possible. Where benefits are not quantifiable then they should be assessed qualitatively and taken into account alongside the qualitative analysis.
37. All significant assumptions used in the economic and financial cases should be documented as the assessment is developed – identifying the evidence on which they are based where possible.
38. The authority should think carefully about the most suitable appraisal period for assessing the impacts of the options, and should explain its decision in the assessment documentation. The authority should also consider how best they can demonstrate the ongoing sustainability of the different options, bearing in mind the long-term implications of a decision to change the model of bus service delivery in an area. The assessment should indicate clearly whether there is anticipated to be any substantive change in outcomes in the years immediately following the end of the chosen assessment period.
39. The authority should then look to present the net present value of each option, derived from the present value of the costs and benefits of each option. In appraising the options the authority should also run a number of sensitivity tests, to provide a range of results around the core options to account for the inevitable uncertainties.

Financial case

40. Section 123B of the Transport Act 2000 requires authorities to consider, as part of their assessment, whether the authority would be able to afford to make and operate the proposed franchising scheme.
41. Authorities should think about the financial implications of the proposed options, not only with respect to the initial introduction of the arrangements, but also factoring in the ongoing management and operation.
42. Authorities should set out the capital and revenue requirements for the different options over their lifespan, together with an assessment of how the options would impact upon the balance sheet, income and expenditure account of the franchising authority. Any requirements for external or additional funding must be set out clearly together with an explanation of how the funding will be secured.
43. In developing the financial case for the assessment, authorities should ensure they have considered:
 - Whether the options would require capital spending, such as for the purchase of depots, buses or other infrastructure;
 - Whether the options would require revenue spending, such as for additional staff, in particular considering the costs associated with the TUPE transfer of staff and their pension protection where relevant;
 - How devolved BSOG funding will be used; and
 - All of the other issues raised at paragraph 33 and 34 above.
44. Particular consideration should be given to demonstrating the longer-term financial sustainability of the options – with a move to a system of franchising in

particular being a permanent change that will need to be sustainable for the authority in question.

45. Specifically, the financial case element of the assessment should set out:
- a year by year cost analysis, broken down by capital and resource expenditure, for the authority;
 - the budget available to the authority in each of the relevant years;
 - a year by year income forecast for the authority if relevant (for example if a gross cost franchise is proposed);
 - whether the option requires additional borrowing by the authority and if so what interest assumptions and repayment arrangements have been used;
 - a summary of the key financial risks, particularly to any forecast income to the authority and including any quantified impacts and high level mitigation plans; and
 - a sensitivity analysis, reflecting the range of financial risks.

Commercial case

46. Section 123B of the Transport Act 2000 requires authorities to consider, as part of their assessment, the extent to which the authority is likely to be able to secure that local services are operated under local service contracts.
47. The authority should consider how the options could be procured competitively and what the contractual arrangements would look like, with the view to ensuring, for franchising proposals in particular, that the proposed franchised services could be secured under local service contracts or through service permits. In particular, authorities should consider how they intend to facilitate the involvement of small and medium sized operators, bearing in mind the need to ensure competition for the first and subsequent rounds of procurement.
48. Authorities should also clearly set out how they intend to facilitate cross-boundary services, including how the service permit system will be used to enable those services to operate.
49. In addition, authorities should think carefully about the transition periods to the new options, setting out how they intend to ensure that services to passengers are protected during that period, and what commercial arrangements they plan to put in place to manage that process.
50. In developing the commercial case of the assessment, authorities should ensure they have considered the following factors, explaining their approach to each one and their reasons for doing so:
- The commercial model they intend employ;
 - The size and geographical scope of the areas to which contracts will relate;
 - The length of contracts;
 - Whether franchising will be phased-in gradually;
 - Other key contractual arrangements, including the transfer of staff;
 - How they intend to facilitate strong competition for contracts; and

- The key commercial risks, their potential impacts and how they would be mitigated and managed.

Management case

51. Section 123B of the Transport Act 2000 requires authorities to consider, as part of their assessment, how the authority would make and operate the proposed franchising scheme.
52. The authority should consider how they would successfully deliver and manage its preferred option, and to set out the arrangements it plans to put in place to manage and mitigate risk.
53. In particular, the authority should set out how they intend to manage the transition process from the current system to the introduction of any of the proposed options. This is likely to require most thought with respect to the franchising proposition, and the authority should ensure they clearly set out any contingency plans for providing replacement services should operators stop running their services before the introduction of the franchising scheme and any other plans they may have put in place to manage those risks.
54. In developing the management case of the assessment, authorities should ensure they have considered for each option:
 - The programme management structure they will employ, including whether additional specialist staff or advice will be required. If additional staff are required this should include the numbers of staff and recruitment strategy.
 - What procurement and contract management processes, if any, are required for the successful introduction and ongoing management of the proposal; and
 - The risk management and mitigation arrangement that the authority plans to put in place, with particular focus on management of the transition process from the status quo to a franchised market.

Conclusion

55. The authority should clearly set out their conclusions having completed the detailed assessment of options, drawing clear distinctions between the performance of the different options with respect to achieving the objectives of the authority, and their impacts on different groups in society.
56. The authority should then identify their preferred option, clearly setting out the rationale for their decision.

Annex O: Franchising Guidance – Role of the auditor

1. Section 123D of the Bill requires authorities to arrange for an auditor to produce a report outlining whether:
 - The information relied on by the authority in producing the economic (value for money) and financial (affordability) cases of their assessment is of sufficient quality;
 - The analysis of that information is of sufficient quality; and
 - The authority has had due regard to guidance issued by the Department in preparing their assessment.
2. The Act specifies that the auditor must be a person or body with a recognised professional accountancy qualification offered by a qualifying body. The Act also explains that the auditor must be able to act as the auditor of the franchising authority's accounts in order to perform the franchising audit function. This means that the auditor needs to be a qualified accountant with no conflicts of interest that would lead to difficulties in acting as the auditor of the local authority's account.
3. The auditor could be the authority's usual external auditor, or could be engaged specifically for the purposes of conducting the franchising audit function. The auditor will of course be expected to act with independence and ensure that the authority is in the best position to take a well informed decision in the interests of passengers.
4. The authority should develop a terms of reference for the auditor setting out the activities that the auditor should be conducting on behalf of the authority. It is recommended that the terms of reference include the following activities:
 - Verifying that the authority has used information from recognised sources and that it has not been selective in the choice of material used in order to support – or otherwise – a particular option;
 - Verifying whether the information relied upon is relevant and up to date that the authority could realistically have used (taking into account the quality and timeliness of any information received from bus operators);
 - Verify that the assumptions recorded as part of the assessment are supported by recognised sources;
 - Verifying the mathematical and modelling accuracy of the analytical methods used to calculate the impacts of the options;
 - Verifying that the authority has followed this guidance in preparing their assessment.
5. The auditor *should not* report or pass judgement on the decisions taken by the authority or the outcomes of the assessment – their role is purely to consider the process that has been followed, the accuracy and robustness of the information that has been used in the analysis, and that the mechanics of the process have been carried out correctly.

Annex P: Enhanced Partnership Guidance

Statutory guidance is underlined.

Introduction

1. Do I go for an Enhanced Partnership or an Advanced Quality Partnership? That depends on what you are seeking to achieve. These are the differences:

Advanced quality partnership scheme (AQPS)

2. The general aim is that the authority should be satisfied that the AQPS will result in the following outcomes:
 - Result in an improvement in the quality of local bus services that benefits users of those services;
 - Reduces or limits traffic congestion, noise or air pollution;
 - Results in an increase in the use of local bus services or an end to, or a reduction in, the decline in their use.
3. But it also retains the provision that some elements of the scheme should be subject to the existing system of ‘admissible objections’ that apply to the QPS regime. It is also, like a QPS, predicated on the authority imposing the scheme on operators – rather than via the operator objection system that exists under an EP.

What can be included in an AQPS?

