Bus Services Act 2017: Response to the Consultation on Draft Regulations and Guidance

Moving Britain Ahead

September 2017

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1. Introduction

1.1. From 8 February 2017 to 21 March 2017, the Department ran a consultation on key regulations and guidance associated with the Bus Services Act (the Act). The consultation document is available at:

https://www.gov.uk/government/consultations/bus-services-bill-draft-regulations-and-guidance

1.2. The consultation document was presented in two parts. Part A included nine key regulations relating to:

- Advanced Quality Partnership Schemes;
- Service permits and transitional provisions for franchising ;
- TUPE, pensions and information from operators, in relation to franchising and enhanced partnership schemes;
- The operator objection mechanism for enhanced partnerships; and
- Information on varied or cancelled services.

1.3. Part B contained key pieces of guidance that are likely to be of most use to anyone considering a franchising or an enhanced partnership scheme.

1.4. The Department also held three briefing sessions on the draft regulations and guidance, one on 24 February 2017 and two on 3 March 2017. The briefing sessions were designed to give local authorities, bus operators and other interested stakeholders an opportunity to ask questions and learn more about the consultation, before submitting a formal response. The sessions were attended by over 80 stakeholders representing 65 organisations.

1.5. A total of 74 substantive responses were received. The respondents included:

- 65 from organisations including:
  - 31 from local authorities and representative organisations
  - 17 from bus operators and representative organisations
  - 5 from organisations representing passengers
  - 3 from trade unions
  - 3 from organisations representing National Parks
  - 8 from other organisations
- 9 from individuals.

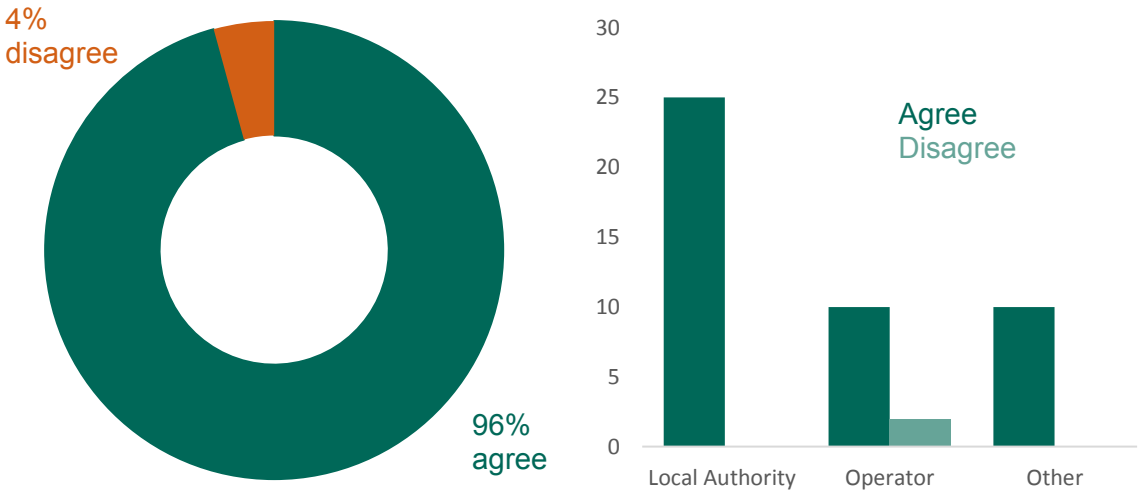
1.6. The response to the consultation is structured according to the questions asked, with a summary of responses given, followed by a statement setting out the Department's proposed next steps.

2. Advanced Quality Partnership Schemes

The Bus Services Act 2017 replaces the existing Quality Partnership Scheme arrangements in England with new Advanced Quality Partnership Scheme (AQPS) provisions. The regulations set out the processes by which bus operators can object to elements of an authority's proposals for an AQPS and place some limitations on the facilities that an authority can provide as part of the scheme.

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

2.1. We received 48 responses to this question, with 96% of respondents agreeing with the proposals. Both respondents who disagreed were operators or operator representatives.



2.2. Most respondents accepted the need to replicate the existing regulations because of the similarities with existing legislation which is seen to work well.

2.3. In addition, a minority said that community transport operators should be included in the admissible objections[a] mechanism, and that specific provisions relating to traffic flows and congestion should be included.

2.4. One respondent thought that these changes reduced burdens on local authorities but increased the requirements that could be imposed on operators. Another respondent questioned whether the standard 12 week formal consultation period was required in all circumstances if the scheme is subject to only 'minor' variations.

Government response

2.5. The AQPS provisions in the Act are intended to build on the existing partnership legislation by providing further flexibility to enable local authorities to tailor

[a] This allows operators to object to the inclusion of certain requirements in the scheme – for example maximum fares. If the operator is unhappy with the decision by local transport authority in response to the objection, there is a right of appeal to the Traffic Commissioner.

schemes more closely to the needs of bus passengers. For this reason, the draft regulations were intended to follow closely the existing QPS regulations. The majority of responses acknowledged that the combination of QPS primary and secondary legislation had worked well and resulted in real improvements to bus services, and as such, we do not wish to introduce new provisions to these regulations that might reduce the effectiveness of such schemes.

