

**BUS SERVICES BILL**  
**POLICY SCOPING NOTES**

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## INTRODUCTION

1. These Policy Scoping Notes have been prepared to inform discussion of the regulation making powers contained in the Bus Services Bill as it reaches committee stage in the House of Lords. The Bill, as currently drafted, contains 37 separate regulation making powers. These have been grouped according to the number of statutory instruments it is planned to lay. There are therefore 20 separate policy scoping notes.
2. Each scoping note:
  - identifies the provisions in the Bill that confer the power to make delegated legislation;
  - outlines the policy intent of the regulations;
  - outlines the proposed content of the regulations;
  - sets out the proposed approach to preparing the proposals;
  - provides indicative timings for having draft regulations available;
  - provides indicative timings for when the powers might come into force.
3. We have also been able to produce two regulations in draft form for committee stage, both relating to the Advanced Quality Partnership Scheme proposals. The draft regulations are shown at **Annex 1**.
4. Initial meetings have been held with key stakeholders to discuss the regulations for franchising. For enhanced partnerships and open data, we have circulated draft proposals to key stakeholders for comment. For all regulations we plan to hold further meetings in June, July and September and to have drafts of most regulations ready for formal consultation in the autumn.

Department for Transport  
June 2016

## **1. Clause 1: Advanced Quality Partnership Schemes**

### Relevant sections of the Bill

Bus Services Bill Clause 1

Transport Act 2000

- Section 113E(3) - Power to clarify in regulations details about the measures that may or may not be taken as part of an Advanced Quality Partnership Scheme under new section 113C(4).
- 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.

### Policy intent

1. The Bus Services Bill makes provision for local transport authorities (LTAs) and local bus operators to enter into an Advanced Quality Partnership Scheme (AQPS) and sets out what the LTA and the bus operators can each undertake to provide as part of the scheme. The Bill provides for existing quality partnership schemes that are wholly in England to effectively become an AQPS.
2. An AQPS allows for an LTA to provide ‘facilities’ or ‘measures’ as part of the scheme. ‘Facilities’ might include the provision of new bus stops or waiting facilities. ‘Measures’ might include the LTA agreeing to revise car parking provision or charges to make bus services more attractive.

3. The Bill also sets out detailed provisions for the LTA to include the requirements as to the frequency, timings and maximum fares on bus services and ways in which passengers may pay for journeys. The proposed inclusion of these requirements by an LTA allow bus operators that would be required to comply with them to object to their inclusion in the AQPS (termed ‘admissible objections’).
4. The regulations will set out detailed requirements, such as:
  - What are defined as measures that an LTA can include within a scheme.
  - Whether facilities or measures that existed before the AQPS came into effect can be included within the scheme.
  - How admissible objections are addressed.
  - What the review mechanism is for requirements that include frequency, timings, maximum fares or ways in which passengers may pay a fare.
5. The policy intent of the regulations is to:
  - Ensure that the measures that an LTA can include as part of an AQPS are actions that will make a tangible positive difference for local bus operators and passengers.
  - Set a threshold for including existing facilities or measures in an AQPS scheme which allows investment and decisions to proceed in anticipation of an AQPS being agreed, but prevents ‘double-counting’ by allowing the inclusion of facilities or measures that have already been in place for a sustained period.
  - Set the detailed provisions and procedures for dealing with admissible objections by local bus operators to ensure there is a fair consideration and resolution of genuine concerns, but that the delivery of an AQPS scheme is not frustrated or unduly delayed by frivolous objections.
  - Set arrangements for reviewing any requirements relating to frequency, timings, maximum fares or ways in which passengers may pay a fare which balance the needs of both local bus operators and LTAs.

## Outline of proposed contents

*Set out further detail regarding the measures that an LTA can include within an AQPS.*

6. The Bill provides that measures must be for the purpose of increasing the use of local bus services serving the routes to which the measures relate, ending or reducing a decline in the use of such services or improving the quality of those local services. The regulations will define what measures can be included within the scheme. We want to ensure that measures which could have a relatively indirect but tangible effect (such as changes to parking policy or traffic management improvements that speed up the flow of all traffic, not just buses) can be included, but that other measures, which might only have a negligible impact on local bus services, are excluded.

*Set out what can be included as facilities provided by an LTA under an AQPS*

7. The regulations will set out time limits for existing facilities to be included in an AQPS scheme if they were first provided more than a set period before the LTA gave notice of a proposed AQPS scheme. This is to prevent LTAs from ‘double-counting’ facilities that have existed more than a set time before the LTA gave notice of the AQPS.
8. Our current intention is to replicate the form of the provisions in the [Quality Partnership Schemes \(Existing Facilities\) Regulations 2001](#) (SI 2001/3317) which state that:
  - An existing facility may not be specified in a scheme if it was first provided ten years before the local authority gave notice of a proposed scheme.
  - An existing facility provided more than five years before the local authority gave notice of a proposed scheme cannot be specified in the scheme if a local bus operator who uses it objects to its inclusion.

9. However, we are proposing to extend the time period for the inclusion of any infrastructure from ten to twenty years to recognise:

- A desire by some LTAs and bus operators to continue partnership arrangements based on facilities over ten years old.
- The financial and practical challenges facing some LTAs in retaining and maintaining some existing facilities.

10. The format of our policy approach to existing measures is expected to be similar, with two timescales specified – as for facilities. The timescales concerned require further discussion with bus operators and LTAs over the next few weeks. Our initial thinking is that:

- An existing measure may not be specified in a scheme if it was first provided twenty years before the local authority gave notice of a proposed scheme.
- An existing measure provided more than one year before the local authority gave notice of a proposed scheme cannot be specified in the scheme if a local bus operator who benefits from it objects to its inclusion.

*Set out detailed mechanics for making an admissible objection, what bus operators are eligible to make an ‘admissible objection’, the appeal arrangements and review mechanisms*

11. The regulations will define who is a ‘relevant operator’ that can make an objection and what is an ‘admissible objection’ as well as detailed procedures for making an objection. It will also include :

- How the LTA decides whether to accept such an objection.
- The appeal arrangements.
- How any requirements relating to frequency, timings, maximum fares or ways in which passengers may pay a fare should be reviewed.

12. We intend to replicate for an AQPS the vast majority of the substance of the [Quality Partnership Schemes \(England\) Regulations 2009](#) (SI 2009/445). A few minor changes are anticipated to reflect experience of operating Quality Partnership Schemes in practice.

#### Approach to preparation

13. The requirements as to the facilities that may be provided, as well as the detailed mechanics for making objections, appeal arrangements and review mechanisms already exist for existing quality partnership schemes. Our intention is to adopt those existing provisions as far as possible for the sake of consistency. Regulations concerning ‘measures’ relate to the detailed application by LTAs of the AQPS provisions and we think it necessary to work closely with both local authority stakeholders and bus operators to develop sensible proposals.

#### Timing

14. We have provided draft regulations for sections 113K(1) and 113N(1). These are shown at **Annex 1**. For section 113E, policy discussions with key stakeholders were started in late May. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

## **2. Clause 4: Consent to franchise – Affirmative**

### Relevant sections of the Bill

Bus Services Bill Clause 4

Transport Act 2000

- Sections 123A(4)(b) - (f): regulations to provide that other categories of local transport authority may also be franchising authorities. The categories of local transport authority listed from (b) to (f) include:
  - county councils in England for an area for which there are district councils;

- county councils in England for an area for which there is no district council;
- non-metropolitan district councils for an area for which there is no county council;
- Integrated Transport Authorities for integrated transport areas in England; and
- combined authorities which are not mayoral combined authorities.

### Policy intent

1. The policy intention is to ensure that franchising is only pursued where there is strong governance and accountability, a clear commitment to improving transport across the area and track record of delivery, and a coherent and sensible geography.
2. Mayoral combined authorities therefore have automatic access to franchising powers as they provide clear, centralised decision-making for transport across a relatively wide local area.
3. Other authorities may also demonstrate these attributes, and the Bus Services Bill provides for other categories of local transport authority, other than Mayoral Combined Authorities, to be franchising authorities. The Bill sets out a two-step process:
  - Firstly, the Secretary of State and Parliament must be content that it is appropriate for the particular category of authority to access franchising powers, with regulations subject to the affirmative procedure; and
  - Secondly, the individual authority must receive the consent of the Secretary of State before it can initiate preparation and assessment of its franchising business case.
4. We expect such requests to be made through the devolution deal process, with authorities considering how better bus services contribute to their wider plans for transport and economic development.



5. Currently, there is only one such authority that has reached agreement with Government through a Devolution Deal that franchising powers should be made available.
6. If that authority intends to pursue franchising then Government will make regulations to provide for authorities of that category to be franchising authorities, and those regulations will be subject to the affirmative procedure.

#### Outline of proposed contents

7. If there is cause to make any regulations under these powers, the regulations themselves will only set out which other categories of local authority can be franchising authorities, from within the list set out in S123A(b) – (f) of clause 4 of the Bill.
8. The regulations could potentially establish one category of authority as a franchising authority or multiple categories of authority as franchising authorities.

#### Approach to preparation

9. This regulation-making power will only be used if the Secretary of State and Parliament determine that further categories of local authority should be provided with access to franchising powers. As such, we will continue to engage with authorities to better understand their ambitions for bus services in their area.

#### Timing

10. We will continue to engage with local authorities regarding their ambition for bus services, and regulations will be drafted when they are required.

### **3. Clause 4: Permits in franchised areas**

#### Relevant sections of the Bill

Bus Services Bill Clause 4

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) – 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
- Section 123T(7) – regulations regarding appeals against the decisions of franchising authorities in relation to service permits

#### Policy intent

1. The Bus Services Bill makes provision for bus operators to provide local bus services in franchised areas under service permits. The process which bus operators must follow when applying for a service permit is set out on the face of the Bill, together with the criteria which franchising authorities must apply when determining whether or not to grant a service permit. The Bill also provides for the authority to charge a fee for issuing a service permit, and explains that the franchising authority may 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 process that must be followed by a franchising authority when revoking or suspending a service permit, and the process through which a bus operator can appeal against the decision of a franchising authority.

2. The regulations will set out the detailed issues, such a time periods and fee amounts, relating to the processes set out on the face of the Bill. The policy intent of the regulations is to:
  - a) Set out further detail regarding the level of fee that can be charged to operators for processing service permit applications;
  - b) Set out the categories of conditions that can be attached to a service permit by an authority;
  - c) Set out the notice periods that should be given to bus operators before a service permit is suspended or revoked; and
  - d) Set out the time period within which appeals against local authority decisions relating to service permits can be made.