4. The authority providing ‘facilities’.
An authority can provide new bus stops, other waiting facilities or such things as dot-matrix displays to provide ‘next bus’ information, just as they could under a QPS – the difference being that there is no *requirement* to do so. It is up to individual authorities to decide whether to include these as part of the overall package.
5. The authority providing ‘measures’.
The Act does not define what these ‘measures’ might be – but they must be aimed at could include potentially anything that the authority can offer to make buses more attractive – such as increasing car parking charges or reducing the provision of car parking spaces – to encourage bus use.
6. The authority specifying other things that make using buses more attractive.
This is about the authority specifying standards that local bus services must meet to make buses more attractive to passengers or potential passengers. These comprise:
 - Specifying vehicle requirements
This is the same as under the QPS regime – a scheme may specify the standards vehicles may meet under the scheme, including requirements about emissions or types of fuel or power.
 - Frequency or timing of services

This also preserves the ability to determine the timing and frequency of individual services under the scheme - But the system of 'admissible objections' that existed under the QPS scheme applies here – in effect there must be no operator objections to the inclusion these requirements in the scheme.

- Specifying maximum fares

This can specify the maximum fares that can be charged for particular journeys on particular types of service – but again there must be no operator objections to the inclusion these requirements in the scheme.

- Ticketing schemes

An AQPS may also specify the way in which passengers pay for fares – so this can require operators to accept a smartcard or other type of media as payment for a fare.

- Information requirements

AN AQPS can also require bus operators to provide specified information about local bus services – such as fare and timetable information. This requirement can be combined with the publicity requirements outlined below.

- Publicity requirements

This can require operators to – for example – market their bus services under a single brand (such as, say, 'City Rover Bus Services') using a single logo or colour scheme or require individual operators to market their services in particular ways, say by using a mandated colour scheme or logo that gives the bus services in an area a 'corporate' feel.

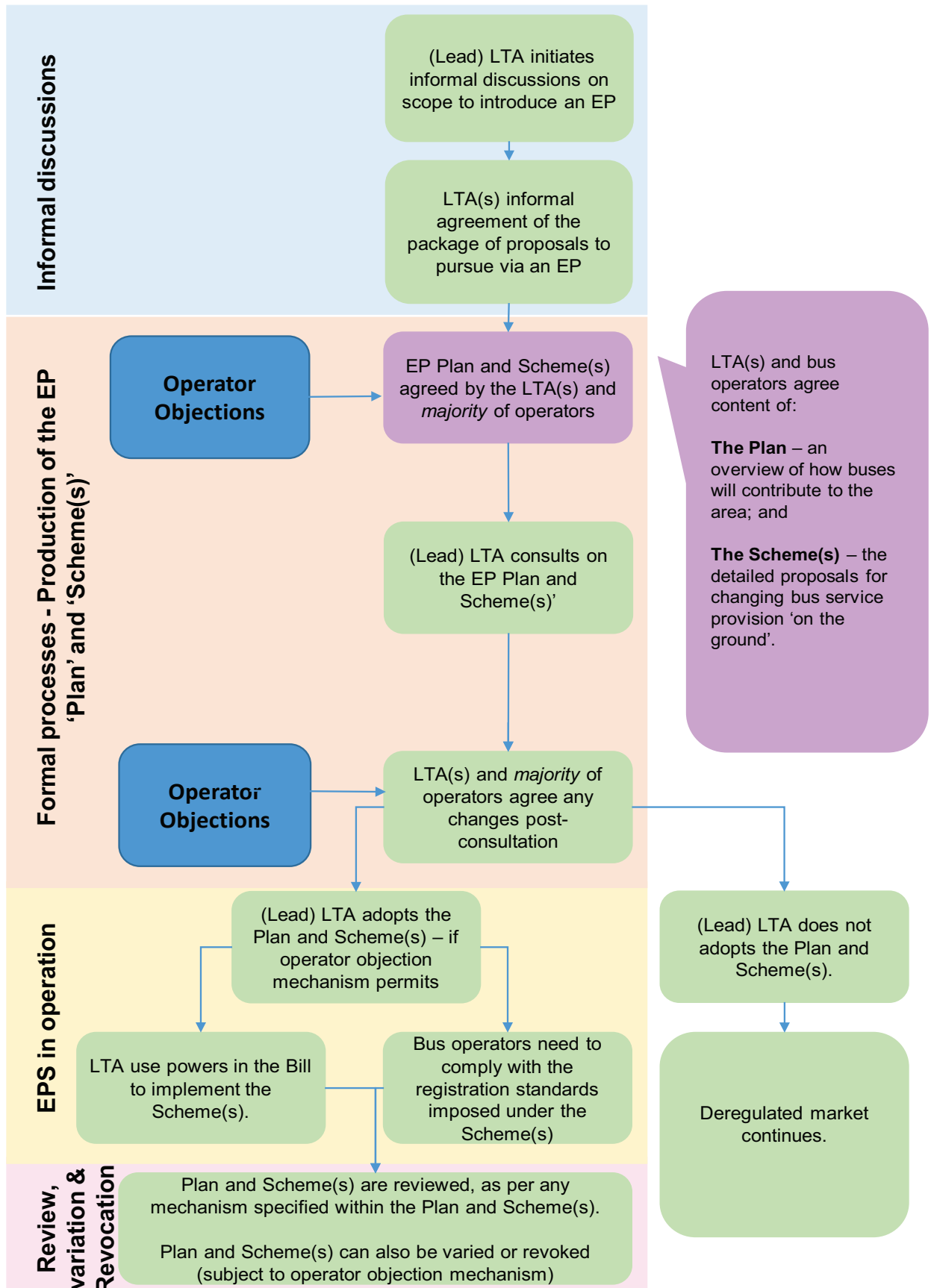
An Enhanced Partnership (EP)

7. This provides the same outcomes as an AQPS in terms of the authority providing 'facilities' and 'measures'. It also allows operators to comply with requirements on vehicles, frequency and timing of services, information and publicity requirements. But an EP can do other things as well:
 - It can mandate the price of a multi-operator ticketing scheme.
 - It offers more controls over the ticketing mechanism generally.
 - It allows more control over how frequently the bus network can change.
 - It also only requires a majority of operators to agree for the EP to go ahead or to change over time – using a specified objection mechanism - there is no requirement to resolve all 'admissible objections'.
8. However, this is only a brief overview of how the two systems differ. It is advised that interested parties read the relevance guidance in full to appreciate the differences between the two regimes.

How an enhanced partnership is introduced

A flowchart, detailing how the process will work is shown on the following page (Fig.1). Detailed guidance is given in the paragraphs that follow.

Fig. 1
Delivering and enhanced partnership



Hold informal discussions first

9. Before any formal processes are embarked upon, the authority and operators that run services in the geographical area that it is considered likely to be covered by an EP, should hold informal discussions on the way forward. Is a formal partnership necessary at all? Can what the authority and the bus operators wish to achieve be achieved through a voluntary agreement? This has the scope to bypass formal procedures and deliver change far more quickly. However, if a formal process is required, it does not assume that the authority will always invoke the discussions nor does it mean that any of the parties involved are committing themselves to partnership. It is just an informal discussion. Indeed, there is nothing to stop a local operator or group of local operators from approaching an authority to initiate the process, providing they agree. Nor is there any obligation on any operator to participate. But they have a legal right to if that is what they wish.
10. However they are started, such discussions should enable, as a core proposition, each authority (if there is more than one) and each operator to collectively discuss what EP content both sides believe would help – and are deliverable – to improve bus services in that area. We would expect the authority and operators to include a wider set of stakeholders in these informal discussions – such as passenger groups, community transport and representatives of local businesses. The key aim is to facilitate a wide discussion of the factors that are, can and will affect how and whether local people use bus services. These can include issues such as planned housing or business developments that affect how people travel around the area, existing and future pressures on the road network or how all sides wish to see people using the bus network in the future. The subject areas covered are entirely up to the parties involved.
11. These discussions are vital, for they will allow both sides to determine what is likely to be collectively deliverable under an EP within an informal environment. This will enable both sides to draw up an initial wish list of what improvements could or should be delivered through an EP and would help both sides discuss what is important to them – for authorities this is likely to be buses being a better ‘offer’ to the public and perhaps relieving congestion for operators it is likely to be growth in the market – this results in greater revenue, and a healthy business that they are more likely to invest in. Most of the requirements imposed by an EP will be paid for by those operators, so it is essential that any EP proposals deliver tangible benefits to those businesses that would justify their investment.
12. It is also important to bear in mind that this stage is very much a *negotiation* between the authority and operators. This is because, under the formal EP processes, neither side has overall control. Although under the legislation the authority ‘makes’ the EP, they cannot do so unless the operator objection mechanism has agreed to the EP going ahead. *So it is in practice a joint proposal – both the authority and a majority of operators must agree for the EP to go ahead.* This means that if it is clear from these informal discussions that there is very little agreement between the authority and operators, or there is very little trust or appetite for partnership working between the parties, then an EP is probably not appropriate for that area. It may also mean that policies considered

important to one side or another may need to be modified or abandoned. Flexibility and compromise are key. It is also important to be realistic about what is achievable and unless any 'bridges can be mended' and 'hatchets buried' there is very little point in pursuing partnership.