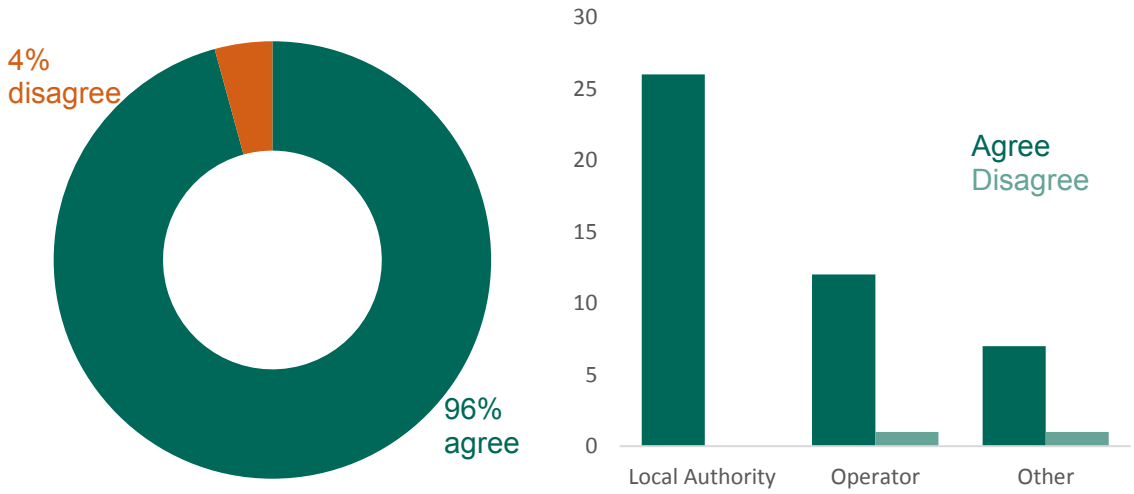
2.6. Some respondents suggested changes to the regulations that cannot be dealt with in secondary legislation – for example, extending the admissible objections mechanism and introducing specific outcomes around traffic flow and congestion. These are out of the scope of this regulation. As the AQPS provisions apply only to registered local services, only community transport services operated under section 22 of the Transport Act 1985 can be included in an AQPS. However, there is nothing to prevent authorities from discussing proposals with relevant community transport operators, and we will reflect this in guidance.

2.7. Finally, we are not convinced of the need to reduce the consultation period.

2.8. The Department does not propose to make any changes to the Advanced Quality Partnership Schemes (England) Regulations.

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

2.9. We received 48 responses to this question. 96% of respondents agreed with the proposals.



2.10. In addition, a minority said that operator consent to include facilities that are more than 5 years old was unnecessary and that they should be included if they are in good working order or that the 5 year period should be extended.

2.11. Others commented that the Act should require facilities to be 'fit for purpose' or meet quality standards, and that an operator's own facilities should be included in the scope of an AQPS. Another suggested that, instead of formally objecting, operators should only be able to request a justification for inclusion of older facilities from the authority.

Government response

2.12. The purpose of this change was to remove the upper limit that exists in the current regulations requiring facilities included as part of a Quality Partnership to be no more than 20 years old.

2.13. Many responses pointed out that older, existing facilities can still be fit for purpose – especially if they have been refurbished – and continue to deliver benefits for passengers, in some cases in prime locations. The fact that operators can object in individual cases was seen as proportionate and we also believe this strikes the right balance between authorities wishing to include facilities as amongst 'their part of the bargain' and ensuring that these facilities offer a fair contribution to the overall AQPS package.

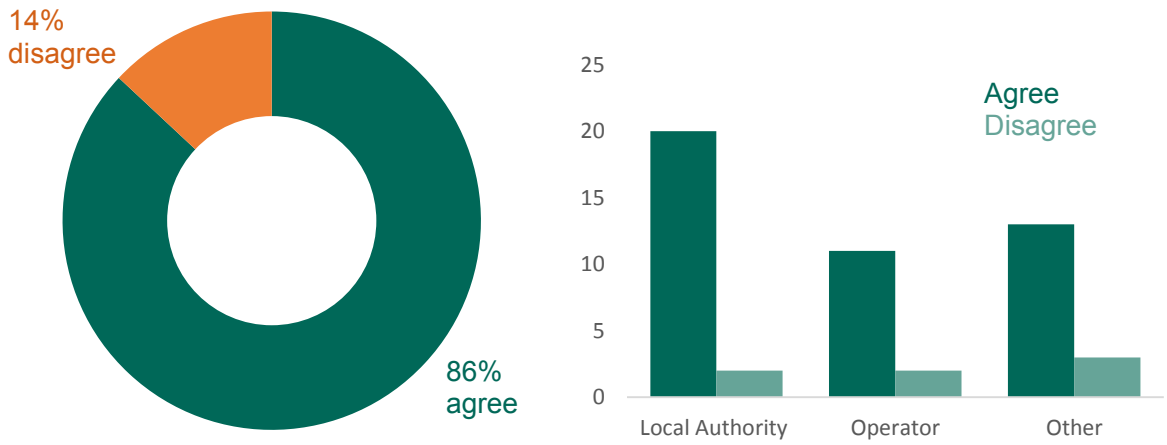
2.14. The Department will proceed with the proposals in the Advanced Quality Partnership Schemes (Existing Facilities) (England) Regulations to remove the upper age limit on facilities.