#### Outline of proposed contents

*Set out further detail regarding the level of fee that can be charged to operators for processing service permit applications*

3. The regulations will set out the basis on which the fee can be charged - in this case on the basis of full cost recovery.
4. The regulations will also set out the activities which can be included by the authority in its calculation of the fee level – for example the costs associated with authority employees processing the permit applications and the costs associated with managing and monitoring a database.

*Set out the categories of conditions that can be attached to a service permit by an authority*

5. The regulations will set out the categories of conditions that can be attached by a local authority to a service permit. These ‘conditions’ will be imposed on the operator of the service, and the operator will not be able to provide the service unless they comply with the conditions.

6. Categories of conditions which are likely to be set out in the regulations include:

- Ticketing requirements – for example conditions which require the operator to accept certain ticket types;
- Vehicle standard requirements – for example conditions which require the operator to comply with certain vehicle emission standards;
- Marketing and branding requirements – for example conditions which require the operator to display information relating to the area-wide network of services on their buses; and
- Service timings and frequencies – for example conditions which prohibit the operator from running their service at certain times of day.
- The time period for which a permit is valid.

*Set out the notice periods that should be given to bus operators before a service permit is suspended or revoked*

7. The regulations will set out the notice periods which local authorities should provide to bus operators with service permits if the local authority decides to revoke or suspend the permit.
8. The regulations will provide for different notice period to apply in different circumstances, for example the authority may not be required to provide any notice to operators if they suspend the permit due to the operator repeatedly running the service in contravention to the permit conditions, but the local authority may be required to provide a much longer notice period to operators in the event that they revoke the permit because they have decided to tender it as part of a franchising contract.

*Set out the time period within which appeals against local authority decisions relating to service permits can be made.*

9. Local authorities will determine whether or not to grant a service permit based on criteria set out on the face of the Bill. Bus operators will be able to appeal against such decisions, together with the decision of an authority to attach conditions to a permit, or to suspend or revoke the permit. The regulations will set out the time periods within which appeals must be brought by bus operators. As above, there may be different time periods in different circumstances.

#### Approach to preparation

10. As these regulations relate to the detailed application of particular aspects of the franchising policy by local authorities, and will have an impact on bus operators looking to run services under service permits in franchising areas, we think it necessary to work closely with both local authority stakeholders and bus operators to develop sensible proposals.

#### Timing

11. Policy discussions with key stakeholders were started in May. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

### **4. Clause 4: Regulations that can be made about franchising schemes**

#### Relevant sections of the Bill

Bus Services Bill Clause 4

Transport Act 2000

- Section 123U the power to make further provisions with respect to:
  - The procedure to be followed when making, continuing, varying or revoking franchising schemes;
  - The local services or classes of local services which are to be, or may be, excluded from schemes; and
  - Other incidental matters in connection with franchising schemes.

### Policy intent

1. The Bus Services Bill sets out the detail of how a franchising authority should go about making, varying or revoking a franchising scheme. We want to ensure that the procedures set out on the face of the Bill are effective, and it may be necessary to set out further detailed provisions in regulations to ensure that the legislation can be implemented efficiently and effectively.
2. The regulations will be used to set out further detailed procedures to complement the making, variation and revocation procedures on the face of the Bill. This could include, for example, further detail with regards to how franchising authorities should give notice to interested parties when franchising schemes are varied.
3. The regulations can also be used to set out the classes of local services which must, or may, be exempted from franchising schemes. The regulations could, for example, set out a list of different types of local services, such a coach services and tour buses, which a franchising authority may choose to exempt from the franchising scheme and therefore allow to continue to operate as currently.

### Outline of proposed contents

*Set out further procedures to be followed when making, continuing, varying or revoking franchising schemes*

4. The regulations are likely to be used to set out further detail procedures to complement those on the face of the Bill. In particular, the regulations can be used to set out how a franchising authority should go about continuing a franchising scheme, and in particular the procedures to be followed when one local service contract ends and another begins. This should help to ensure that the transitions are smooth for local passengers, and also that local people and bus operators in the area are given appropriate notice of changes in services or providers.

*Set out the local services or classes of local services which are to be, or may be, excluded from schemes*

5. The regulations will set out categories of local services which may be excluded from franchising schemes should the franchising authority choose to do so. This could include:
  - Excursion or tour services which are technically ‘local services’ but do not serve a local transport function.
  - Interurban or other long distance scheduled services that are not generally used for local journeys within the scheme area, but may use stops.
  - Other services that make limited use of stops within the scheme area, perhaps including infrequent services from outlying rural areas if those services could not reasonably be expected to meet the standard specified in the scheme.
  - Local services not normally available or widely used by the general public (e.g. school or work buses).
  - Cross-boundary services with only a very limited number of stops in the franchised area.
  - Dedicated services to airports or other facilities.
  - Rail replacement services.
  
6. There is no current intention to stipulate any mandatory categories that must be excluded (but services operating under a section 22 permit are already excluded by way of provisions on the face of the Bill).

#### Approach to preparation

7. As these regulations relate to the detailed application of particular aspects of the franchising policy by local authorities, and will have an impact on bus operators looking to run services in franchising areas, we think it necessary to work closely with both local authority stakeholders and bus operators to develop sensible proposals.

## Timing

8. Policy discussions with key stakeholders were started in May. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

## **5. Clause 4: Transitional provisions**

### Relevant sections of the Bill

Bus Services Bill Clause 4

Transport Act 2000

- Section 123V 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 make further provision about the procedure to be followed when varying the notice period.

### Policy intent

1. Where an authority chooses to implement franchising, the bus market will need to transition from the status quo, where operators determine which routes they wish to operate, and then register those routes with the Traffic Commissioner, to a



system whereby the franchising authority specifies the services to be delivered and bus operators bid to provide those services. When franchising is introduced, operators will no longer be required to register services with a Traffic Commissioner.

2. The policy intent is therefore to ensure that there are practical and transparent arrangements and processes set out to assist in the transition from the current model of bus provision to franchising, where services are no longer registered with the Traffic Commissioner.
3. Additionally, we also want to ensure that passengers are protected, and that there are sensible safeguards put in place to minimise potential disruption to services in the transition period.
4. These regulations will therefore set out a number of processes which should be followed to help smooth the transition. These are likely to include:
  - The ability for a franchising authority 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;
  - Set out circumstances in which an authority can provide bus services themselves or employ shortened procurement procedures to ensure services are protected in the event that bus operators leave the area before the implementation of franchising; and
  - Set out procedures that must be followed when registering bus services if a franchising scheme has been revoked or varied to reduce the area to which it applies.

#### Outline of proposed contents

*Extending 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*

5. The regulations will set out the ability for franchising authorities to extend the notice period which must expire before a bus operator can vary or cancel a local bus service. This extended notice period can then be applied from the point at which the authority has made its franchising scheme until franchising is introduced in the scheme area or sub-area.
6. The regulations will set out the ability for franchising authorities to double the notice that must be provided by bus operators to a period of 112 days, and also set out the procedures that the authority must follow to ensure that operators are made fully aware.

*Set out circumstances in which an authority can provide bus services themselves or employ shortened procurement procedures to ensure services are protected in the event that bus operators leave the area before the implementation of franchising*

7. The regulations will set out certain circumstances in which an authority would be able to employ shortened procurement procedures in order to ensure that services continued to be provided to passengers ahead of the introduction of franchising, together with the procedures that must be followed.
8. The regulations could, for example, allow an authority to directly award a short-term contract to an operator in the event that an incumbent operator leaves the local market ahead of the introduction of franchising.

*Set out procedures that must be followed when registering bus services if a franchising scheme has been revoked or varied to reduce the area to which it applies*

9. Once franchising has been introduced, services will no longer need to be registered with the Traffic Commissioner. As such, the regulations will be required to set out the bespoke procedures which may need to be followed to re-establish a system of registration should franchising be revoked or varied so as to reduce the area to which it applies.

### Approach to preparation

10. As these regulations relate to the detailed application of particular aspects of the franchising policy by local authorities, and will have an impact on bus operators of local services in the run-up to the introduction of franchising, we think it necessary to work closely with both local authority stakeholders and bus operators to develop sensible proposals.

### Timing

11. Policy discussions with key stakeholders were started in May. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

## **6. Clause 4: Application of TUPE and pensions regulations to franchising**

### Relevant sections of the Bill

Bus Services Bill Clause 4

Transport Act 2000

- Sections 123X(6) and (9) allow further provisions to be made with respect to:
  - the application of TUPE where staff are transferred between operators as a result of franchising; and
  - the pension protection to be provided to employees of bus operators who transfer to a new employer as a result of franchising.

### Policy intent

1. The Bus Services Bill makes provisions for TUPE regulations to apply when staff are transferred as a result of local service contracts awarded under a franchising scheme, and for those staff to be provided with certain pension protection.

2. The regulations will set out further detail regarding the application of TUPE in the franchising context, and further detail regarding the protection of employee's pension rights. The policy intent of the regulations is to allow further provisions to be made:
  - Determining whether a person's employment is principally connected with the provision of particular services;
  - Determining which operator employees should transfer to;
  - Requiring operators of local services to provide the franchising authority with certain information in relation to their employees;
  - Requiring the franchising authority to provide certain information to bus operators to enable them to comply with the requirements on them to supply information; and
  - Requiring the franchising authority to ensure that certain pension protection is secured for all employees transferring as a result of franchising, and defining that pension protection.
  
- We intend to develop broadly similar regulations to those set out in: [The Quality Contracts Schemes \(Application of TUPE\) Regulations 2009](#) and [The Quality Contracts Schemes \(Pension Protection\) Regulations 2009](#).

#### Outline of proposed contents

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

3. S123X of clause 4 of the Bill provides for TUPE to apply where staff are transferred as a result of franchising. Before TUPE can be applied, and staff transferred, the franchising authority must first establish whether employees are connected with the provision of services in the area, and should therefore transfer to a new employer.

4. The regulations will explain how an authority should determine whether a person is ‘principally connected’. The regulations could either:
  - Set out a set proportion of a person’s employment which must be connected with the provision of local services in the area for them to be deemed ‘principally connected’ or;
  - Set out a consultation process which must be followed by the franchising authority, to allow the authority to agree, in consultation with bus operators and employee representatives, whether employees are ‘principally connected’.