These discussions also do not need only to involve the authority and bus operators.

13. However, it is worth stressing at this point that any commitments made by an authority or by bus operators under an EP are legally binding. An authority that does not fulfil its obligations under an EP is breaking the law and can face legal action in the courts. Likewise an operator not fulfilling its requirements would be in breach of its local bus service registration and can face either (or both) of its registrations being cancelled or wider action by the traffic commissioner – which could lead to a ban on running particular types of local service, any local bus services, or wider action against their operator's licence on grounds of good repute – just as they would in a completely deregulated environment.

Then embark on the formal processes

Invitations to participate in the preparation of an EP

14. Once informal discussions have taken place and there is general agreement that an EP proposal is worth pursuing it is time to invoke the formal legal processes. The first step is for the authority that proposes an EP to give notice of their intention to prepare an EP proposal for consultation.
15. This formal process involves the authority inviting the local bus service operators that operate local bus services within or into the proposed geographical area of the EP to participate in its development. This process then results in formal discussions between authorities and local bus service operators on what the content of an EP should comprise.
16. There is no obligation for any operators to participate in the informal development of an EP, but the authority must ensure that all are kept informed of the progress of those discussions in terms of outcomes and given an opportunity to take part in the discussions at any point. However, the invitation should make clear that the requirements imposed by any subsequent formal EP proposals will eventually apply to all affected operators of local bus services – whether they have participated in the process up to that point or not.
17. The structure and membership of the partnership going forward should reflect the size and ambition of the proposals. A small-scale EP in, say, a small market town involving a small number of proposals is not likely to require large-scale stakeholder engagement and governance. However, an EP covering the whole or large parts of a city is a different matter. This is likely to involve many different stakeholders and needs governance structures that can support it. In these circumstances we would advocate creating an 'EP Board' made up of the authority, bus operators, representatives of passenger groups, local businesses, the Local Enterprise Partnership and local authorities whose areas would

neighbour any proposed scheme. Only the operators and authority will be able to determine whether the EP goes forward – but this does not prevent or exclude others on the Board from contributing to the development of the proposals. It may also be desirable for the Board to have an independent chair, or arrangements for the chair to rotate between key stakeholders or between the operators and the authority. What is important is that those discussions should be open, honest and productive.

The outcome of informal EP discussions

18. Once authorities and relevant bus operators have held informal discussions on the content of an EP, and decided to pursue an EP, the next step is to draft the formal documentation. This comprises:

19. **An EP Plan** – This is the high-level strategic document that sets the bus network in the EP area into context. There are a number of areas that the plan must cover. These are:

- The geographical area of the EP – preferably using a map.
- The lifespan of the plan and what the arrangements are for reviewing it.
- An analysis of the existing local bus market and the problems faced by operators.
- What policies regarding bus services will be pursued in the EP area.
- The objectives of the plan – in terms of how it will improve the quality and effectiveness of local bus services in the EP area over the lifetime of the plan.
- How the related EP scheme(s) will assist in implementing the policies set out in the plan and how those policies relate to neighbouring areas that are outside the plan area.

20. These are all high-level requirements and the plan can interpret them as widely as the partnership considers necessary. It can include for example:

- Targets for bus usage, journey times, or connectivity.
- Identifying the strategic issues that, in the opinion of the EP stakeholders, are relevant to the future provision of local bus services.
- These can include, as stated previously, retail, business and housing developments that are likely to change the flow of people and their transport demands over the life of the EP.
- The investment that is likely or has the potential to flow into the area from local and central Government. This can include highways investment, housing or new transport infrastructure.
- The aspirations and business plans of all local transport providers – how they would wish to see the local bus market develop over time and how an EP can contribute to that.

21. Whatever it includes, the EP plan should at the very least contain a comprehensive assessment of:

- All the relevant factors that affect, or have the potential to affect the local bus market over the life of the EP.
- What outcomes need to be delivered to improve local bus services in the plan area; and
- What overall measures the partnership believes need to be taken to deliver those outcomes.

22. **EP Scheme** – Whilst the EP plan is a strategic overview of all the factors that can affect local bus services, it cannot exist on its own. The EP scheme¹ defines a geographical area (either the whole or part of the plan area) within which the detailed changes to bus services that will deliver the above last bullet of the plan (or a part of the plan) are set out.

23. Again, it is important to emphasise that these elements must be formally agreed by both the authority and the majority of bus operators. Neither side can impose them unilaterally. It is also important to consider how big the geographical area of a plan and scheme should be. This will largely depend on the scale of ambition. For example, an intention to improve bus services in a small market town may only result in the plan and a single scheme covering a relatively small area that comprises the boundaries of the town. However, an EP intended to improve the bus services across a city will necessarily require the plan to cover a very wide area. But this does not necessarily mean that the resultant scheme(s) should cover a wide areas also. A plan can result in a number of different schemes of varying size and ambition. For example, one scheme could cover the whole of the plan area and define a multi-operator ticketing scheme – with a zonal fare structure. But another scheme could cover only the centre of the city and define, say, some route-specific requirements. The structure of the plan and its schemes is entirely flexible and it is for individual EPs to decide what best suits what they want to achieve.

24. A scheme contains three principle elements:

Facilities

These are the physical assets that are provided at specific locations along particular routes (or parts of routes) within the scheme area – such as new bus stops or other passenger waiting facilities or new bus stops with built up kerbs – which the authority agrees to provide. They can also include bus priority measures – such as bus lanes, equipment to give buses priority at junctions, enforced clearways at stops or new ‘buses only’ sections of road.

The only restriction on facilities and the ‘measures’ outlined below is that they must not include facilities that the authority would provide as part of its duty to obtain and provide passenger information. This prevents an authority from including in the scheme facilities that it has a legal obligation to provide anyway.

Measures

The authority can also do other things that are within its power – either statutory or otherwise – to make bus services more attractive. The only requirement is that

¹ For scheme, also read schemes – as an individual plan can have more than one scheme

'measures' must be for the purpose of:

- Increasing the use of local services or ending or reducing a decline in their use; or
- Improving their quality.

A good example of this is changes to parking provision. An authority could decide, as part of the overall scheme package, to reduce the number of car parking spaces in a particular area, or increase car parking charges. Although neither measure affects buses directly, they do make buses more attractive by making using a car less attractive. Measures could also include a commitment better to enforce those areas that affect bus services – such as illegal parking.

Service standards

These are the requirements that local bus services operating within the scheme area must meet or abide by. So unlike facilities or measures, it is for the *bus operators* to meet them. These standards are divided into ones that apply to a geographical area (or the whole of) the scheme and ones that are route specific.

Further requirements regarding 'facilities' and 'measures'

Obligations on the authority

25. If an authority includes any facilities or measures in a scheme, they have a legal obligation to:

- Provide the facilities and take the measures not later than the date(s) specified in the scheme.
- Continue to provide those facilities and take those measures throughout the life of the scheme or until a scheme is varied to remove the obligation to do so.

26. The only exception to this rule is if:

- The scheme is formally postponed (see paragraph 78 below)
- If the authority is temporarily unable to provide a facility or take a measure due to circumstances beyond their control.

Traffic regulation orders in relation to facilities and measures in schemes

27. As part of the negotiations between an authority and local bus operators, the authority may decide to offer as part of its part of the bargain, 'facilities' or 'measures' that would involve the making or varying of a traffic regulation order (TRO)². These orders can be made either to affect permanent changes – such as preventing certain types of traffic from using particular roads on a permanent basis – or on a temporary basis – i.e. to restrict certain types of traffic because roadworks are taking place.

² Parts I, II and IV of the Road Traffic Regulation Act 1984

28. So, for example, in relation to a scheme, the authority might agree to include a 'measure' in the scheme that creates a 'buses only' section of road – by using a TRO to prohibit that section of road by all other types of traffic. However, an order can only be made by the relevant highway authority with the powers to do so on the stretch of road in question. This may require a local authority that is not the authority for EP purposes to become a formal party to the scheme. For example, this may include a metropolitan district council or even the Secretary of State for Transport.
29. Although it is entirely for those authorities to determine if they wish to be a party to the scheme, if they decide to do so, the same obligations to provide those facilities or to take those measures as outlined above also apply.