3. Franchising: Service permits

The Act makes provision for bus operators to provide local bus services in franchised areas under service permits. Service permits can be used to enable operators to run services that cross the boundary of the franchising scheme area, and can also be used to enable operators to provide services which complement the franchised network of services, where there is a gap in service provision. The regulations set out further details regarding the service permit provisions.

Question 3 - Do you agree with the procedure that authorities must follow before they can start to accept applications for service permits? Please explain your reasons.

3.1. We received 51 responses to this question. Overall, 86% of respondents agreed with the procedure outlined in the draft regulations.



3.2. Although there was broad agreement expressed for the procedures set out in the draft regulations, respondents did raise a number of issues. Several respondents suggested that local authorities needed more flexibility than is offered in the draft regulations to amend and update their service permit schemes, with concerns expressed that the need to consult on changes would be cumbersome in reality.

3.3. In addition, concerns were raised regarding the fees that could be charged by authorities for issuing permits, and that the approach taken in the draft regulations gave authorities too much leeway to charge high rates for such permits. Further points were made about the need for authorities and operators to have the flexibility to work together to agree permits at short notice to deal with unforeseen circumstances.

Government response

3.4. We want to ensure that authorities set out the details of their service permits schemes openly and transparently, and consult all relevant parties. We recognise that this may be time-consuming for the franchising authority, but consider that it is necessary to ensure that all parties, in particular bus operators

that will be affected, are aware of what is involved in both applying for a service permit and operating a service under a permit.

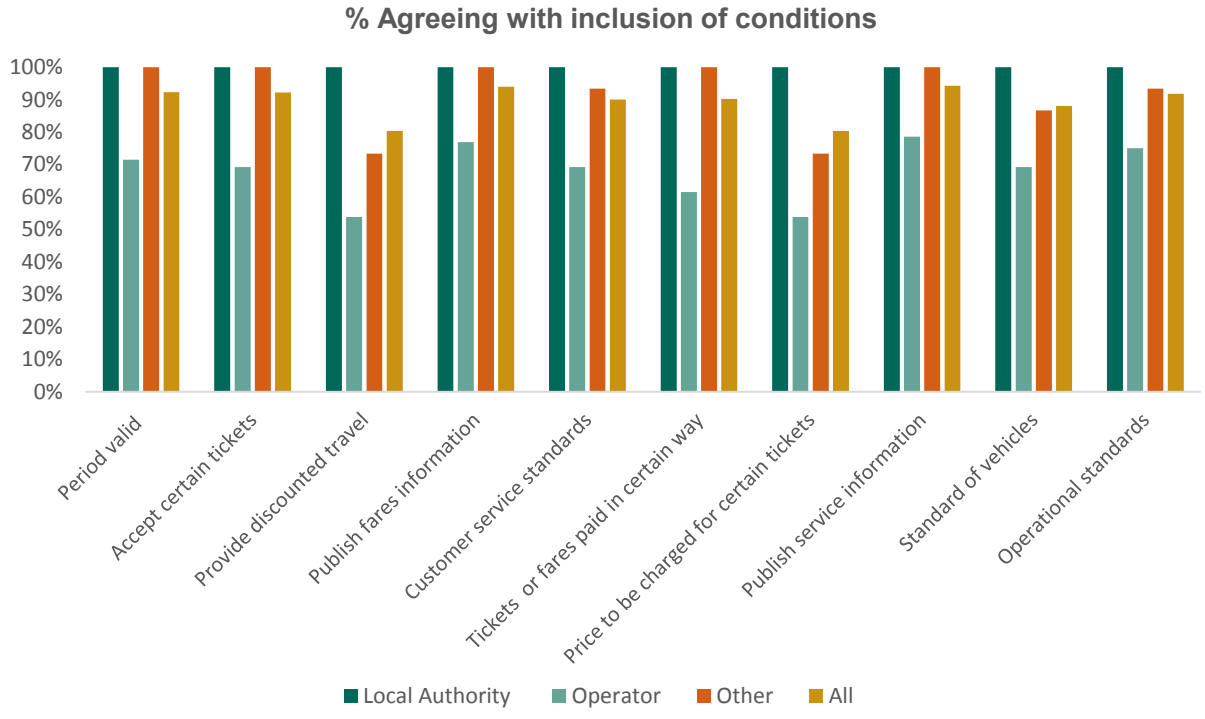
3.5. With respect to the fee that an authority can charge for the issuing of a service permit, the regulations state that the maximum amount that can be charged equates to the reasonable cost of processing the application. As such, we do not agree that the regulations provide authorities with leeway to charge high rates.