*Determining which operator employees should transfer to*

5. The regulations will explain how an authority should prepare the ‘allocation arrangements’ for staff that are transferred, which will set out which employees should transfer to each new employer.
6. The regulations will set out a consultation process which must be followed by the franchising, to allow the authority to determine and set out, in consultation with bus operators and employee representatives, which employees should be transferred to which employer.

*Requiring operators of local services to provide the franchising authority with certain information in relation to their employees*

7. The regulations will set out the categories of employee-related information that franchising authorities can request of operators to help them in determining whether employees are ‘principally connected’ and how employees should be allocated to new employers. The regulation is likely set out the following categories of information:
  - Information about individual employees, such as particulars of employment, information about collective agreements; and

- Information about the identity of appropriate representatives of relevant employees.
8. The regulations will also set out the time periods within which operators must comply with these requests.

*Requiring the franchising authority to provide certain information to bus operators to enable them to comply with the requirements on them to supply information*

9. The regulations will also set out the information that franchising authorities must provide to operators to enable them to comply with employee-related information requests.

*Requiring the franchising authority to ensure that certain pension protection is secured for all employees transferring as a result of franchising, and defining that pension protection*

10. The regulations will set out the duty on franchising authorities to ensure that local services contracts made as a result of franchising are made on terms which secure pension protection for all transferring employees, and that the pension protection is enforceable by the employee.
11. The regulations will also define the level of pension protection that must be provided. They will set out the need for franchising authorities to ensure that transferring employees are provided with the same rights as they had previously, or are provided with rights which are ‘broadly comparable’.
12. The regulations will further define ‘broadly comparable’ and set out detail regarding the assurance processes to be undertaken.

#### Approach to preparation

13. As these regulations relate to the detailed application of particular aspects of the franchising policy by local authorities, and will have an impact on bus employees and bus operators, we think it necessary to work closely with local authority stakeholders, bus operators and Trade Unions to develop sensible proposals.

### Timing

14. Policy discussions with key stakeholders were started in May. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

## **7. Clause 5: Request of information from incumbent operator**

### Relevant sections of the Bill

Bus Services Bill Clause 4

Transport Act 2000

- Section 143A(3)(i) regulation making power to allow further provisions to be made regarding the categories of information that can be requested by a local transport authority or authorities in connections with their functions in relation to franchising schemes.

### Policy intent

1. The Bill sets out the process that franchising authorities must follow before they can introduce franchising in their areas. This process includes the preparation and assessment of a franchising scheme, together with independent audit of some aspects of that franchising scheme.
2. The Bus Services Bill makes provision for franchising authorities to require operators of local services in their area to provide information relating to the local services they operate for use in connection with their franchising functions. The Bill makes clear that the information acquired by the franchising authority must

only be used in connection with its franchising functions, and not for other purposes.

3. The policy intention is to ensure that authorities considering franchising can access the information they need to accurately assess their franchising scheme. This will help to ensure that informed decisions can be made on the basis of robust evidence and analysis.
4. The Bill sets out a list of information that authorities can request of bus operators, and provides for further categories of information to be specified in regulations. The intention is to use the regulations to ensure that authorities have the information they need to develop comprehensive assessments, whilst avoiding placing excessive or unnecessary burdens on local bus operators.

#### Outline of proposed contents

##### *Categories of information*

5. The regulations will set out which additional categories of information franchising authorities should be able to request of operators to enable them to develop and assess their franchising schemes.
6. The regulations are likely to specify additional categories of information such as:
  - Information relating to bus fleets, including vehicle age;
  - Information relating to the operation of existing services; and
  - Information relating to the costs associated with operating particular services.

#### Approach to preparation

7. As these regulations relate to the detailed application of particular aspects of the franchising policy by local authorities, and will have an impact on bus operators



running services in an areas where franchising is considered, we think it necessary to work closely with both local authority stakeholders and bus operators to develop sensible proposals that both meet the needs of franchising authorities and do not place unnecessary burdens on local bus operators.

#### Timing

8. Policy discussions with key stakeholders were started in May. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

### **8. Clause 9: Measures which may or may not be specified in an EPS**

#### Relevant sections of the Bill

Bus Services Bill Clause 4

Transport Act 2000

- Section 138D(3) – power to make further provisions about the measures which may or may not be specified in an EPS

#### Policy intent

1. The Bus Services Bill makes provision for an Enhanced Partnership Scheme (EPS) to include ‘measures’ that a local transport authority (LTA) can include as part of the scheme. The Bill makes further provision that these measures must be for the purpose of increasing the use of local bus services serving the routes to which the measures relate, ending or reducing a decline in the use of such services or improving their quality.
2. The regulations will define what measures can be included within the scheme.
3. The policy intent of the regulations is to ensure that LTAs and local bus operators seeking to implement an EPS are clear about what measures can be included within the scheme. We wish to ensure that the measures that an LTA can include

as part of an EPS are actions that will make a tangible positive difference for local bus operators and passengers.

#### Outline of proposed contents

*Set out further detail regarding the measures that can be included by an LTA in an EPS*

4. The Bill provides that measures must be for the purpose of increasing the use of local bus services serving the routes to which the measures relate, ending or reducing a decline in the use of such services or improving the quality of those local services. The regulations will define what measures can be included within the scheme. They will allow a broad range of measures to be included, particularly where they are directly related to bus services – such as the provision or publication of information about services.
5. We intend to ensure that measures which could have a relatively indirect but tangible effect (such as changes to parking policy or traffic management improvements that speed up the flow of all traffic, not just buses) can be included, but want other measures, which might only have a negligible impact on local bus services, to be excluded.

#### Approach to preparation

6. Regulations concerning ‘measures’ relate to the detailed application by LTAs of the EPS provisions and we think it necessary to work closely with both local authority stakeholders and bus operators to develop sensible proposals.

#### Timing

7. Policy discussions with key stakeholders were started in June. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

## **9. Clause 9: Decision making: preparing and making an EPS – Affirmative**

### Relevant sections of the Bill

Bus Services Bill Clause 9

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

### Policy intent

1. The Bus Services Bill makes provision for regulations to determine what are qualifying local bus services for the purposes of an LTA making an Enhanced Partnership Plan and/or Scheme (EPS). It also allows the operators of those qualifying local services to object to the LTA's proposals before (a) the LTA carries out a consultation exercise on a proposed EPS and (b) following consultation and before the LTA makes the EPS (where necessary with modifications following consultation).
2. The LTA can only proceed at each stage if a "sufficient number" of operators of qualifying local services do not object – effectively giving bus operators a vote on the proposals. This approach is designed, along with other measures in the Bill, to ensure that LTAs develop EPSs with their local operators.
3. The Bill makes provision for voting to be based upon the proportion of operators that disagree with the proposals – i.e. silence is consent. This is to avoid delays or problems with individual operators, for whatever reason, not casting a vote. The development of the voting mechanism may need to take account of differing bus markets – e.g. between urban and rural areas or depending on the number and relative size of local bus operators.

4. The policy intent of the regulations is to:

- Prescribe a voting mechanism that is fair to all operators that would be affected by the proposals – including SMEs.
- Allow the EPS voting mechanism to apply only to particular types of service.

Outline of proposed contents

*Set out further detail regarding the voting system used by operators of qualifying local services*

5. The regulations will prescribe detailed rules on how the operator vote should be shared out amongst the operators of qualifying local services. Our policy intention is that this should be set at a level which:

- Gives a fair say to both the most significant companies in a local bus market, and small and medium sized operators in the area; and
- Allows progress to be made on an EPS where there is not a unanimous view amongst affected operators; but
- Does not give LTAs the ability to make EPSs which would not – overall – be supported by the bus operators who will have to pay for much of their implementation.

6. There are a number of ways in which this could be achieved including through setting a threshold for objections which:

- Relates to a set market share (potentially as indicated by route miles operated or passenger journeys made); and/or
- A weighted market share held by each operator according to their scale (so that a small operator has a greater say relative to a larger operator for any given market share); or

- Operated on a “double-lock” basis, requiring objections from: a) a certain percentage of businesses operating services; and b) operators who together held more than a set market share; and/or
- Varied depending on the circumstances of the local bus market (such as the number of different operators or the scale of the dominant players).

*Set out the services which do and do not qualify for a vote on the EPS*

7. There are a number of possible examples of services that it would not be sensible or necessary to include within the voting mechanism for an EPS. These include services run under contract by the LTA who have to comply with the EPS requirements but we do not currently intend should have a vote because they are acting under instructions from the LTA.
8. The LTA and operators will also have the ability to exempt other services from the EPS, if agreed as a part of the EPS (e.g. categories of cross-boundary services, event services and airport services). As they are not affected by the EPS it would not be appropriate to include these services in the voting mechanism. Examples of potential such services include:
  - 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 EPS area, but may use stops;
  - Other services that make limited use of stops within the EPS area, perhaps including infrequent services from outlying rural areas if those services could not reasonably be expected to meet the standard specified in the EPS; and
  - Local services not normally available or widely used by the general public (e.g. school buses).

Approach to preparation

9. Regulations concerning the voting mechanism relate to the detailed application by operators of the EPS provisions and we think it necessary to work closely with bus operators and LTAs to develop sensible proposals. We want to test out some of the options set out in this paper to identify the most effective potential approach or approaches to include in the regulations.

### Timing

10. Policy discussions with key stakeholders were started in late May. We anticipate that draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

## **10. Clause 9: Decision making: proposing to vary, varying and revoking an EPS**

### Relevant sections of the Bill

Bus Services Bill Clause 9

Transport Act 2000

- Section 138L(8) – mechanism when proposing to vary a scheme
- Section 138M(8) – mechanism when varying a scheme
- Section 138O(11) – mechanism when revoking a scheme

### Policy intent

1. The Bus Services Bill makes provision for a local transport authority (LTA) to vary or revoke an Enhanced Partnership Plan and/or Scheme (EPS). The Bill also includes requirements about the LTA giving notice of their intention to propose a variation or revocation to all operators of qualifying local services in the EPS area. The LTA must also invite those operators to participate in the preparation of the variation proposals (including operators that begin running local services in the EPS area while the variation is being prepared). The LTA must also consult bus operators when considering revoking any part of an EPS.