Area-wide service standards

Requirements about the vehicles that operate on the local bus services

30. These requirements can, for example, include – requirements about age or emission standards (emission standards could be met by either using newer buses or retrofitting existing ones to improve their environmental performance). Vehicle standards can also be more specific such as requirements to refurbish existing vehicles to a particular standard. They can also include requirements about the appearance of vehicles – such as their livery – or require equipment such as information displays to be installed. These requirements can apply to all vehicles or specific categories of vehicles - although specifying vehicles made by a particular manufacturer is likely to be unreasonable.

Requirements about providing information to the public

31. This can cover any information that passengers would require or expect to have access to in order to use bus services. These can include simple requirements such as the provision of timetable or fares information, to the provision of real-time passenger information. This can require information to be provided on the vehicle, at bus stops and stations, or via the web or on a smartphone. Again these requirements can apply to all local bus services or particular descriptions of local services.

Requirements about how local bus services are publicised or marketed

32. This could for example, introduce an umbrella brand for the bus network in a particular area. This can specify particular logos, colour schemes, or other types of branding on publicity material – whether provided as physical media (leaflets, posters etc.) or electronically. These requirements then must be used on the material produced by individual operators or by the authority itself.

Requirements about how often the timing of bus services can change

33. Currently, operators of commercial local bus service can change the timetable of a bus service every 56 days³. However, a scheme can specify an alternative period. So, for example, it could specify that all bus services operating in a particular area or on a particular corridor can only change their timetables every, say, 100 days. This might be, for example, because the partnership decides that

³ Or at shorter notice in specific circumstances.

some extra stability to the bus network is required, say, in a town centre, or to services provided to a new housing development, where particular emphasis is put on encouraging bus use. Or it might be that timings can only change in specific circumstances that are defined in the scheme.

Ticketing requirements

34. Although an EP can introduce a number of measures and requirements to improve the overall ticketing 'offer' to passengers it only applies to:
- (a) The type of tickets that must be available to passengers and accepted on the local bus services operating within or into the EP area.
 - (b) The provision and price of a multi-operator ticket.
35. It does *not* in any way constrain local bus operators from continuing to provide and set the price of their own suite of single-operator tickets. Nor can an EP set the price of any type of ticket mandated under the scheme other than the multi-operator ticket mandated under an EP.
36. Having said that, there is still considerable flexibility under an EP to ensure that a comprehensive suite of tickets are available to passengers and valid on all services. These requirements can cover the types of tickets that are available.
37. The scheme has full flexibility to specify what range of tickets must be available in the scheme area. These can include:
- *Tickets available on particular services* – such as a through ticket that would allow passengers to travel on particular services or a group of services. For example, a scheme might specify a network of services marketed as 'Red Rover routes' where purchase of a 'Red Rover' branded ticket allows travel on all those services.
 - *For travel on particular journeys or types of journey*. For example, this might be a single ticket that allows travel on any bus service going from a housing estate to or from a large shopping centre or town centre.
 - *For travel at particular times* – this might include a specific defined off-peak ticket that can be used on all services in a particular area.
 - *For travel in particular areas* – this might specify a ticket that is available for use on all services in, or entering into, a defined zone, or series of zones.
 - *Tickets for use by particular groups of passengers*. For example, this could set eligibility criteria for a young person, student or jobseekers ticket.
38. These requirements can also be used in combination. For example, a zonal ticketing system with day, week, monthly and an annual travelcard available. This could offer single or multi-operator variants and tickets that can also be used on connecting rail or tram services.
39. This package could, for example, look as follows:

TICKETING REGIME FOR BUS SERVICES IN 'ANYTOWN'									
Areas tickets are valid	Type of ticket	Period of validity							
		One day		1 Week		4 Week		12 month	
Zone 1	Bus only	Single operator	All operator	Single operator	All operator	Single operator	All operator	Single operator	All operator
Zone 2		Bus and tram							
Zone 3	Bus Train and tram								
Zone 1 & 2									
Zone 1, 2 & 3									

40. The package can also offer peak and off-peak variants; a concessionary ticket available to young people (say divided into under 16 years and 16-18), students (21-25 years) and jobseekers. It can also specify what evidence needs to be provided to gain access to these types of concessionary fares.

How tickets are obtained and paid for

41. The scheme can also specify how passengers obtain tickets and pay for them. This might require that tickets are available on the bus, at bus stations, via bus operators' web portals and apps or their other retail outlets or other types of retail outlets such as participating newsagents. It can also specify that tickets should also be available through an EP-provided portal or app.

Ticket media

42. In these terms a 'ticket' can mean either a paper ticket, smart product such as a period smartcard or e-purse, a token via a smart app or contactless payment. There are comprehensive powers to determine what ticketing technology is to be used. For example, it may require that operators can issue ticket media that meets a defined specification – e.g. the ITSO specification. It can also require that bus ticket machines should be able to accept that ticket specification. It can also mandate that local bus services must be able to accept an EP-provided smart ticketing system or a smartphone token.

Marketing of ticketing products

43. The scheme can also specify what branding the tickets should use and what the tickets themselves can look like. This, along with the other requirements that can be imposed under a scheme, highlighted above, can be used to provide a complete ticketing 'offer' to passengers that covers ticket types, marketing, fares information and media. The scheme can also require that these ticketing products are marketed alongside – i.e. with equal exposure or emphasis – to individual

operators own ticketing products.

Ticket prices

44. A scheme can *only* specify the price of a multi-operator ticket. The price of *any* other type of ticket remains to be set by individual operators themselves. This intentionally preserves the freedom for operators in the scheme area to continue to compete on price for their single operator tickets and even to use this pricing structure to compete with any scheme-mandated multi-operator ticket.
45. The price of a multi-operator ticket is not restricted to a simple pricing structure for period passes. It can also be more innovative. For example multi-operator carnet products that could offer discounted travel compared to a period pass or on a 'buy ten journeys, get two free' basis.

Route-specific standards

46. A scheme can also set standards that apply to individual bus corridors – whether these are used by a single bus service or multiple services. However, authorities and operators should not consider this element of partnership as 'franchising-lite'. The legislation only allows franchising within an EP on particular routes in very specific circumstances – where private sector operators cannot reach voluntary agreement to abide by route requirements. Nor should operators seek to try to preserve a purely deregulated route network. Partnership involves both sides working together to improve services to passengers, each side giving ground, not seeking to exclusively pursue their own agendas or preserve their own position.

47. Route-specific requirements can apply two standards:

1. Frequency of services

The scheme may specify the frequency of services on an individual corridor. For example, it could specify that no more than six buses an hour can travel, each way, through that corridor. Or it may specify different frequencies at different times or a minimum frequency. For example, a maximum of six buses an hour during defined peak periods and 12 buses an hour at other times. Schemes cannot specify which operators these requirements apply to. They apply to all services that currently operate or plan to operate along that corridor.

2. Timing of services

A scheme can also specify the times at which individual services arrive at bus stops. These requirements can apply to particular services or all services operating along the specified corridor. For example, an individual bus service could be required to arrive at a particular bus stop at a particular time to coordinate with the arrival or departure of a rail service. Another use of the power would be to require the services operating on a particular corridor to have even headways (time gaps between individual bus services). This could, for example, be used to prevent 'bunching' at bus stops where a number of buses arrive in close time proximity, leaving long time gaps between. However, partnerships

should consider the underlying problem first – is this a result of a wider traffic congestion issue that also needs to be addressed?

Flexibility available to plans and schemes

Content

48. It is for individual partnerships to decide on the content and geographical area of plans and schemes. They can be as simple or complicated as the partnership considers appropriate. A plan can cover the whole of an authority area or a combination of different authority areas, or it can cover only a part of a single area – e.g. the centre of a market town.
49. Whilst only a single plan can cover a particular area, that area can be covered by a number of separate schemes. For example, a specified geographical area can have one scheme that imposes only ticketing requirements, another dealing only with route requirements, and a third dealing with, say, information and marketing requirements. Or a single scheme can set different implementation dates for the separate elements of a scheme. So, for example, a multi-operator ticketing scheme can come into operation on a particular date, the requirements covering route requirements can come into operation, say, six months later and information requirements can apply six months after that. The main message is that it is for individual partnerships to decide what aspects of a scheme should be introduced and in what timescale.