3.6. We agree that the regulations should be flexible enough to allow authorities to issue permits at short notice, for example to replace services which have been withdrawn. We therefore propose to amend the regulations to allow authorities to set out different time periods that must elapse in different circumstances in their service permit notice, both in relation to the time period within which the authority must determine whether or not to award the service permit, and the time period that must elapse between the awarding of the service permit and the services starting to operate.

3.7. The Department will amend regulation 2 of the Franchising Schemes (Service Permits) (England) Regulations to ensure that they are flexible enough to allow authorities to award short notice service permits.

Question 4 - Do you agree with the categories of conditions that can be attached to service permits? Please explain your reasons.

3.8. We received 52 responses to this question, with the proportions of the different groups agreeing and disagreeing with the inclusion of the different conditions set out in the graph below.



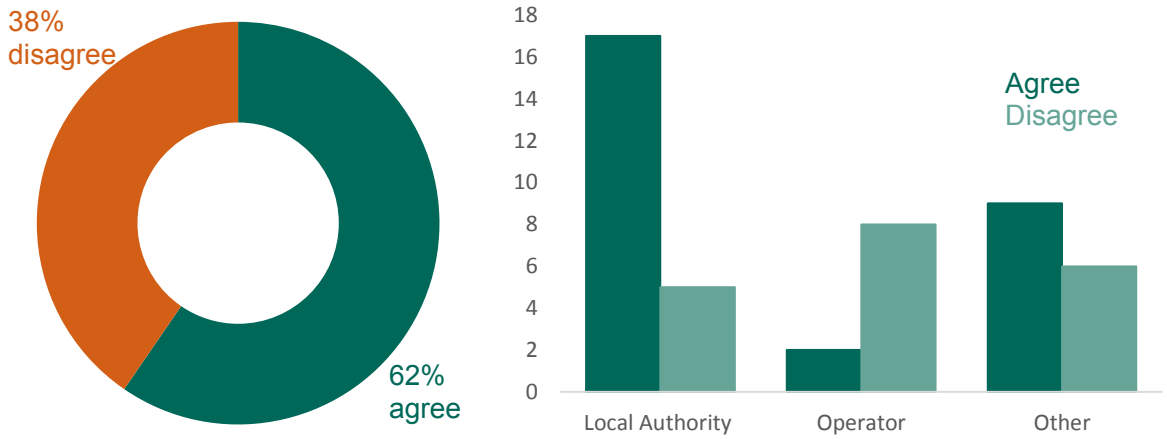
Government response

3.9. The Department considers that the categories of conditions proposed in the draft regulations should be retained due to the broad support expressed through the consultation.

3.10. The Department does not intend to remove or amend any of the existing conditions set out in the Franchising Schemes (Service Permits) (England) Regulations.

Question 5 - Should other conditions be added? If so, what should these be?

3.11. We received 50 responses to this question. Over 60% of respondents thought that other conditions should be added.



3.12. A number of authorities and organisations representing authorities argued that local authorities should be free to determine the sorts of conditions that are needed locally, and should not be required to choose from a pre-defined list of categories.

3.13. In addition, there were a number of suggestions made for additional categories of conditions that should be added to the list set out in the draft regulations. These ranged from operational aspects such as punctuality and adherence to a code of conduct, to accessibility requirements, branding of services, arrangements to allow revenue to be apportioned between the authority and the operator and terms and conditions for drivers or staff.

3.14. Several respondents also raised the issue of stopping points and frequencies, and proposed that the authority should be able to attach conditions to service permits to control these factors.

Government response

3.15. The Act allows local authorities to attach conditions to service permits of a type specified by the Secretary of State in secondary legislation. We want to ensure that authorities have sufficient scope to attach the sorts of conditions that will work locally, whilst also ensuring that the impacts of these conditions on the

services operated under service permits is proportionate. Specifying a long-list of types of conditions in secondary legislation, rather than giving authorities complete autonomy to determine them for themselves, balances these two considerations and is the approach for which the primary legislation was designed.

3.16. The Act also sets out the circumstances in which local authorities are required to grant service permits - where they are satisfied that the service will benefit local passengers, and where they are satisfied that it will not have an adverse effect on franchised services. It is through that application process that authorities and operators should discuss the details of the proposed service, such as the route, stopping points and frequency, working together to address any issues which give the authority cause to refuse the permit. As such, we do not think it appropriate to add 'stopping points' and 'frequencies' as categories of conditions.

3.17. Of the additional categories of conditions that were suggested through the consultation, we consider that a number could be captured under one or more of the categories already included in the draft regulations. These include accessibility standards of services and adherence to a 'code of conduct', both of which could already be set using a combination of the customer and operational service standard conditions set out in the draft regulations. In addition, authorities would be able to specify certain branding requirements using the vehicle specification condition.

3.18. In relation to revenue apportionment, we can see the need for appropriate commercial agreements to be put in place where a condition is attached to a service permit which requires the operator to accept a multi-operator ticket. The revenue apportionment agreements would not constitute 'conditions' in themselves, instead they would be commercial agreements needed to facilitate delivery of the condition - the acceptance of the multi-operator ticket. As such, the ability of the authority to attach a condition requiring the acceptance of the ticket should be sufficient to enable the system to work in practice.