2. Once a proposal to vary or revoke any part of an EPS has been prepared, the Bill requires the operators of those qualifying local services to be able to object before the LTA can carry out a consultation exercise on the proposal and subsequently proceed to vary or revoke the EPS.
3. The LTA can only proceed at each stage if a “sufficient number” of operators of qualifying local services do not object – effectively giving bus operators a vote on the proposals. This approach is designed, along with other measures in the Bill, to ensure that LTAs develop EPSs with their local operators.
4. The Bill makes provision for voting to be based upon the proportion of operators that disagree with the proposals – i.e. silence is consent. This is to avoid delays or problems with individual operators, for whatever reason, not casting a vote. The development of a default voting mechanism may need to take account of differing bus markets – e.g. between urban and rural areas or depending on the number and relative size of local bus operators.
5. The Bill provides for the default voting mechanism to be replaced with a different mechanism agreed locally and set out in the EPS concerned.
6. The policy intent of the regulations is to:
  - Prescribe a default voting mechanism that is fair to all operators that would be affected by the proposals – including SMEs.
  - Allow the EPS voting mechanism to apply only to particular types of service.
  - Prescribe for certain mechanics relating to timescales and the way in which objections are evidenced.

#### Outline of proposed contents

*Set out further detail regarding objections by operators of qualifying local services*

7. The regulations will prescribe detailed default rules on how the operator vote should be shared out amongst the operators of qualifying local services. Our policy intention is that this should be set at a level which:
  - Gives a fair say to both the most significant companies in a local bus market, and small and medium sized operators in the area; and
  - Allows progress to be made on an EPS where there is not a unanimous view amongst affected operators; but
  - Does not give LTAs the ability to make EPSs which would not – overall – be supported by the bus operators who will have to pay for much of their implementation.
  
8. There are a number of ways in which this could be achieved including through setting a threshold for objections which:
  - Relates to a set market share (potentially as indicated by route miles operated or passenger journeys made); and/or
  - A weighted market share held by each operator according to their scale (so that a small operator has a greater say relative to a larger operator for any given market share); or
  - Operated on a “double-lock” basis, requiring objections from: a) a certain percentage of businesses operating services; and b) operators who together held more than a set market share; and/or
  - Varied depending on the circumstances of the local bus market (such as the number of different operators or the scale of the dominant players).
  
9. Our current intention, which we will test with stakeholders, is that the voting mechanism for the variation or revocation of an EPS should be the same as that which applies when an EPS is made.

*Set out further detail on the mechanics of consultation and objection*



10. Given that the EPS still operates within a deregulated bus market – where individual operators of local services can enter and leave at any time – the regulations will prescribe the point at which operators are eligible to object to a variation or revocation (the ‘qualifying time’). They will also prescribe the period during which qualifying operators may object to the proposed variation or revocation and how an objection should be evidenced.

*Set out the services that qualify for inclusion in the EPS variation or revocation mechanism*

11. There are a number of possible examples of services that it would not be sensible or necessary to include within the voting mechanism for an EPS. These include services run under contract by the LTA who have to comply with the EPS requirements but we do not anticipate should have a vote because they are acting under instructions from the LTA.

12. The LTA and operators will also have the ability to exempt other services from the EPS, if agreed as a part of the EPS (e.g. categories of cross-boundary services, event services and airport services). As they are not affected by the EPS it would not be appropriate to include these services in the voting mechanism. Examples of potential such services include:

- 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 EPS area, but may use stops;
- other services that make limited use of stops within the EPS area, perhaps including infrequent services from outlying rural areas if those services could not reasonably be expected to meet the standard specified in the EPS; and
- local services not normally available or widely used by the general public (e.g. school buses).

13. Our current intention, which we will test with stakeholders, is that types of service that qualify for a vote on the variation or revocation of an EPS should be the same as those that qualify for a vote when an EPS is made.

#### Approach to preparation

14. Regulations concerning the consultation and objection mechanism relate to the detailed application by operators of the EPS provisions and we think it necessary to work closely with bus operators and local authorities to develop pragmatic and workable proposals. We want to test out some of the options set out in this paper to identify the most effective potential approach or approaches to include in the regulations.

#### Timing

15. Policy discussions with key stakeholders were started in late May 2015. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

### **11. Clause 9: EPS - Regulations about plans and schemes**

#### Relevant sections of the Bill

Bus Services Bill Clause 9

Transport Act 2000

- Section 138(P) - Power to make further provisions with respect to the procedure to be followed when making, varying, revoking a scheme including local services which may be excluded.

#### Policy intent

1. The Bus Services Bill makes provision for a local transport authority (LTA) to make, vary or revoke any part of an Enhanced Partnership Scheme and/or Plan

(EPS). The Bill makes provision for how the plan and one or more schemes should be drafted, made, varied or revoked.

2. The regulations will set out the detailed issues, such as:

- the required content of any plan or scheme, particularly where a scheme includes route-level requirements relating to the frequency or timing of services;
- how the LTA gives notice to operators of local services in the plan or a scheme area about their intention to make, vary or revoke a plan or scheme.
- mandatory national, or optional local, exclusions from EPSs (in addition to community transport services operated under permits granted under section 22 of the Transport Act 1985).
- the mechanism for dealing with objections by operators to any of the EPS proposals.
- requirements about how the proposals should be implemented on the ground.

3. The policy intent of the regulations is to:

- Provide a clear and transparent mechanism to be followed when an LTA proposes to develop, make, vary or revoke an EPS plan or scheme.
- Ensure that EPSs include an appropriate level of information to work in practice, including for enforcement of the standards they contain by the LTA and/or traffic commissioner.
- Ensure that operators of local services that would be affected by any of the proposals are made aware of them in an suitable way and have an appropriate opportunity to object to them.
- Ensure that other stakeholders have an appropriate opportunity to comment on draft proposals.

## Outline of proposed contents

*Set out further detail on how LTAs and local bus operators should develop and pursue EPS plans and schemes*

4. The plan and resultant scheme(s) serve different purposes and the regulations will provide LTAs and operators with further requirements on how a plan and scheme(s), or elements of either, should:
  - (a) be initially developed;
  - (b) implemented;
  - (c) varied; and
  - (d) revoked.
  
5. This will include the documentation that should result from discussions and deliberations at a local level that are used for consultation purposes. The Bill makes particular provision for statutory provisions relating to making traffic regulation orders (e.g. to create bus priority measures) and for schemes that include requirements about the timing or frequency of services. The statutory requirements will be supplemented by both statutory and non-statutory guidance.

*Set out further detail regarding how LTAs should engage with others.*

6. The regulations will provide requirements on how LTAs should develop new or amended EPS proposals and how other stakeholders – particularly local bus operators - should participate and shape the proposals. This will include requirements about how operators should be given notice of proposals and arrangements for them to formally object to them. These procedures will be supplemented by statutory and potentially non-statutory guidance.

*Set out the services that qualify for inclusion in the EPS mechanism*

7. There are a number of possible examples of services or operators of services that it may not be sensible or necessary to include within the EPS scheme mechanisms – either anywhere or in particular local circumstances. These include:
- Excursion or tour services which are technically ‘local services’ but do not serve a local transport function.
  - Interurban or other long distance scheduled services that are not generally used for local journeys within the scheme area, but may use stops.
  - Other services that make limited use of stops within the scheme area, perhaps including infrequent services from outlying rural areas if those services could not reasonably be expected to meet the standard specified in the scheme.
  - Local services not normally available or widely used by the general public (e.g. school or work buses).
  - Cross-boundary services with only a very limited number of stops in the EPS area.
  - Dedicated services to airports or other facilities.
  - Rail replacement services.
8. We intend to explore this list of options with stakeholders, ensure that there are none missing and identify whether any should be considered for exemption nationally in all EPS schemes, rather than be an option for local decision.

#### Approach to preparation

9. These regulations relate to the detailed application by operators of the EPS provisions and we think it necessary to work closely with bus operators and local authorities to develop pragmatic and workable proposals.

#### Timing

10. Policy discussions with key stakeholders were started in June. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

## **12. Clause 9: Power to make transitional provisions about schemes**

### Relevant sections of the Bill

Bus Services Bill Clause 9

Transport Act 2000

- Section 138Q(1) – power to make transitional provisions in connection with the making, coming into operation, varying or revoking EP plans and schemes

### Policy intent

1. The Bus Services Bill makes provision for transitional arrangements to apply when the whole or part of local transport authority's area (LTA) or several LTAs acting together, implement and then operate an enhanced partnership scheme (EPS). This includes arrangements when schemes are varied or revoked.
2. The regulations will set out the detailed issues, such as transitional arrangements if the registration authority changes. Currently, a local bus service as defined in section 2 of the Transport Act 1985 must have its service particulars (e.g. route and timetable) registered with the traffic commissioner. However, the Bill makes provision for the LTA (or lead LTA if there is more than one) to take over the registration function. Regulations will be required to prescribe how the registration system should be transferred in this case. The Bill also makes provision for an LTA to implement EPS schemes through registration requirements. Transitional arrangements will be required to allow an LTA to attach such requirements to registrations held by the traffic commissioner.
3. Transitional arrangements are also required in the case where route level requirements – e.g. limiting the number of buses that may operate on a particular

route – cannot voluntarily be met by bus operators running or wishing to run services on that corridor. This is to implement the requirements of EU procurement law.

4. An EPS scheme may also include services that are not commercially viable but that the LTA subsidises because they are socially necessary. Transitional provisions are required to deal with changes to such contracts where they are required in order to implement an EPS scheme.
5. The policy intent of the regulations is to:
  - Ensure that there are practical and transparent arrangements for the transition from the current bus market to one that includes an EPS including where LTAs take on bus registration functions from a traffic commissioner.
  - That services to passengers are uninterrupted by the transition.
  - That EU procurement law is properly implemented.

#### Outline of proposed contents

*Set out further detail regarding how the bus registration system should implement the transition to an EPS*

6. All the requirements on operators under an EPS are imposed and enforced through the bus registration system. The regulations will set out how the transition of registration requirements from one organisation to another should be implemented to take account of obligations on operators as a result of an EPS, either (a) if the registration function stays with the traffic commissioner, or (b) if it moves to an LTA within the area of the EPS plan.
7. They will cover issues such as:

- What information, in what format an LTA implementing an EPS needs to provide to a traffic commissioner about the effect on existing bus services registered in the EPS area.
- The notice periods and other arrangements for the cancellation of existing service registrations which would not comply with the EPS requirements.
- Set out how appeals against decisions taken in the transitional period will be handled in practice.