Objection mechanism upon variation or revocation of a scheme

50. Whilst the preparation and making of a plan and scheme are subject to a statutory objection mechanism set out in regulations⁴, the scheme can contain an alternative bespoke objection mechanism that is used when the scheme is varied or revoked. An alternative mechanism might be useful because, for example, the statutory one is not well suited to the mix of bus operators in the scheme area. Provided the revised mechanism is subject to the statutory objection mechanism when the scheme is first made, any alternative objection mechanism can be included – although the statutory requirements about ‘qualifying time’ and notice periods would still apply.

Reviewing a plan and scheme

51. There is no obligation to review a plan or scheme. This might be, for example, because a scheme is so small scale that reviewing it is not necessary – although some review at some point in the future (even if this is a number of years in the future is probably warranted). However, it is likely that large scale plans and schemes will need reviewing – not least to determine whether the content of those plans and schemes are having the desired effect ‘on the ground’ in terms of, say, encouraging bus use.

⁴ The Bus Services (Objection to Enhanced Partnership Plans and Schemes) Regulations 2017

52. However, all plans and schemes must say whether they are subject to review and specify:

1. How it is to be reviewed

It is for individual partnerships to determine how a review is to take place. For example, for a plan this might only involve a review of the factors that affect bus use – to ensure that, say, all the transport effects of housing and business developments that have been built after the plan was made are fully captured. For a scheme, this might only require a review of how passengers are using local buses, or if there has been a significant change in the performance of buses – e.g. journeys times have increased over a defined level – the partnership has full flexibility to determine what the triggers are in order to determine whether the content of the scheme is proving effective in delivering the overall aims and objectives of the plan.

2. The dates on which the reviews are to be completed

This can specify a specific calendar date – say 1 June in a specific year – or simply say, for example, every five years from the date on which the scheme was formally made. It can also contain different review dates for different elements of a scheme – e.g. one date to review area-wide elements and another for route requirements. Or even individual dates for individual elements of a scheme.

Small and medium sized operators

53. The bus market in England is largely made up of a small number of very large operators and a large number of very small operators, with a small number between. It is important that the needs of small and medium sized operators (SMOs) are considered as part of an EP plan and scheme. But what is an SMO? It is not simply an operator with a small share of a particular bus market. Whilst this may be the case for a subsidiary of a large national operator, they still have access to the benefits of their 'parent' company – such as corporate administrative and legal support, access to funding and the lower costs resulting in the buying power such operators enjoy. Nor is it necessarily a "small and medium sized enterprise" (usually defined as a business with fewer than 250 employees).

54. Authorities should conduct a thorough assessment of which operators in the EP area(s) they consider to be SMOs and a summary of this assessment should be included in the EP plan and each scheme. Authorities should, amongst other things, take account of the overall nature of their market, the operator's fleet size and consider the turnover of the operator – where necessary including its parent structures – as a whole.

55. Authorities should bear in mind that SMOs may not be well placed to implement the requirements of an EP quickly. Requirements that would attract a considerable administrative burden or large financial outlay such as new vehicles or ticketing equipment are likely to be more difficult if an operator has limited access to capital and/or a relatively limited geographical scope to their operations. Authorities should therefore discuss these issues with SMO operators at an early state of developing such proposals and where necessary make

adjustments.

Notice of intention to prepare a plan and scheme

56. It is an important legal requirement that an authority that is considering embarking on drafting a plan and scheme invites all the local bus operators to participate in that process. Operators that enter the plan and scheme area whilst the proposals are being prepared also have a legal right to take part. The involvement of local bus operators early on in the process is vital in determining what measures are likely to be deliverable and more importantly get through the operator objection process. Other stakeholders such as passenger groups should also be involved at this stage to ensure that the package of measures that go forward to the subsequent processes are likely to result in greater use of buses. The key advice at this stage is that as many different relevant stakeholders as possible should be invited to participate in these early discussions to ensure that the later processes include a package of measures that are likely to be deliverable and result in better bus services to passengers.

Notice once a plan and scheme have been prepared

57. Once the early discussions have taken place and a draft plan and scheme have been prepared, the next stage is to make all relevant local stakeholders aware of it. It is particularly important that all operators of local bus services that would be affected by a plan and scheme are aware of its existence. This is because it is not a legal requirement that any particular operators should be obliged to participate in the preparation of a plan and scheme. Although all operators should have an equal opportunity to do so, there may be some that do not wish to engage with the process. However, despite this, all operators at this stage should be made aware of the full details of what is being proposed in the draft plan and scheme so that they can properly take part, if they wish, in the subsequent procedures. These details can either be contained in a letter or email to the affected operators, or by providing them with information about how full information can be accessed – e.g. via a dedicated web page or website.

58. This also applies to other stakeholders. If, for example, a passenger group has decided not to be involved in the development of a plan or scheme they should be made aware that drafts have been prepared and that the authority intends to consult on their contents, so that they may provide feedback at that point.

Formal consultation

59. The main purpose of this pre-consultation stage is to determine whether the next stage of the process can go ahead – via the operators deciding whether to object to the draft plan and scheme being subject to a formal consultation exercise. The notice to operators that a plan and scheme has been prepared must also contain details of how individual operators can object to the proposal to consult. Any objection should be made in writing to the authority, who should provide a mail and email address to where such objections should be sent – and acknowledge that an objection has been received. The legislation requires that any objection should be made within the deadline set by the authority – but this deadline cannot

be less than 28 days after the date after which the notification was sent. Operators wishing to object to a plan or scheme are not required to give a justification for doing so. However, it is hoped that individual operators would raise any concerns that might lead to an objection with the authority before the objection process commences, so that early resolution can be sought.

Operator objections

60. An essential legal requirement before a consultation exercise on a plan and scheme takes place is that operators of local bus services are legally entitled to object to that consultation exercise going ahead. Unless this process results in the consultation to proceed *it cannot do so*. An authority cannot unilaterally decide to proceed with a consultation exercise without the operator objection process allowing it to do so.

Objection process

Who can object?

61. Any operator of qualifying local bus services that operates within or into the geographical area of a plan or scheme on the day before the notice under paragraph 47 above is issued by the authority is entitled to object to the consultation exercise on the plan or scheme detailed in the notice. This notice should be sent to the address that is listed on the PSV operator's licence of each operator concerned.

What is a qualifying local service?

62. There are a number of rules on what kind of operators can lodge an objection and what mileage counts for the purposes of the operator objection mechanism outlined below. Draft regulations currently exclude services :

- Where the operator is running a service under contract to a local authority on a 'gross cost' basis – i.e. they are paid a contract price for running the local bus service with all the revenue going to the authority⁵.
- Services that are registered as local services but are excursions or tours⁶.
- Interurban or other long distance scheduled services that are not generally used for local journeys within the EPS area, but may use stops. This is defined as a service that crosses the geographical boundary of a plan or scheme – where less than [10] per cent is registered as a local bus service.

How do operators make an objection?

63. The notice of consultation must contain an address to which objections can be made. This should be a postal address and an email address. The notice must contain the date by which objections from operators must be received. This date cannot be less than [28 days] from the date on which the notice is sent.

What happens once objections are made?

⁵ A 'net cost' contract service would count – these are paid a fixed contract price to run the service that includes retaining the revenue. This is because those operators bear some risk in terms of whether revenue increases or decreases over time.

⁶ As defined in section 137(1) of the Transport Act 1985

64. The authority must assess objections using two criteria – if *either* is satisfied it is a legal requirement that the consultation exercise on the plan and scheme cannot go ahead:

- The objections received amount to at least [25%] of the commercial operated mileage in the plan or scheme area – and that at least [X]⁷ operators have lodged an objection.
- That the objections received comprise at least 50% of operators running commercial services within the plan or scheme area – and those operators represent at least [4%]⁸ of commercial operated mileage.

Requirement to publish objections

65. The authority itself must publish any objections made within [X] days (our assumption is no more than 14 days) of the last day of the period to which objections can be made. This must as a minimum include the name of each operator (as it appears on the operators' licence) that has made an objection.

What happens after the objection period has elapsed?

66. Hopefully, the authority will have gained a sufficient steer during negotiations on the package to determine in advance whether individual operators are likely to object to the proposals – and negotiate changes that resolve their issues. However, if sufficient objections are received that prevents the consultation process from going ahead, the authority will need further to discuss the package of measures in the plan and scheme with their operators to resolve the contentious issues – then open the revised package to objections once again. Whilst the authority should seek to resolve as many objections as possible, it does not require all objections to be resolved. The legal requirement is that if there are not sufficient unresolved objection to meet either of the objection criteria, then the consultation can go ahead.