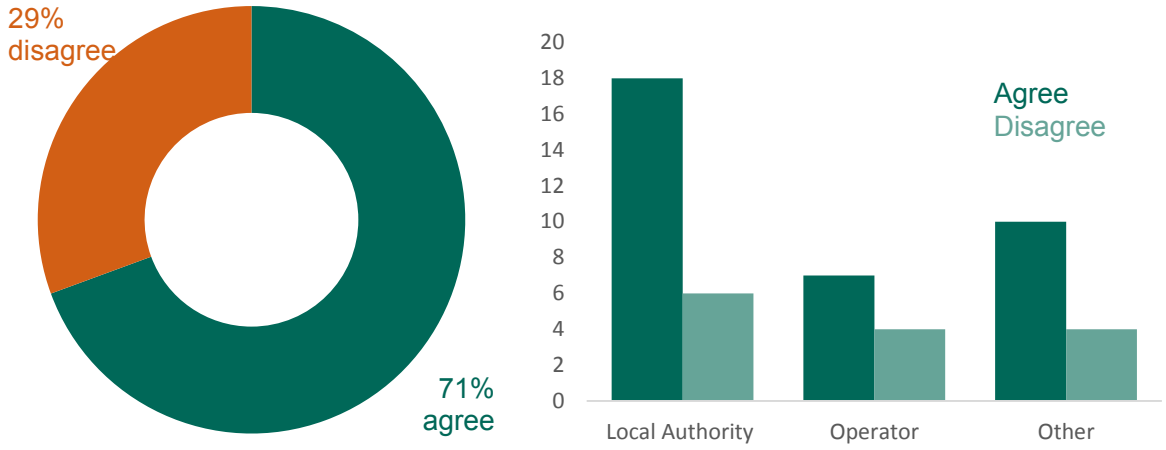
3.19. The Department does not plan to amend the Franchising Schemes (Service Permits) (England) Regulations in light of responses to this consultation question.

Question 6 - Do you agree with the procedure for revoking and suspending service permits? Please explain your reasons.

3.20. We received 49 responses to this question. Over 70% of respondents agreed with the procedure.

3.21. A number of respondents thought that operators should be given time to respond to or resolve issues before the authority can suspend or revoke their service permit. Alternatively, a number of other respondents felt that authorities should

be able to revoke or suspend permits much more quickly, with suggestions of 28 and 7 days, rather than the minimum 56 days set out in the draft regulation.



3.22. Furthermore, a number of respondents felt that authorities should be able to suspend or revoke service permits with immediate effect where the operator of the service was not meeting the conditions attached to their permit.

3.23. In addition, a number of respondents queried whether the regulations should set out procedures for operators to follow to withdraw from permits.

Government response

3.24. The minimum 56 days' notice period in the draft regulations is designed to mirror the 56 days' notice that an operator must provide to the Traffic Commissioner where they decide to vary or cancel a registered local service. One of the aims of specifying a 56 day notice period was to ensure that operators had sufficient certainty about their ability to run the service to enable them to take the necessary commercial decisions and commit to running those services.

3.25. We have tried to balance the ability for authorities to take action to address performance issues against the need to provide certainty to operators. We consider that operators should be given sufficient time to remedy any concerns that the authority may have before their permit is suspended or revoked. The draft regulations therefore require authorities to give written notice to the operator in question of their intention to suspend or revoke a service permit and their grounds for doing so, setting out the measures the holder of the permit would need to take to have the suspension lifted.

3.26. We understand that authorities may wish to suspend or revoke the permit more quickly where the operator is no longer meeting the conditions of the permit for example, but we do not consider that a strong enough argument was made through the consultation responses to deviate from the minimum 56 day notice period.

3.27. However, the consultation responses did draw our attention to the fact that there is nothing in the Act or regulations which compels operators to give notice of their

intention to withdraw a service operated under a service permit. To ensure passengers are made aware of any potential changes to services, and to provide authorities with time to enter into an agreement with another operator to provide a replacement service, we think it would be beneficial for authorities to be able to require operators of services under service permits to provide notice of their intention to withdraw such a service.

3.28. As such, we intend to amend the regulations to allow authorities to add a condition to a service permit that requires the operator to provide them with notice of their intention to withdraw a service. We intend to specify that authorities should require operators to provide no more than 56 days' notice, but will leave it to authorities to specify a shorter time period if they wish.

3.29. The Department proposes to amend regulation 4 of the Franchising Schemes (Service Permit) (England) Regulations to allow authorities to specify, as a condition that can be attached to a service permit, the notice period that operators must abide by before they can withdraw or vary a service.

Question 7 - Do you have any further comments on the service permit regulations?

3.30. 33 respondents had further comments on the service permit regulations. A number of respondents raised the issue of cross-boundary services, and the need for neighbouring authorities to be more involved in the process of accepting or rejecting applications for service permits given the impacts such decisions could have on passengers in their areas.

3.31. A number of respondents also thought that authorities should be required to publicise services operated under permits in the same way as they would publicise their own franchised services. In addition, a number queried how the enforcement of service permits would work and several questioned when the regulations governing the appeals process would be shared.