*Set out the arrangements for ensuring the route-level requirements in an EPS scheme are achieved in practice.*

8. The regulations will set out the procedure to be followed if a route level requirement setting frequencies or timing of services cannot be met by those operating or wishing to operate a local service on that route. The Regulations will set out detailed requirements for how that mechanism will work, whilst ensuring that services to passengers remain uninterrupted.

*Set out arrangements for how LTA tendered bus services should deal with the transition to an EPS*

9. Most local authorities run some tendered bus services in areas where commercial buses services are not viable. The Regulations will deal with how those services should be amended, within a contracted environment, to comply with the requirements of an EPS scheme.

#### Approach to preparation

10. These regulations relate to the detailed application by LTAs and operators of the EPS provisions and we think it necessary to work closely with bus operators and local authorities to develop pragmatic and workable proposals.

#### Timing



11. Policy discussions with key stakeholders were started in June. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

### **13. Clause 9: Application of TUPE and pensions regulations to an EPS**

#### Relevant sections of the Bill

Bus Services Bill Clause 9

Transport Act 2000

- Section 138S(6) and (9)  
This will allow further provisions to be made with respect to TUPE where staff are transferred between operators as a result of an enhanced partnership scheme and provisions about the pension protection to be provided to employees of bus operators who transfer to a new employer under an enhanced partnership scheme.

#### Policy intent

1. The Bus Services Bill makes provision for a situation where, to comply with EU procurement law, provision of a bus service on a particular route in an EPS area needs to be subject to a competitive tendering regime. In an EPS area, this can only happen if:
  - (a) there is a route-level requirement – e.g. a frequency restriction (say, no more than five buses a hour); and
  - (b) the operators of services on the route or any operator wishing to run services on the route cannot reach voluntary agreement on a pattern of services to meet that requirement.

2. Under these conditions, any existing services on the route must be cancelled and their provision competitively tendered. In this eventuality, the Bill provides for TUPE provisions to apply.
3. The regulations will set out further detail regarding the application of TUPE in the enhanced partnership context, and further detail regarding the protection of employee's pension rights. The policy intent of the regulations is to allow further provisions to be made:
  - Determining whether a person's employment is principally connected with the provision of particular services;
  - Determining which operator employees should transfer to;
  - Requiring operators of local services to provide the authority with certain information in relation to their employees;
  - Requiring the authority to provide certain information to bus operators to enable them to comply with the requirements on them to supply information; and
  - Requiring the franchising authority to ensure that certain pension protection is secured for all employees transferring as a result of the enhanced partnership and defining that pension protection.
4. We intend to develop broadly similar regulations to those set out in: [The Quality Contracts Schemes \(Application of TUPE\) Regulations 2009](#) and [The Quality Contracts Schemes \(Pension Protection\) Regulations 2009](#).

#### Outline of proposed contents

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

5. S138S of clause 9 of the Bill provides for TUPE to apply where staff are transferred as a result of an enhanced partnership. Before TUPE can be applied, and staff transferred, the authority must first establish whether employees are

connected with the provision of services in the area, and should therefore transfer to a new employer.

6. The regulations will explain how an authority should determine whether a person is 'principally connected'. The regulations could either:
  - Set out a set proportion of a person's employment which must be connected with the provision of the relevant local services for them to be deemed 'principally connected' or;
  - Set out a consultation process which must be followed by the franchising authority, to allow the authority to agree, in consultation with bus operators and employee representatives, whether employees are 'principally connected'.

*Determining which operator employees should transfer to*

7. The regulations will explain how an authority should prepare the 'allocation arrangements' for staff that are transferred, which will set out which employees should transfer to each new employer.
8. The regulations will set out a consultation process which must be followed by the franchising, to allow the authority to determine and set out, in consultation with bus operators and employee representatives, which employees should be transferred to which employer.

*Requiring operators of local services to provide the authority with certain information in relation to their employees*

9. The regulations will 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. The regulation is likely set out the following categories of

information:

- Information about individual employees, such as particulars of employment, information about collective agreements; and
- Information about the identity of appropriate representatives of relevant employees.

10. The regulations will also set out the time periods within which operators must comply with these requests.

*Requiring the authority to provide certain information to bus operators to enable them to comply with the requirements on them to supply information*

11. The regulations will also set out the information that authorities must provide to operators to enable them to comply with employee-related information requests.

*Requiring the authority to ensure that certain pension protection is secured for all employees transferring as a result of franchising, and defining that pension protection*

12. The regulations will set out the duty on authorities to ensure that contracts made as a result of enhanced partnerships are made on terms which secure pension protection for all transferring employees, and that the pension protection is enforceable by the employee.

13. The regulations will also define the level of pension protection that must be provided. They will set out the need for authorities to ensure that transferring employees are provided with the same rights as they had previously, or are provided with rights which are ‘broadly comparable’.

14. The regulations will further define ‘broadly comparable’ and set out detail regarding the assurance processes to be undertaken.

Approach to preparation

15. As these regulations relate to the detailed application of particular aspects of the enhanced partnership policy by local authorities, and will have an impact on bus employees and bus operators, we think it necessary to work closely with local authority stakeholders, bus operators and Trade Unions to develop sensible proposals.

### Timing

16. Policy discussions with key stakeholders were started in June. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

## **14. Clause 10: Information operators must provide to a local transport authority**

### Relevant sections of the Bill

Bus Services Bill Clause 10

Transport Act 2000

- Section 143B(10)  
Regulations specifying 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

### Policy intent

1. The Bus Services Bill makes provision for a local transport authority (LTA) to prepare and make an Enhanced Partnership Plan and/or Scheme (EPS). The proposals in the Bill set out two principle mechanisms by which bus services in the geographical area of the EPS are considered and changed:

- (a) The plan is the high-level narrative that considers all the factors that affect bus services, both currently and over the lifetime of the EPS. In addition to the

obvious elements such as examining the current role that buses play in the area, it also looks more widely – for example, considering how spatial development in the area (new schools, housing or retail developments) might affect the role and provision of bus services.

(b) Every plan must have one or more schemes. These are the detailed proposals for how buses and/or their related infrastructure are changed ‘on the ground’. These could include everything from changes to individual bus services (frequency, timings etc.) to ticketing arrangements, bus priority measures and even issues that are not directly bus related, but nevertheless affect the use of buses, such as parking arrangement or traffic management plans.

2. The Bill places the responsibility on LTAs to develop Enhanced Partnership plans and schemes, working with bus operators. As the bus market outside London is deregulated, the local operators in the proposed EPS area will have most of the information about how passengers currently use bus services which may be needed to develop an effective scheme. This information will be necessary to inform the content of the plan and scheme and also to monitor the effectiveness of the EPS on the ground once it is in place.
3. The regulations will set out the detailed information that the LTA can request from local bus operators. The Bill provides that this information can only be sought for the specific purpose of making, reviewing or determining whether to vary an EPS. It also prevents an LTA from disclosing this information if it would fall within the exemptions of the Freedom of Information Act 2000 relating to personal information, information provided in confidence, legal professional privilege and/or commercial interests.
4. The policy intent of the regulations is to:
  - Ensure that the LTA has the necessary information from operators to inform the development of the plan and scheme(s).

- Ensure that the LTA has on-going access to the necessary information to monitor the effects of the EPS on the ground.
- Ensure that the LTA is properly informed about whether the EPS scheme(s) is working or whether individual elements of the plan and/or scheme(s) should be varied or revoked.
- Avoid placing excessive or unnecessary burdens on local bus operators.

### Outline of proposed contents

*Set out further detail regarding the information that an LTA can request from local bus operators when developing EPS proposals.*

5. The regulations will list the information that the LTA can require operators to provide in order to inform the policies and content of the EPS plan and scheme(s).

This is likely to include, for example:

- (a) available patronage information to enable the LTA to determine how passengers use the existing bus network and ticketing data; and/ or
- (b) ticketing information on the types of tickets that are popular with passengers – e.g. to inform an EPS mandated multi-operator ticketing scheme; and/or
- (c) evidence needed to evaluate the potential affordability, costs and benefits of particular requirements being considered for inclusion in an EPS.

*Set out further detail regarding the information that an LTA can request from local bus operators when an EPS has been implemented.*

6. The regulations will list the information or information streams that the LTA can require operators to provide in order to inform the LTA about whether the EPS scheme(s) is achieving its objectives and the objectives set out in the plan.

7. In principle, this data may be identical to the data used to develop the plan and schemes. However, it may also include data streams (such as punctuality information or passenger volumes) so that overall performance of the local bus market can be analysed over time.

#### Approach to preparation

8. These regulations relate to the detailed application by LTAs and operators of the EPS provisions and we think it necessary to work closely with bus operators and local authorities to develop pragmatic and workable proposals.

#### Timing

9. Policy discussions with key stakeholders were started in late May. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

### **15. Clauses 11 to 14: Registration of local services in an EPS area**

#### Relevant sections of the Bill

Bus Services Bill Clause 11

Transport Act 1985

- Section 6, insertion of new paragraph (ha) into section 6(9) as to variation or cancellation of the record of a requirement under section 138(A)(5)(6) of the Transport Act 2000 – registration of local services in an EP area

Bus Services Bill Clause 12

Transport Act 1985



- New section 6E(5)-(8) – cancellation of registration where an enhanced partnership scheme is in operation

#### Bus Services Bill Clause 13

##### Transport Act 1985

- New section 6F(4) – regulations specifying the manner in which appeals may be made and the procedure to be followed in connection with such appeals

#### Bus Services Bill Clause 14

##### Transport Act 1985

- New section 6G(9) – regulations to provide for registration functions to be delegated from the Traffic Commissioner to the LTA
- New section 6H(3) – regulations relating to the charging of registration fees where an enhanced partnership scheme is in operation

#### Bus Services Bill Clause 14

##### Transport Act 1985

- New section 6I(6) – regulations relating to the form of records and the particulars to be supplied to a traffic commissioner

#### Policy intent

1. The Bus Services Bill makes provision for the local transport authority (LTA) to become the registration authority in place of the traffic commissioners. Currently, a local bus service as defined in section 2 of the Transport Act 1985 must have its service particulars (e.g. route and timetable) registered with a traffic commissioner. Under the Bill, the traffic commissioner must take into account the requirements of an EPS when determining whether to register or vary a local service that is subject to EPS requirements. They gain the power to refuse or

cancel a registration that, in their opinion, is not or cannot comply with relevant EPS requirements.