Consultation process

67. Assuming that the objection stage does not raise sufficient objections to meet either of the two criteria outlined above, the next stage is a formal consultation exercise. Consultation is an important element in the delivery process. It may be prudent to adopt a flexible approach to implementation of the elements of any plan or scheme.

68. It is for the authority to carry out the formal consultation exercise and when doing so they must, as a minimum include a number of statutory consultees. These are:

- All operators of local bus services that would be affected by any of the proposals.
- Organisations that represent passengers

⁷ Views are requested on the minimum number of operators that need to object to satisfy this requirement. Our suggested range is 3-4 (See Part A Section 8)

⁸ Views are requested on the minimum level of operated mileage that objecting operators together need to satisfy to trigger this provision (See Part A Section 8)

- Other local authorities that would be affected by the proposals⁹
- The Traffic Commissioners
- The chief officer of police for each area to which the plan relates.
- Transport Focus; and
- The Competition and Markets Authority (CMA).

69. Although these are the bodies that must always be consulted, these minimum requirements should be seen as only part of a wider need for effective communication, publicity and consensus building. Where a scheme involves modification to infrastructure, consultation might be conducted with:

- Residents and occupiers of commercial premises in the immediate vicinity of proposed works.
- Existing bus passengers on affected services.
- Existing road users on affected highways.

70. Where the scheme involves modification to services, consultation should be conducted with:

- Existing bus passengers on affected services.
- Relevant organisations which are not already involved in the EP process (for example, major local employers).

71. Responses to the consultation should be analysed thoroughly and changes made to the proposals where necessary. There is little point in conducting an extensive and comprehensive consultation exercise if, for example, passengers' views have not been properly taken into account. They are the group that bus services need to cater for, so their views ought to be paramount. The appropriate time needs to be devoted to analysing feedback from consultation and where necessary amending the proposals.

Consultation requirements when there is more than one scheme

72. The consultation process should take place for *all* schemes that relate to a plan. There is nothing to prevent a single consultation exercise covering a plan and several schemes at the same time – even if some of those schemes will not enter into force together. However, if a scheme is developed by the partnership after the initial scheme(s) have been consulted on, a separate consultation exercise must be carried out on that subsequent scheme.

Making a plan and scheme

Modifications to a plan or scheme after consultation and then 'making' them

73. Once the consultation exercise has completed and the responses have been properly analysed and any changes made, the partnership must decide whether to 'make' the plan and scheme ('make' being the legal term for finalising the

⁹ Local transport Authorities, district councils in England, National Park authorities, the Broads Authority, London transport authorities and councils in Scotland.

content of both and then implementing the requirements of the scheme 'on the ground').

74. This can be on the basis of the plan and scheme put to consultation, or a modified version of either that takes into account the responses to consultation. As stated previously, it is important that the partnership is open to changing the content of the plan or especially the scheme to reflect consultation responses, especially feedback from passengers or passenger groups.

Notice of intention to 'make' a plan and scheme

75. Once that process has completed, the next stage is to inform all relevant operators of the intention to proceed. Again, this is because it is not a legal requirement that any particular operators should be obliged to participate in the preparation of a plan and scheme up to this point. Although all operators should have an opportunity to do so, there may be some that do not wish to engage with the process. However, despite this, all operators at this stage should be made aware of the full details of what the 'making' of a plan and scheme will mean for them, so that they can properly take part, if they wish, in the subsequent procedures set out below. These details can be contained in a letter or email (preferably both) to the affected operators, or by providing them with information about how full information can be accessed – e.g. via a dedicated website.

Operator objections

76. An essential legal requirement after a consultation exercise on a plan and scheme and before either can be finalised or implemented is that operators of local bus services are legally entitled to object to a modified plan and scheme being 'made'. Unless this process allows the plan and scheme to be made they *cannot do so*. An LTA cannot unilaterally decide to implement a plan or scheme unless any formal objections from operators do not meet the criteria listed in section 8 above.

Objection process

Who can object?

77. Any operator of qualifying local bus services that operates within or into the geographical area of a plan or scheme on the day before the notice under paragraph 65 above is issued by the authority is entitled to object to the making of the plan and scheme detailed in the notice. This means that any operator that has started running a qualifying local service in the time between the objection process before consultation and the day before the notice is issued is also entitled to object. This notice should be sent to the address that is listed on the operator's licence of each operator concerned.

What is a qualifying local service?

78. The rules on who is entitled to make an objection are the same as the process before consultation. The authority can decide whether:

- Operators exclusively running local buses under contract to a local authority on a 'gross cost' basis can make an objection,

- Whether operators of ‘net cost’ contracts – that are paid a fixed contract price to run the service that includes retaining the revenue can make an objection.
- Services that are excursions or tours¹⁰ are entitled to make an objection.
- Whether the mileage on a cross-boundary service that is operated outside the geographical area of the scheme should be counted for these purposes.

How do operators make an objection?

79. The notice of consultation must contain an address to which objections can be made. This can be (either or preferably both) a postal address or an email address. The notice must contain the date by which objections from operators must be received. This date cannot be less than [28 days] from the date on which the notice is sent.

What happens once objections are made?

80. The authority must assess objections using the same criteria as for objections to consultation, and again, if *either* is satisfied the making of the plan and scheme cannot go ahead:

- The objections received amount to at least [25%] of the commercial operated mileage in the plan or scheme area – and that at least [X]¹¹ operated have lodged an objection.
- That the objections received comprise at least [50%] of operators running commercial services within the plan or scheme area – and those operators represent at least [4%]¹² of commercial operated mileage.

Requirement to publish objections

81. The authority must publish any objections made within [X] days (our assumption is no more than 14 days) of the last day of the period to which objections can be made. Again there is a minimum requirement for the LTA to publish, as a minimum requirement, the name of the operator (as it appears on the operators’ licence) for each operator that has objected.

What happens after the objection period has elapsed?

82. Again, hopefully the authority will have gained a sufficient steer during the post-consultation negotiations on the package to determine in advance whether individual operators are likely to object – and negotiate changes that resolve their issues. However, if sufficient objections are received that prevents the consultation process from going ahead, the authority will need further to discuss the package of measures in the plan and scheme with their operators to resolve the contentious issues – then open the revised package to objections once again. However, as with objections made prior to consultation, whilst the authority should seek to resolve as many objections as possible, it does not require all objections to be resolved. The legal requirement again is that if there are not sufficient unresolved objections to meet either of the objection criteria, then the

¹⁰ As defined in section 137(1) of the Transport Act 1985

¹¹ Views are requested on the minimum number of operators that need to object to satisfy this requirement. Our suggested range is 3-4 (See Part A Section 8)

¹² Views are requested on the minimum level of operated mileage that objecting operators together need to satisfy to trigger this provision (See Part A Section 8)

plan and scheme can be made.

Making the plan and scheme – notice

83. Once the objection process has been completed and if there are not sufficient objections to prevent the plan and scheme being made, the authority can then make the plan and scheme. The date that the plan and scheme are made are for the authority to determine. However, the requirements in a scheme can only enter into force after the scheme is made – so that date must properly take into account the dates from which the requirements in the scheme will enter into force and the statutory 56 day notice period for changing registrations.

Notice that a plan and scheme has been made

84. No later than 14 days after the date on which the plan and scheme was made, the authority must give notice that the plan and scheme have been made. This notice is to:

1. Relevant stakeholders in the plan and scheme area

It is important that the passengers who use services in the plan and scheme area are made aware that changes to their bus services are on the way, but it is for the authority to determine what form this notice takes. It could include leaflet drops, posters, newspaper advertisements, web content, and information leaflets (e.g. handed out on the street or in local shopping centres etc.).

2. To all operators that would be affected by the scheme

It is very important that all operators whose local services would be affected by the scheme are made aware that they may be required to make changes to their local bus services. Although we would expect in most cases that all operators are already aware of what will happen, this cannot be guaranteed. Nor should such notice rely on general publicity as outlined above. The authority should write to each affected operator setting out in detail which requirements of the scheme will affect their services – using the address listed for operator licensing purposes. This notice should detail both area-wide requirements (such as compliance with a multi-operator ticketing scheme) and any requirements applying to individual services – such as a route level requirements such as a frequency or timing restriction.