Government response

3.32. The Department agrees that franchising authorities should engage with neighbouring authorities in the development and operation of the service permit system, both in terms of the detail of the scheme and in relation to the types of conditions that the authority intends to attach to service permits. This is particularly relevant in relation to the treatment of cross-boundary services.

3.33. As they stand, the regulations already require the franchising authority to consult such persons as they think fit in relation to their draft service permit scheme, and we would expect neighbouring authorities to fall within that category. However, we agree that it may be helpful to specifically list neighbouring authorities as bodies that must be consulted, and we therefore plan to amend the regulations accordingly.

3.34. Again, we agree that authorities should be encouraged to market services that are operated under service permits as they would their own franchised services as this would likely be of most benefit to the passenger and would help to integrate services. However, we do not think it sensible to mandate any particular type of approach through regulation, but will pick this issue up as part of the wider guidance materials that we are preparing to compliment the Act.

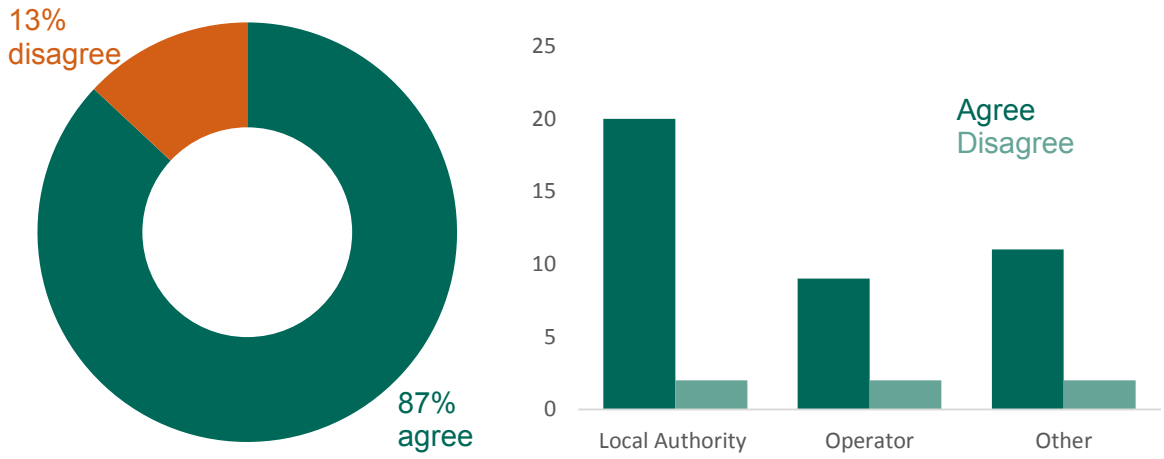
3.35. The Department proposes to amend the Franchising Schemes (Service Permit) (England) Regulations to ensure that neighbouring authorities are consulted on the details of the service permit scheme.

4. Franchising: Transitional provisions

Where an authority choses to implement franchising, the bus market in that area will need to transition from the status quo, where operators determine which routes they wish to operate, to a system whereby the franchising authority specifies the services to be delivered by way of local service contract and bus operators bid to provide those services. Operators will no longer be required to register such services with the Traffic Commissioner, nor will operators providing local services under service permits issued by the authority. Regulations set out further details on the transitional provisions.

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

4.1. We received 46 responses to this question. Over 85% of respondents agreed that the provisions were useful.



4.2. A number of respondents thought that the regulations could be broadened so that services could be registered at short notice where they replaced one that had been varied rather than just replacing a service that had been cancelled. Respondents made the point that a variation to a service so that it no longer called a certain stops, or ceased to operate at weekends for example, was as much of an issue as a service being cancelled in its entirety.

Government response

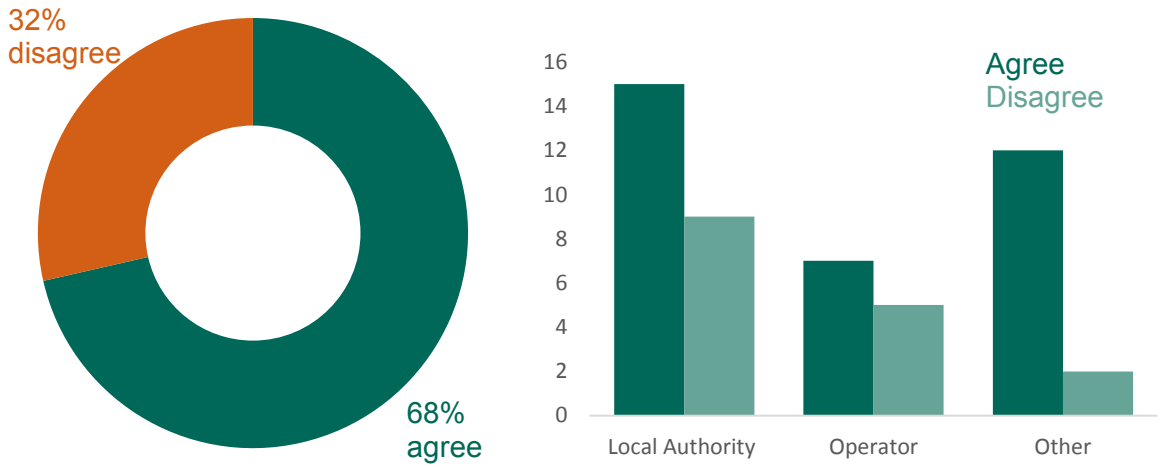
4.3. The Department agrees that it would be sensible to amend the regulations to allow services to be registered at short notice during the transition period where they replace aspects of services that have been varied. This will help ensure that replacement arrangements can be put in place to deal with situations where the variation of a service has major impacts on local passengers.