2. However, the Bill also makes provision for the registration function to be delegated from the traffic commissioner to the LTA (or a “lead” LTA if there is more than one) who made the the EPS. If the LTA takes on this function, they will have the power to accept and record new service registrations, variations and cancellations as well as revoking registrations where the operator is not providing a service that is in line with the registration.
3. Where the traffic commissioner remains the registration authority, the Bill allows for their decisions in relation to EPS requirements to be appealed to the Upper Tribunal. Where the LTA takes over the registration function, the Bill makes provision for the traffic commissioner to become the appeal body for operators that do not agree with a decision made by the LTA.
4. Under current legislation the traffic commissioner can charge a fee to bus operators, set out in existing secondary legislation, for the registration and variation of a local bus service. The Bill makes provision for the LTA, if it takes on the registration function, to charge such a fee to operators instead of a traffic commissioner.
5. The regulations will set out the detailed issues, such as:
  - How the requirements of an EPS scheme are imposed on operators through the registration regime.
  - How the registration system deals with route-level requirements, where operators on those routes, or wishing to operate on those routes cannot voluntarily agree to comply with those requirements.
  - The detailed mechanics for operators to appeal to the traffic commissioner against a decision made by an LTA when acting as the registration authority.
  - How fees that can be charged to operators by the LTA when acting as the registration authority should be set.

- What information about local services that should be held by the LTA when acting as the registration authority.
- The information that should be provided to the traffic commissioner about the local services registered with an LTA.

6. The policy intent of the regulations is to:

- Ensure the system of local bus service registration properly implements the requirements of the EPS scheme(s).
- That information on local bus services is properly recorded by the LTA and shared with the traffic commissioners.
- That there is an accessible and transparent means of appeal against decisions made by an LTA that becomes a registration authority.
- That fees charged by LTAs when acting as registration authority are calculated on a fair and reasonable basis and reflect no more than the cost of providing the service.
- Ensure that services to passengers are not affected adversely as a result of the mechanisms set out in these regulations.

#### Outline of proposed contents

*Set out further detail regarding how the requirements set out in an EPS scheme(s) should be recorded with the particulars of individual service registrations, variations and cancellations.*

7. The regulations will set out detailed procedures on how local bus services that are subject to the requirements of an EPS scheme should have those requirements included amongst the registration particulars. This is important to ensure that those requirements can be properly enforced. This is a technical issue which will require close working with the Office of the Traffic Commissioners and with LTAs.

*Set out requirements about the information about local services that must be shared by the LTA with the traffic commissioner.*

8. The regulations will set out detailed requirements on the particulars of individual local bus services registrations that should be shared with the traffic commissioners when the LTA is acting as the registration authority. This is to ensure that the traffic commissioners – who remain the registration authority outside the EPS area - are aware of the services that operate within the EPS area, so that they have a complete picture. This is a technical issue which will require close working with the Office of the Traffic Commissioners and with LTAs.

*Set out the requirements where the registration authority must cancel services because operators cannot voluntarily comply with an EPS route-level restriction.*

9. The Bill provides a mechanism which ensures that EPS route requirements which limit the frequency or timing of services do not result in incumbent operators necessarily holding all of the available “slots”. Instead there will be ongoing competition in, or for, the local bus market and The Bill requires that where registrations for bus services are not compliant – across operators – notice to cancel all of the affected registrations is given by the LTA and/or traffic commissioner. These regulations will set out how this works in practice.

10. We intend to use this power to:

- Require that the intended cancellation of registrations is stopped if – within a prescribed timescale - operators amend their registrations so that in totality they comply with the EPS route requirements. The revised registrations may reflect a voluntary agreement between operators which has been certified by the LTA in accordance with section 153 of the Transport Act 2000.
- Provide the detailed mechanisms required for the LTA to award contracts for the provision of services to replace services which are cancelled because operators cannot voluntarily agree to comply with a route-level

requirement. This will allow the LTA to operate a “slot-allocation” system by way of contracts.

- Ensure that services to passengers are not interrupted as a result of this mechanism during the transition to any contracts awarded by the LTA.

*Set out detailed mechanisms for operators to appeal to the traffic commissioner against a decision made by an LTA when acting as registration authority.*

11. The regulations will set out detailed requirements on how and in what time frame operators can appeal to the traffic commissioner. This is likely to include the required format, information and evidence (where available) that should be provided in connection with the appeal, as well as timescales and how traffic commissioners would conduct proceedings.

*Set out the rules and mechanics for LTAs to calculate the fees they charge for carrying out their functions as registration authority.*

12. The LTA will be able to charge a fee to operators wishing to register, vary or cancel a local bus service registration. Our intention is that the fee should reflect the costs of the LTA in providing the registration service. It would not cover the wider work of the Enhanced Partnership or any enforcement-related costs. The regulations will set out the particular types of costs that can be taken into account in setting the fee level and the mechanisms that must be applied when calculating the fees that an authority can charge.

#### Approach to preparation

13. These regulations relate to the detailed application by LTAs and operators of the EPS provisions and we think it necessary to work closely with bus operators, local authorities and the traffic commissioners to develop pragmatic and workable proposals.

#### Timing

14. Policy discussions with key stakeholders were started in June. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

## **16. Clause 17: Information provision: route, timetable, fares, tickets – Affirmative**

### Relevant sections of the Bill

Bus Services Bill Clause 17

Transport Act 2000

- Section 141A(1) – power to require provision of information about English bus services

### Policy intent

1. The Bus Services Bill makes provision for the Secretary of State to make regulations applicable in England requiring operators of local bus services and the local transport authority for franchising authorities to provide information about routes, timetables, fares, tickets and the operation of services (i.e. punctuality of services).
2. The regulations will set out the detailed issues, such as the specific information required, to whom it is to be provided, the manner and form in which it is to be provided, when it is to be provided, and use and disclosure of the information.
3. The policy intention is to make it easier for passengers to access information about bus routes, timetables, fares, tickets and punctuality, enabling them to make more informed travel choices. Route and timetable information is already available to passengers, but the data is largely based on information obtained from paper-based bus registration applications which do not provide timetable information for all stops. Availability of fares information is much more limited and is often difficult to locate, and the availability of real time information is also more limited. Where applications for mobile devices have been developed they

tend to be specific to a local transport authority area or a particular bus operator.

4. A comprehensive open data set for the bus industry which includes accurate information about routes, fares and timings will allow application developers to innovate and develop products that passengers want. The benefits this can offer are evident from the range of services available to public transport users in London. The requirements set down in the regulations should lead to the sort of bus information that passengers have come to expect in London being available across England.

#### Outline of proposed regulations

5. The regulations will prescribe the information to be provided in relation to:
  - routes and timetables - taking into account existing bus registration requirements;
  - fares and tickets - for example day/week tickets available); and
  - punctuality - with the focus being on the provision of real-time information.
6. The existing procedural requirements for the provision of information on route and timetables will be streamlined so that an operator need only provide the information once. Local authorities will no longer have to re-input the information as they do now to produce the national data set.
7. Information on fares and ticketing is very complex with operators having a large variety of fares and the Government intends to work with the industry to determine how this can be effectively achieved in a way that gives passengers access to information that enables them to make informed choices. Similarly, real-time information provision is also complex and not all vehicles are currently fitted with the equipment necessary to generate the required data, so consideration will need to be given to how complete coverage can be achieved and by when. In each case we will be looking to develop solutions that deliver the information passengers want, with the minimum burden on industry.

8. The regulations will set out that the information collected will be “open data”, so that anyone is free to use it subject, at most, to measures that preserve provenance of the information and its integrity. This will enable those registering services, the Traffic Commissioners, local transport authorities, providers of travel information and DfT when administering Bus Service Operators Grant claims to have access to the information. The expectation is that third parties will use the information to develop journey planning websites and applications for smartphones.

#### Approach towards implementation

9. To ensure that the data provision requirements in the regulations do deliver the sort of bus information passengers want we need to put in place structures to support operators and local authorities in providing the data. The intention is for there to be a “data hub” which builds, where possible, on existing bus registration and route and timetable journey planning processes. To facilitate the open data work, we are looking to fully digitalise the registration process for bus services (currently 75% of registration applications are paper based). We also need to ensure a system is in place for receiving fares, ticketing and real-time punctuality data.
10. We envisage that these requirements will be phased in with the regulation on route and timetable being in place in the autumn 2017, and regulations on fares, ticketing and punctuality data being added in stages by 2020. This transitional approach should make the process of releasing data easier for operators to manage. We recognise that any move to digital open data will need to take into account the needs of smaller operators who may find it less easy to participate. So we need to work closely with industry to develop workable solutions.

#### Timings

11. Policy discussions with key stakeholders were started in June 2016. Draft regulations will be available for consultation in January 2017, with the regulations coming into force in the autumn 2017.



## **17. Clause 18: Information provision: cancelled or varied services**

### Relevant sections of the Bill

Bus Services Bill Clause 18

Transport Act 1985

- Section 6C – this will allow 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

### Policy intent

1. The Bus Services Bill makes provision for the Secretary of State to make regulations requiring an operator to provide, at the request of the local transport authority, information on the patronage and revenue of the service that the operator is proposing to cancel or vary. The regulations will specify what information is to be provided and when, the use and disclosure of information so supplied, and enable Traffic Commissioner to reject applications to cancel or vary a service if information required under this section is not provided.
2. This clause gives effect to a recommendation made by the Competition Commission (now Competition and Markets Authority) following its investigation in 2011 of the local bus services market. One of the remedies proposed by the Competition Commission concerning supported local bus services was that the Secretary of State should give local transport authorities powers to obtain information about revenue and patronage of deregistered services, and the right to disclose this to potential bidders for subsequent tenders. This was in order to prevent incumbent operators of commercial services having an unfair information advantage when tendering for newly supported services. The information would also enable the local transport authority to make a more informed decision as to whether to tender the service in the first place.
3. Section 6C will also give effect to the Competition Commission's recommendation that operators failing to provide information requested about a

service under these provisions should have any request to deregister that service rejected.