3. The traffic commissioners

As the scheme will be enforced through the system of local bus service registrations, it is important that the traffic commissioner is given early notice of the making of a scheme – especially if the authority is obliged or has elected to take over the registration system. Of course, this is only a formal notification and we would expect authorities to have discussed these issues with the traffic commissioners much earlier on in the development of the proposals.

Making more than one scheme

85. A plan and a number of schemes can be made at the same time and all can be included in a single notice – even if elements of the scheme or the scheme itself have later dates for the individual measures in them to be introduced – and provided that information is included in the notice. However, for any scheme that

is made afterwards, these notice requirements apply separately to that scheme as well.

Postponement of a scheme or part of a scheme

86. Even after a plan and scheme are made it is possible for an authority to postpone any of the implementation dates specified in the scheme for any elements of the scheme. The dates that can be postponed are:

- The date on which the scheme is to come into operation.
- The date on which a particular requirement is to be imposed under the scheme.
- The date on which any particular facilities are to be provided – such as new bus stops or other waiting facilities.
- The date on which any particular measures are to be taken – such as reduction in the number of parking spaces or parking fees that are under the control of the authority are to be changed.
- The date on which operators are required to comply with particular registration conditions – such as an area-wide or route requirement.
- The date upon which any change as a result of a scheme variation or revocation comes into effect.

Consultation requirement

87. Before deciding to postpone any element of a scheme listed above, the authority must consult all operators of local bus services that would be affected by the postponement of the scheme in question.

Decision to postpone a scheme

88. If an authority, after consulting operators, decides to postpone the above elements of a scheme, the authority must give notice, including the reasons for postponement, not later than 14 days after the decision is made to:

1. Relevant stakeholders in the plan and scheme area

It is important that the passengers who use services in the plan and scheme area are made aware that the changes to their bus services outlined in a scheme will be postponed. But it is for the authority to determine what form this notice takes. It could include leaflet drops, posters, newspaper advertisements, web content, and information leaflets (e.g. handed out on the street or in local shopping centres etc.).

2. To all operators that would be affected by the scheme

It is very important that all operators whose local services would be affected by the scheme are made aware that any requirements to make changes to their local bus services have been postponed. Although we would expect in most cases that all operators are already aware that postponement is likely to happen, this cannot be guaranteed. Nor should such notice rely on any general publicity as outlined above. The authority should write to each affected operator setting

out which elements of a scheme will be postponed. This notice should detail both area-wide requirements (such as compliance with a multi-operator ticketing scheme) and any requirements applying to individual services – such as a route level requirements such as a frequency or timing restriction.

3. The traffic commissioners

As the scheme will be enforced through the system of local bus service registrations, it is important that the traffic commissioner is given early notice that the making of elements of a scheme will be postponed. Of course, this is only a formal notification and we would expect authorities to have discussed these issues with the traffic commissioners much earlier on in the development of the proposals.

Variation of a plan or scheme

89. Once a plan and scheme have been made there is nothing to prevent the partnership from varying it. A variation can result from a number of reasons:

- That another authority wishes to become part of the plan and scheme – this can be because – for example, a proposal to extend a ticketing scheme into a surrounding urban or rural area that are within another authority area. Indeed, when considering to vary an enhanced partnership plan, an authority has a legal obligation to consider whether it is desirable to include another LTA(s) within the revised plan. If a scheme is varied to include another authority, the new authority becomes an authority for the purpose of the scheme and also becomes legally obliged to deliver any of the facilities or measures in their area that are included in the revised scheme.
- Or that an authority that is already part of a plan or scheme wishes to withdraw from the proposals – this can occur because, for example the outcomes of the plan or scheme have not been delivered or because the authority has simply decided it no longer wishes to be a party to the plan or scheme.

Circumstances in which as scheme can be varied

90. The authority that wishes to vary a scheme cannot do so unless they are satisfied that the scheme, as varied, will contribute to the implementation of:

- The policies set out in the related plan for those policies that the authority consider need to be varied at the same time as the plan – this means that the plan was varied which resulted in scheme changes to reflect the changes in the related plan;
- That the scheme needs to be varied to reflect the authorities local transport policies.

91. The authority must also be satisfied that the variations to the scheme will:

- Benefit passengers by improving the quality or attractiveness of bus services in the scheme area; or
- Reduce or limit traffic congestion, noise or air pollution.

Notice of intention to prepare a variation to a plan or scheme

92. As with other stages of preparing and making a plan and scheme, the authority should give local bus operators and other stakeholders that have been involved in the preparation of a plan and the preparation and roll-out of a scheme notice of their intention to vary it. It is important that those stakeholders are involved in the preparation of any variation and fully understand why the authority is proposing the variation. This may be, as stated above, because the authority wishes to include a neighbouring authority in a plan and scheme. Or it may be because the authority and local operators feel that changes need to be made to a scheme in the light of experience of how the original scheme proposals are working 'on the ground'. There is also nothing to prevent an operator or group of operators approaching an authority with a proposal for variation. There are no conditions on what can be varied. It is up to individual partnerships to decide.

Notice once a plan and scheme variation has been prepared

93. Once the early discussions have taken place and a draft variation to a plan and scheme have been prepared, the next stage is to make all operators of local bus services that would be affected by a variation to a plan and especially a scheme are aware of its existence. Again this is important because not all operators may have been able or wished to be involved in developing the proposals. But once those proposals have been developed at this stage all operators running services within or into the area subject to the variation should be made aware of the full details of what is being proposed so that they can properly take part, if they wish, in the subsequent procedures. These details can either be contained in a letter or email (preferably both) to the affected operators, or by providing them with information about how full information can be accessed – e.g. via a dedicated website.

94. This also applies to other stakeholders. If, for example, a passenger group has decided not to be involved in the development of a variation they should be made aware that a draft proposal has been prepared and have an opportunity to provide feedback at that point.

Consultation process – variation to a plan or scheme

95. The next stage is that operators must be allowed to vote on whether the draft variation to a plan and scheme should proceed to the next stage - a formal consultation exercise. The notice to operators that a variation to a plan and/or scheme has been prepared must also contain details of how individual operators can object to the consultation exercise. Any objection should be made in writing and the authority should provide a mail and email address to where such

objections should be sent – and acknowledge that an objection has been received. The legislation requires that any objection should be made within the deadline set by the authority – but this deadline cannot be less than 28 days after the date after which the notification was sent. Operators wishing to object to a variation are not required to give a justification for doing so. However, it is hoped that individual operators would raise any concerns that might lead to an objection with the authority before the objection process commences, so that a resolution can be sought.

Operator objections

96. Any variation of a plan is subject to the statutory objection process. However, as explained in paragraph 43 above, a scheme when it is originally made, may contain an alternative objection mechanism that is used when a scheme is varied or revoked. If this is the case, then that mechanism must be used for the purposes of operator objections. However, if no alternative mechanism has been included in the scheme, the statutory requirements will apply. Only the statutory objection mechanism can apply to the variation (or revocation) of a plan.
97. If the statutory objection mechanism is to apply, the same procedures will apply as when voting takes place prior to the consultation stage and making of a plan and scheme. Any operator of qualifying local bus services that operates within or into the geographical area of a plan or scheme on the day before the notice under paragraph 83 above is issued by the authority is entitled to object.

Requirements as to notice, consultation and making a variation

98. The same requirements that apply to notice, consultation and making of a scheme also apply at this stage when the variation to an existing scheme is being considered. If following the operator objection process, the variation of the plan or scheme is to proceed, the authority must carry out a consultation exercise on the variation proposal. It is for the authority itself to determine how to undertake this exercise. However, all operators of local bus services in the area concerned must be formally notified as well as any other stakeholders, such as passenger groups that have been involved in the making of the original scheme. At this stage the CMA must also be formally consulted.

Voting mechanism on variation

99. Again, as with the procedures outlined previously, following consultation, if the authority decides to 'make' the variation, they must give notice to all operators of local bus services and allow operators to make objections. The objection mechanism used can either be a bespoke one that has been defined in a scheme or, in its absence, the statutory one. The variation of a plan must use the statutory voting mechanism.

Decision to vary a plan or scheme

100. Again, as with other stages of the process, if an authority, after consulting operators, decides to make the variation, the authority must give notice, not later

than 14 days after the decision is made to:

- Relevant stakeholders in the plan and scheme area.
- To all operators that would be affected by the scheme.
- The traffic commissioners.