4.4. The Department proposes to amend the Public Service Vehicles (Registration of Local Services) (Franchising Schemes Transitional Provisions) (England)

Regulations to allow short notice registrations to be accepted where the authority enters into an agreement with an operator to provide a service.

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

4.5. We received 50 responses to this question. Over 65% of respondents agreed with the processes.



4.6. A number of respondents argued that even with a notice period of 112 days, there was a chance that passengers could be left without services during the transition period. Some of these respondents argued that the de-registration and variation notice period should match the 6 months that must elapse between a franchising authority awarding a franchise contract and that contract starting to operate in practice.

4.7. However, a number of respondents also expressed concern that a period of 112 days' notice was too burdensome on operators, and that the existing 56 days remained appropriate.

4.8. In addition, some respondents made the point that only services that are likely to be majorly affected by franchising should be subject to the extended notice period, citing cross-boundary services as a category of services that should not be subject to it and could continue to observe the standard 56 day period.

Government response

4.9. In producing the draft regulations, we sought to ensure we put appropriate measures in place to protect passengers' interests whilst also bearing in mind that bus operators need to be free to take their own commercial decisions in the run up to the introduction of franchising in an area.

4.10. We consider that providing authorities with the ability to extend the notice period up to a maximum of 112 days, a doubling of the current period, strikes the right

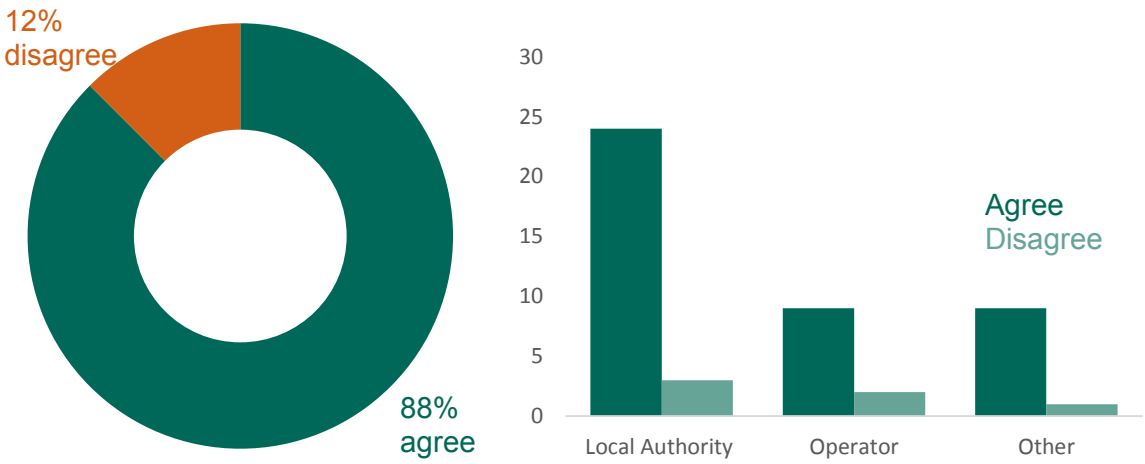
balance, and whilst it does place a potential burden on bus operators, it ensures that authorities have more time to arrange for replacement services.

4.11. The draft regulations enable authorities to apply the extended de-registration and variation notice periods to services that have at least one stopping point in the area to which a franchising scheme relates. In addition, the draft regulations allow authorities to apply different notice periods to different types of services, so authorities would be able to apply a 56 day period to cross-boundary services for example, should they consider that best for passengers. As such, we do not consider that changes to the regulations are required.

4.12. The Department does not propose to make any changes to the Public Service Vehicles (Registration of Local Services) (Franchising Schemes Transitional Provisions) (England) Regulations in light of this consultation question.

Question 10 - Where an authority decides to vary or revoke a franchising scheme so that it no longer applies in a particular area there will be a period of time before the variation or revocation takes effect. To ensure continuity of service, the draft regulations propose that applications for registration that are made by bus operators during that period should become effective at the point at which the variation or revocation takes effect. Do you agree? Please explain your reasons.

4.13. We received 49 responses to this question. 88% of respondents agreed with the proposal.



4.14. Some respondents queried the practical usefulness of these provisions, whilst others thought it would help level the playing field and help maintain stability. There were few changes suggested to the draft provisions.