#### Outline of proposed contents

4. Whilst the Competition Commission remedy set out the high level principles there is a lot of complex detail that needs to be worked through with industry to ensure that the remedy works in practice. The regulations will prescribe details about the information that has to be provided and when.
5. The Competition Commission recommended that the remedy would apply to any situation in which a reduction in the provision of commercial services might reasonably be expected to give rise to a tender for supported services. They expected this to be the case where a service is withdrawn in its entirety or no longer serves particular stops, or no longer stops at particular times of the day or week (e.g. a withdrawal of evening and/or weekend services). However, they judged it unlikely that a requirement to issue a new tender would arise from service enhancements or minor changes to service timing or frequency. This detail needs to be discussed with industry.
6. Similarly, whilst the Competition Commission concluded that revenue and patronage data should be provided for each of the 12 months prior to deregistration, a lot of the details need to be resolved about how that is to be achieved. For example, some of the issues to be considered include whether the information requested should include the number of passengers boarding at particular stops, the number of passengers paying a particular fare, the number of passengers boarding during particular hours of the day and whether the requirements should be different for small operators.
7. The regulations will set out the circumstances when the information will be disclosed, as the Competition Commission recognised this would not be appropriate where the local transport authority takes the revenue risk on a contract (i.e. where they have the risk of collecting and retaining fare revenue). The

regulations will also set out the circumstances when an application to vary or cancel a service will be refused. We will be considering with stakeholders whether there are other ways of ensuring action can be taken against operators who do not provide the required information, instead of an application being refused if the information is not provided.

#### Approach to preparation

8. We are in the process of working with stakeholders to begin to flesh out some of the detail before formal consultation begins. We need to ensure that local transport authorities are provided with an appropriate level of detail to ensure that the incumbent operator does not have an advantage in any tender exercise and to assist the local transport authority in determining whether to tender the service in the first place. At the same time we need to be mindful of the burdens on business, particularly small businesses, and issues around the disclosure of revenue information that may be commercially sensitive.
9. We also need to ensure that information is received by the local transport authority at the right time in their decision making process. To this end we are considering whether we need to implement another of the Competition Commission's recommendations for a 14 day pre-notification period in relation to any application to register, vary or cancel a local bus service, so that information is provided in that period.

#### Timing

10. Policy discussions with key stakeholders were started in June 2016. Draft regulations will be available for consultation in October 2016, with the regulations coming into force in spring 2017.

### **18. Clause 20: Retention of fees for carrying out Traffic Commissioners' functions**

#### Relevant sections of the Bill

## Bus Services Bill Clause 20

### Transport Act 1985

- Section 6J – this will allow regulations to be made regarding the fees that an authorised person carrying out certain functions of a Traffic Commissioner can charge and retain for performing those functions

### Policy intent

1. Existing legislation provides that a local bus service has to be registered with a Traffic Commissioner and the operator is required to pay a fee for that service. Sections 69 and 74 of the Deregulation and Contracting Out Act 1994 provide that Traffic Commissioners may delegate their functions to other persons. However, other provisions in the Public Passenger Vehicles Act 1981 that relate to the payment of fees for local bus services ensure that any fee collected by Traffic Commissioners, or the persons they have delegated their functions to, has to be paid into the consolidated fund and cannot be retained unless this is specifically provided for in legislation.
2. The Bus Services Bill makes provision for the Secretary of State to make regulations enabling an “authorised person” who is delegated to take on the registration functions of the Traffic Commissioner (under the Deregulation and Contracting Out Act 1994) to charge a fee for the registration, variation or cancellation of a local bus service.
3. The regulations may specify the fees chargeable or make provision about the setting of fees by the “authorised person” including determining the amount of such fees. The regulations may make provision about who must pay the fees and at what time and whether they can be paid in instalments.
4. The administrative functions of Traffic Commissioners are currently undertaken, under delegated authority, by staff employed by the Driver and Vehicle Standards

Agency (DVSA). The policy intention in making regulations under section 6J is to ensure that if it became clear that it is untenable for DVSA to continue administering bus registration functions on behalf of Traffic Commissioners, because large numbers of local transport authorities had started using the new franchising and enhanced partnership powers, it would be possible for these functions to be delegated to an “authorised person” through an order under section 69 of the Deregulation and Contracting Out Act 1994. As the “authorised person” would not be part of central government, the regulations would enable any fee collected by the “authorised person” to be retained and not paid into the “consolidated fund”. So for example, if this role was delegated to local transport authorities such local authorities would be able to retain the fee.

#### Outline of proposed contents

5. The regulation making powers reflect the powers already available to the Traffic Commissioners in terms of fees for the registration, variation and cancellation of services. Any future regulations would allow or require the authorised person to charge fees in respect to the registration, variation and cancellation of local bus services. The regulations will set the fee levels or how the authorised person must determine fees. The regulations will make provision about who must pay the fees, at what time, whether they can be paid in instalments and enable the authorised person to decline to proceed with the application until the fee or instalment is paid.

#### Approach to preparation

6. Regulations would only be brought forward if it became clear that it is untenable for DVSA to continue administering bus registration under delegated authority from the Traffic Commissioner.

#### Timing

7. As set out above, these regulations will only be brought forward at such a time that the Secretary of State makes an order to delegate the Traffic Commissioner function in administering bus registrations to an authorised person that is not part of central Government. Consultation on the content of the regulations will take place when it is clear that they are needed.

## **19. Clause 22: Consequential amendments – Affirmative**

### Relevant sections of the Bill

Bus Services Bill Clause 22

- Subsection (1) – power to make consequential amendments of enactments by statutory instrument

### Policy intent

1. The legislative framework for the bus market is very complex. There are a number of Acts that the Bill is amending (including the Transport Act 2000, the Transport Act 1985 and the Road Traffic Regulation Act 1984). We have identified all the changes to primary legislation that we believe are necessary to make the legislation work and have included them in the Bill. However, given the complexity of the existing legislation, there is a possibility that something important has been missed.
2. Clause 22(1) confers a power on the Secretary of State to make regulations that are consequential to any provision made by or under this Bill. Subsection (2) provides that this power to make regulations may be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an Act passed before this Bill or in the same Session.
3. We understand the importance of proper Parliamentary scrutiny and we are proposing that any regulations made by the Secretary of State under this clause that amend or repeal primary legislation must be laid before and approved by a resolution of each House of Parliament. This follows the general principle that

changes made to primary legislation by secondary legislation should be subject to the affirmative procedure, in order to provide an appropriate degree of Parliamentary scrutiny.

The policy intention is to use this regulation solely for the purposes of picking up any consequential amendments which have been missed from the Bill itself.

#### Outline of proposed contents

4. We have not currently identified any consequential amendments which are not dealt with by the Bill itself.
5. This regulation will only be used if further consequential amendments are required.

#### Approach to preparation

6. The policy team will consider whether any additional consequential amendments are required.

#### Timing

7. The policy team will continue to consider whether additional consequential amendments are required as the Bill is scrutinised by Parliament, and will prepare regulations if required.

### **20. Clause 23: Transitional, transitory or saving provisions**

#### Relevant sections of the Bill

##### Bus Services Bill Clause 23

- Subsection (1) – power to make Transitional, transitory or saving provision in connection with the coming into force of any provision of the Act – the regulations may in particular make provisions about ticketing schemes under section 135 of the Transport Act 2000

### Policy intent

8. The Bus Services Bill sets out a number of new approaches to the delivery of local bus services, and as such it may be necessary to make additional provisions to set out how existing arrangements, including ticketing schemes, partnerships, should be accommodated once the Bill comes into force.
9. This will be particularly important to English local authorities that may have set up a ticketing scheme under section 135 of the Transport Act 2000 which wish to develop an advanced ticketing scheme under clause 7 of the Bill.
10. These regulation making powers will only be used to ensure that any transition process for the provision of local bus services from the current legislation to new legislation that is proposed in this Bill is smooth and effective.

### Outline of proposed contents

*Set out further detail regarding transition from a ticketing scheme under section 135 of the Transport Act 2000 to an advanced ticketing scheme*

11. The regulations will set out further detailed transitional provisions to assist local authorities who have established a ticketing scheme under section 135 of the Transport Act 2000 to transition to an advanced ticketing scheme.

*Set out other transitional provisions*

12. The regulations will also set out any other transitional provisions that may be required. This is likely to include further details to ensure local authorities who have existing Quality Partnership schemes can effectively transition to new Advanced Quality Partnership schemes.

### Approach to preparation



13. As these regulations relate to the transition of local authority schemes, and will have an impact on bus operators, we think it necessary to work closely with both local authority stakeholders and bus operators to develop sensible proposals.

#### Timing

14. Policy discussions with key stakeholders were started in May. Draft regulations will be available for consultation in October, with the regulations coming into force in spring 2017.

# ANNEX 1: Draft regulations for Advanced Quality Partnership Schemes

## Section 113K(1)

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DRAFT STATUTORY INSTRUMENTS

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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(1), 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.

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(1) 2008 c. 38.

### Specification of existing facilities

3.—(1) An existing facility may not be specified in a scheme if that facility was first provided before the beginning of a period of twenty years ending on the date on which notice is given under section 113G(1) of the Act. 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) 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(2) must be made in writing and served on—
- (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(2) 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 or 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.

Signatory text

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department

### EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations make provision for existing facilities to form part of an advanced quality partnership scheme. Quality partnership schemes are introduced by Part II of the Transport Act 2000.

Regulation 3 provides that existing facilities may not form part of an advanced quality partnership scheme where they were first provided more than 20 years before notice of the proposed scheme is given. However, where an existing facility was provided more than 5 years but less than 20 years before notice of the proposed scheme is given, it may form part of an advanced quality partnership scheme providing no objection is made and not withdrawn by any person relying upon that facility in the provision of local services.

Regulation 4 provides that any objection given pursuant to Regulation 2 must be in writing, and be served on the appropriate authority.

Regulation 5 provides that an authority must, in the course of consultation in respect of a proposed scheme, specify the date on which it believes each relevant existing facility was first provided. Where more than one authority proposes to make the scheme, the authority in whose area the existing facility is situated is responsible for making the statement. The authority must also specify the date by which any objection should be made. The authority must give at least 42 days within which to make any objection.

**Section 113N(1)**

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DRAFT STATUTORY INSTRUMENTS

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**2017 No. xxxx**

**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 (2) makes the following Regulations.

**PART 1**

**General**

**Citation, commencement, extent and application**

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

(2) These Regulations come into force on xxxx.

(3) These Regulations extend to England and Wales

(4) These Regulations apply in England only.

**Interpretation**

**2.**—(1) In these Regulations—

“the Act” means the Transport Act 2000;

“the 1981 Act” means the Public Passenger Vehicles Act 1981;

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(2) 2000 c. 38

“the 1985 Act” means the Transport Act 1985;

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

“authority” means a local transport authority;

“lead authority” means—

- (a) the authority which has made, or is proposing to make, a scheme; or
- (b) where regulation 2 applies, the authority named as the lead authority in the notice of a proposed scheme given under section 113G(1) of the Act;

“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.