101. The date(s) for variation of a plan – and particularly a scheme – will need to take into account the 56-day rule for registration variations – although the authority can decide to grant short notice variations, if it is the registration authority, if requested to do so by operators.

Revocation of a plan or scheme

102. A plan cannot be revoked without also revoking all the schemes that are connected with it. And all the schemes cannot be revoked unless the connected plan is also revoked. However, a single scheme (if there is more than one) can be revoked without also revoking the plan.

103. The authority should give notice of their proposal to revoke a plan and scheme to all stakeholders that were involved in the previous stages of preparing or varying a plan or scheme. But as a minimum this must comprise:

- Operators of local services that provide local bus services in the plan or scheme area that would be subject to revocation.
- The Competition and Markets Authority

104. If after consultation, the authority still wishes to proceed with revocation, they must formally notify all the operators of local services of their intention to revoke a plan or scheme. This notice must, as a minimum, contain:

- The date on which the plan or scheme is to be revoked.
- The authority's reasons for revocation.
- Specify which operators can object to the revocation and what the objection period is – although this must not be less than 28 days from the date on which the notice was sent. Eligible operators will be those that would otherwise be able to object to a variation.

Operator objections

105. As with a decision to vary a plan or scheme, local bus operators running local services on the day before a notice to revoke is issued may object to the revocation. For revocation of a scheme, the objection process can either be a bespoke one that is included within the scheme, or, in its absence, the statutory objection process. The revocation of a plan must always use the statutory process.

Notice period

106. If, with agreement from the bus operators through the objection process, the authority decides to revoke a plan or scheme, they must, no later than 14 days after the revocation date, give notice of the revocation to:

- Relevant stakeholders in the plan and scheme area
- To all operators that would be affected by the scheme
- The traffic commissioners.

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Annex Q: Enhanced partnership guidance – Competition issues

Background

1. The development of a plan and scheme are subject to the requirements of competition law. However, it is worth stating that given that bus partnerships in various forms have been in existence since the mid-1990s, there have not been *any* cases where partnerships have given rise to action being taken on competition grounds. However, this does not mean that authorities should be complacent. It is very important that the development of plans and especially schemes are not conducted in a way that that is unfair to particular operators. But a distinction needs to be drawn between what is ‘unfair’ in the development of a plan or scheme and what may simply be unpopular with individual operators.
2. An example of unfairness would be an authority dealing with a particular operator or group of operators differently to others. Although, as stated above, it is for each operator to decide their level of engagement, the authority should not make that decision for them. For example, if a small or medium sized operator (SMO) wishes to have the same engagement with the authority as a much larger one, they have a right to do so. Authorities should not engage differently with large operators because, for example, they feel that they can ‘get things done’ more quickly than SMOs.
3. However, this does not mean that the authority should shy away from content of plans and schemes that may not be popular or have the backing of all operators. A key difference between an EP and the practicalities of an AQPS (or a QPS) is that the content of schemes and plans require only the majority of operators to agree – via the objection process. This does not mean that any ‘blocking minority’ should be ignored. If an individual operator or group of operators believes that the requirements of a plan or especially a scheme would have serious consequences for their business, they should take that up with the authority at an early stage.

Role of the authority

4. All EP schemes exist within a deregulated bus market. It is not a franchised arrangement where the authority control all aspects of bus services, from routing of individual services through to ticketing – as stated previously this is not ‘franchising-lite’. The effect of all EPs – especially EP schemes – is to impose a suite of restrictions, set out in the scheme, on the deregulated bus market in that scheme’s geographical area.
5. The role of the authority is to ensure for plans and all schemes that an appropriate balance is struck between:
 - (a) The EP plan and schemes delivering tangible improvements to passengers.
 - (b) Imposing restrictions on the deregulated bus market.
6. This balance is important and it is a legal requirement that before making or varying a plan or scheme that the authority undertake a formal assessment about

whether, in their opinion, this balance has been achieved.

7. The authority therefore has the major role in monitoring and shaping the local bus market on behalf of consumers in its area. It needs to understand the role of competition rules in this process, and act as the facilitator in delivering necessary co-operation without unnecessarily restricting the underlying potential for competition. For example, it is very important that the effect of a scheme on a SMO is fully taken into account.
8. Some elements of a scheme – particularly route requirements – may require two or more operators to co-operate with each other. For example, it may require them to co-ordinate timetables. Such co-operation requires a ‘qualifying agreement’ between the operators concerned. These agreements require the formal approval of the authority that any such agreement meets two tests:
 - (a) It must be in the interests of passengers using local services in the EP scheme or wider plan area; and
 - (b) It must not impose restrictions that are not indispensable to achieving the plan or scheme objectives.
9. So it is clear that the overall role of the authority is to ensure this balance between restriction and deregulation is appropriate. All plans and schemes should include a competition section in their documentation that deals with relevant competition issues and sets out:
 - (a) The elements of the scheme result in competition issues and what those issues are.
 - (b) How the authority has addressed or proposes to address those issues to ensure the appropriate balance outlined above is achieved.
 - (c) Detail any competition issues from individual operators that remain unresolved – e.g. because they were not sufficient to meet the operator objection criteria that would prevent a plan or scheme being made or varied.
10. In assessing what elements of the plan and scheme may result in competition issues, the authority may wish to consult that CMA’s Competition Impact Assessment guidelines which help identify how a policy may affect the suppliers and consumers in any given market.
11. In the context of an EP, concerns which may arise include any aspects which:
 - permit the unnecessary exchange of sensitive information;
 - reduce incentives on operators to independently set their own fares;
 - which result in operators sticking to given routes and areas;
 - and which reduce the chance of any entry or expansion.
12. Other issues may also be relevant to the competition assessment. This is to maintain the benefits of competition - i.e. that operators are incentivised to maintain an efficient and effective service at reasonable fares so as not to lose

custom to existing competitors now or potential competitors in the future.

13. Authorities should ensure that the EP scheme is reviewed if they believe that a change of circumstance means that their assessment of the competition impacts would be materially different.

Reducing risk to operators

13. As commercial undertakings, bus operators are subject to normal competition law provisions to prevent practices that harm passengers' interests, such as colluding to raise prices or geographic market sharing. If evidence is found of such behaviour, the CMA has powers to, among other things, impose fines on operators of up to 10% of group turnover. However, legislative mechanisms are in place to ensure that competition law does not prevent consumers benefitting from improvements that can only be secured through closer partnership working between the authority and bus operators. The requirements of EP schemes are imposed by the authority as conditions of local bus service registration. This means that bus operators that are, for example, co-ordinating timetables, or accepting tickets, in order to comply with a EP scheme requirement and otherwise complying with the law *are not breaching competition law and are therefore not at risk of CMA action or penalties*. Any action taken by the CMA would be against the content of the scheme (or parent plan) itself – e.g. by requiring the authority to vary or cancel elements of a plan or scheme that it felt did not strike the appropriate balance outlined above.
14. However, this protection applies only to action by operators specifically to comply with the registration requirements set out in a scheme. Any other action by the operator that falls outside this compliance with a registration requirement is subject to all the requirements of competition law that would apply to bus services in a fully deregulated area that is not subject to an EP plan or scheme.

Practical effect of competition law on EP plans and schemes

15. From the above, it is clear that both authorities and operators need to remain aware that the requirements of competition law apply throughout the development and implementation of a plan and scheme. Both sides should therefore act fairly to all other parties and the authority has the responsibility to ensure that this happens in practice and should generally seek to resolve competition issues.

Making a complaint to the CMA

16. The role of the CMA is to determine whether anti-competitive practices – which most partnership arrangements involve – are justified. And to take action if not. So, if, after the process outlined above, an individual operator(s) remains concerned with the effect of EP proposals on the viability of their business, they should take this up with the CMA. Operators should not shy away from complaining to the CMA for fear of upsetting the authority – it is an important safeguard. Nor does raising concerns with the CMA involve a complex administrative or legal process. A simple letter setting out the operator's detailed

concerns, the resulting harm to competition and/or consumers and how they relate to specific plan or scheme proposals is sufficient. However, any operator intending to make a complaint to the CMA should inform the authority beforehand so that any subsequent inquiries by the CMA do not come 'out of the blue'.

17. Details of how contact the CMA can be found at:

<https://www.gov.uk/guidance/tell-the-cma-about-a-competition-or-market-problem>

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