(2) 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.

(3) 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 regards to the typical rates of return for operating local services of a comparable nature elsewhere in England.

### **Identification of lead authority**

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

- (a) the frequency or timing of services,
- (b) the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, or
- (c) 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.

(2) 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.

(3) 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—

- (a) consult and seek representations from, and
- (b) 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.

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

**4.—**(1) 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).

(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.

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

(4) For the purposes of this regulation—

- (a) a “service subsidy agreement” means an agreement made under section 9A(4) of the Transport Act 1968 or section 63(5) of the 1985 Act; and
- (b) 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 of timing of services, or as to the maximum fares that may be charged for particular journeys, or for journeys of a particular description.

## PART 2

### Determination of Relevant Operator and Admissible Objection

#### **Definition of “relevant operator”**

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

(2) 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—

- (a) is operating one or more local services in accordance with the particulars registered under section 6 of the 1985 Act, or
- (b) 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.

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

- (a) 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
- (b) 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.

(4) 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.

#### **Definition of “relevant operator” following modification of proposed scheme**

**6.**—(1) 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).

(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.

(3) 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.

(4) 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.

#### **Definition of “admissible objection”**

7.—(1) 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.

(2) An “admissible objection” is an objection—

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

(3) The grounds are that—

- (a) 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
- (b) taking into account the matters listed in paragraph (5), it would not be commercial 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.

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

- (a) 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
- (b) 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.

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

- (a) 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;
- (b) 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 —
  - (i) provision of facilities by the authority
  - (ii) measures taken, or to be taken, by the authority, and
  - (iii) improvements to the standards of services,

if the scheme as proposed in the notice given under section 113G(1) of the Act were to be made; and

- (c) 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.

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

- (a) 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
- (b) 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.

(7) 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—

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

(8) 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.

#### **Procedure for making an objection**

**8.—**(1) 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.

(2) 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.

(3) An objection made under paragraph (1) must contain—

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

#### **Request for further information by lead authority**

**9.—**(1) 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.

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

(3) 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—

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



(4) 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.

### **Decision of lead authority**

**10.**—(1) 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—

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

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

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

(3) Where the decision of the lead authority is that—

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

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

(4) The requirement is that the written notice must either—

- (a) 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
- (b) describe when and in what manner the lead authority will issue a supplementary notice to inform the objector of the proposed modifications.

(5) 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.

### **Referral to a traffic commissioner**

**11.**—(1) 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.

(2) The matters are—

- (a) 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 admission objection; or
- (b) 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).

(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—

- (a) a copy of the objection as submitted to the lead authority;
- (b) a copy of any further information or evidence submitted to the lead authority in response to any request under regulation 9(1);
- (c) 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
- (d) 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.

(4) 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.

### **Provision of information to traffic commissioner**

**12.**—(1) 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 in which the information provided by virtue of regulation 11(4) is received, submit to the traffic commissioner—

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

(2) 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).

(3) 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.

(4) 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 considered necessary in order to make a determination.

(5) 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 4 days beginning with the day in which the request is received.

(6) 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.

(7) 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.

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

### **Assessors to assist traffic commissioners**

**13.**—(1) 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.

(2) 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 (assessors to assist traffic commissioners).

(3) 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.

### **Determination of a traffic commissioner**

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

- (a) the end of the period for submission of the material described in regulation 12(1)(a) and (b), or
- (b) 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.

(2) 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.

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

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

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

(4) Where either—

- (a) the traffic commissioner does not make recommendations to the lead authority in relation to a determination described in paragraph (2), or
- (b) 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.

(5) 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).

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

(7) 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.

(8) 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.

(9) 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 114(6B) of the Act.

### **Extension of time**

**15.**—(1) 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).

(2) 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.

(3) The periods are those specified in—

- (a) regulation 11(1);
- (b) regulation 12(1);

- (c) regulation 12(4);
- (d) regulation 12(5);
- (e) regulation 14(1); and
- (f) regulation 14(8).

## PART 3

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

#### 16. Interpretation of Part 3

For the purposes of this part—

- (a) A review is “completed” on the latest of the following dates—
  - (i) 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,
  - (ii) 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
  - (iii) 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;
- (b) 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;
- (c) “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—
  - (i) which have one or more stopping places in the area to which the scheme relates; and
  - (ii) 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;
- (d) “maximum fares requirement period” has the meaning given in regulation 17(2);
- (e) “participating operator” means, in relation to a particular scheme, an operator—
  - (i) who has given a written undertaking to a traffic commissioner in accordance with section 113J(4) or (5) of the Act in respect of that scheme; and
  - (ii) who is, at the relevant time, operating local services in accordance with the terms of that undertaking;
- (f) “relevant date”, in relation to a requirement as to frequencies, timings, maximum fares, or ways in which passengers may pay for journeys means either—
  - (i) 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
  - (ii) where there has been a previous review of that requirement or formula, the date on which that review was completed;

- (g) “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
- (h) “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.

**Review of requirements as to maximum fares by lead authority**

17.—(1) 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).

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

- (a) 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
- (b) 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.

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

(4) 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.

(5) The review notice must propose —

- (a) 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;
- (b) 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
- (c) revised requirements as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.

(6) 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).

(7) 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).

(8) 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.

(9) The conditions are that—

- (a) 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

- (b) 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.

#### **Failure of lead authority to review requirements as to maximum fares**

**18.**—(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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—

- (a) revised requirements come into effect following a subsequent review, or
- (b) the requirements cease to have effect following a subsequent review,

whichever is earlier.

#### **Request for review of requirements as to maximum fares by operator**

**19.**—(1) 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—

- (a) three or more relevant participating operators, or
- (b) at least 50% of relevant participating operators,

(whichever is the lesser).

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

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

(3) 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.

#### **Review of formula for varying maximum fares by lead authority**

**20.**—(1) 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.

(2) 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).

(3) The conditions are that—

- (a) 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
- (b) 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.

(4) The review notice must propose—

- (a) 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;
- (b) one or more revisions to the formula referred to in paragraph (1); or
- (c) replacing the formula with specified maximum fares that may be charged for particular journeys, or for journeys of particular descriptions.

#### **Request for review of formula varying maximum fares by operators**

**21.**—(1) 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—

- (a) three or more relevant participating operators, or
- (b) at least 50% of relevant participating operators,

(whichever is the lesser).

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

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

(3) 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.

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

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

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

**22.**—(1) 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 they consider 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.

(2) The conditions are that—

- (a) 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
  - (b) 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.
- (3) The review notice must propose either—
- (a) 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
  - (b) that those requirements should be revised.

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

**23.**—(1) 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—

- (a) three or more relevant participating operators, or
- (b) at least 50% of relevant participating operators,

(whichever is the lesser).

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

- (a) 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;
- (b) submit representations and evidence in support of the request; and
- (c) propose revised requirements as to frequencies and timings or the ways in which passengers may pay for journeys.

(3) 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.

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

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

**Procedure for reviews**

**24.**—(1) 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—

- (a) not less than 28 days, and
- (b) not more than 42 day,

after the date on which the review notice is issued.

(2) 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, or the ways in which passengers may pay for journeys, as the case may be, the formula used to vary maximum fares, should—

- (a) continue to have effect until the next review,
- (b) cease to have effect, or



(c) be revised.

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

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

(5) 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—

- (a) set out the details of the proposed revisions; and
- (b) subject to paragraph (6), set out the timetable for the proposed implementation of the revisions.

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

- (a) 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;
- (b) 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;
- (c) 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
- (d) 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.

### **Objections to the outcome of a review**

**25.**—(1) 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.

(2) 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).

Signatory text

Address  
Date

*Name*  
Parliamentary Under Secretary of State  
Department

## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations make provision about advanced quality partnership schemes which include requirements as to frequencies, timings, maximum fares and the ways in which passengers may pay for journeys as a standard of services. An advanced quality partnership scheme is a scheme made by a local transport authority, or two or more local transport authorities, under which the authority provides particular general measures relating to local services or facilities at specific locations along the routes used by local bus services, and operators of local services who wish to use those facilities agree to provide services of a particular standard. Advanced quality partnership schemes are made under Part 2 of the Transport Act 2000, as amended by the Bus Services Act 2017.

*Part 1* of the Regulations contains general provisions. *Regulation 3* specifies that, where a scheme is to be made jointly by two or more authorities, one of those authorities must be identified as the lead authority for the purposes of these Regulations. This regulation also imposes obligations on a lead authority to consult and, where appropriate, act in accordance with the representations of the other authorities with whom the scheme is made. *Regulation 4* specifies that where a local bus service is operated under subsidy from the authority, and the effect of the subsidy agreement is that the service is provided to a standard proposed to be specified in a scheme, operators cannot object to the inclusion of that standard in the scheme.

*Part 2* of the Regulations defines, for the purposes of sections 113E(7) and (8) and 1113N (4)(d) and (5)(b) of the Transport Act 2000, the terms “admissible objection” and “relevant operator”. It also prescribes the procedure to be followed by an operator who wishes to object to the inclusion of requirements as to frequencies, timings, maximum fares and the ways in which passengers may pay for journeys in a scheme. To be admissible an objection must be submitted by a relevant operator in accordance with the prescribed procedure, and must satisfy either or both of the grounds specified in *regulation 7(3)*. These are that it would either not be practicable, or it would not be commercially viable, for an operator to provide services to the standard specified. An objection must be submitted to the lead authority for a decision and, if the objector is unhappy with that decision, the matter may be referred to the traffic commissioner for a determination.

*Part 3* of the Regulations prescribes the procedure under which requirements as to frequencies, timings, maximum fares and the ways in which passengers may pay for journeys may be reviewed. Where a scheme contains requirements as to maximum fares, these must be reviewed at least every 12 months. No maximum period between reviews is prescribed for requirements as to frequencies and timings or the ways in which passengers may pay for journeys and it is for authorities to decide when they should take place. Where a prescribed number of operators request a review of the requirements which apply to them, the authority is generally under an obligation to carry out such a review. This obligation does not apply where it is less than 12 months since the previous review of those requirements, unless there has been a change in market conditions which materially affects the ability of the operator to secure an appropriate rate of return from operating the existing services. Following a review, operators may object to the outcome of that review, following the procedures in Part 2 of these Regulations.