Government response

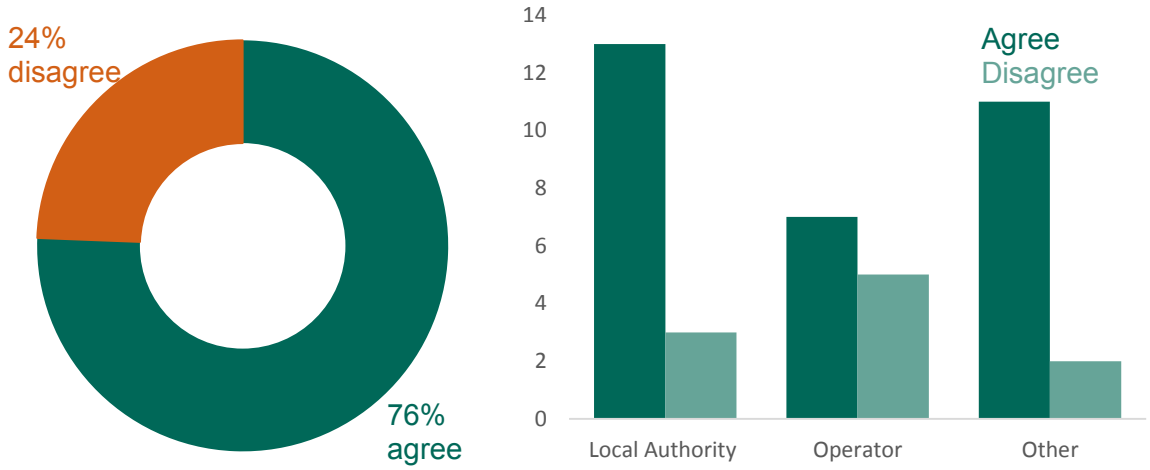
4.15. As there were few comments made on this aspect of the draft regulations, the Department does not propose to make any changes.

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

The Act provides that Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE) should apply to scenarios where staff transfer as a result of franchising or an enhanced partnership. The regulations contain more detail on the application of TUPE to these scenarios.

Question 11 - Do you agree with the process set out in the draft regulations for determining whether a person is 'principally connected' and should therefore transfer under TUPE? Please explain your reasons.

5.1. We received 41 responses to this question. Three quarters of respondents agreed with the proposal. Those that disagreed were a mix of local authorities, operators or operator representatives and trade unions.



5.2. Most respondents were generally in favour of local decision-making, with local authorities, operators and employee representatives working together to determine which factors should be taken into account when deciding which staff are in scope to transfer under TUPE. General support was also expressed for the inclusion of a 'fall-back' option, should local agreement not be possible.

5.3. Several respondents queried whether it would be more sensible for the consultation process to focus on the roles or groups of employees that will be subject to the TUPE transfer, rather than the factors that will be taken into account in each individual case.

5.4. Following on from that, there were additional comments made about the difficulty of attempting to define 'principally connected', with some respondents suggesting that it should remain undefined by regulations.

5.5. There were a number of comments on the detail of the proposed process itself. Firstly, some respondents felt that the regulations could provide more detail on the timescales involved to help ensure that local negotiations are concluded in a

timely manner. Others queried whether there should be different approaches taken in the regulations for different groups of employees.

5.6. A number of respondents queried why the draft regulations attempted to set out a bespoke process at all, and why they did not rely on tried and tested TUPE practices.

Government response

5.7. The TUPE provisions in the Act were included in recognition of the fact that it is not entirely clear whether TUPE would apply to either the franchising or enhanced partnership scenarios. This is because the initial transition to franchising or the awarding of a contract in an enhanced partnership scenario may not be considered as service provision changes or transfers of an undertaking or business. The provisions in the Act therefore state that these situations should be considered as relevant transfers – leaving no doubt that TUPE should apply.

5.8. For a usual TUPE process, employees transfer where they form part of an 'organised grouping' whose principal purpose is to carry out the affected function. Recognising that the transfers in question may well fall outside the scope of a normal TUPE transfer, the Act provides further direction on how TUPE should be applied in this context. It states that for the purposes of TUPE, organised groupings of employees that are subject to the transfer consist of those whose employment is 'principally connected' with the provision of the affected services.

5.9. However, 'principally connected' is not defined further in the Act, and Government's view is that it would be helpful to provide more detail through regulations to ensure these transfers are effective, and that there is a common understanding between the affected parties of what 'principally connected' means.

5.10. The approach set out in the draft regulations was designed to allow authorities to engage with operators and employee representatives to reach agreement locally about the most suitable way of determining whether an employee should be considered as 'principally connected'. The Department agrees with some of the suggestions made by respondents that the wording of the regulations is relatively narrow, and could be amended to make it clear that authorities can consult with operators and employee representatives about the sorts of roles and groups of employees that should be considered as 'principally connected', and we will amend the regulations accordingly.

5.11. Government understands the concerns expressed about the timescales within which the process of consultation should be conducted, and the desire for these to be specified in the regulations. The draft regulations already allow the authority to set out the details of the consultation as part of the notice that they must publish, and we consider that it would be useful to amend the regulations further

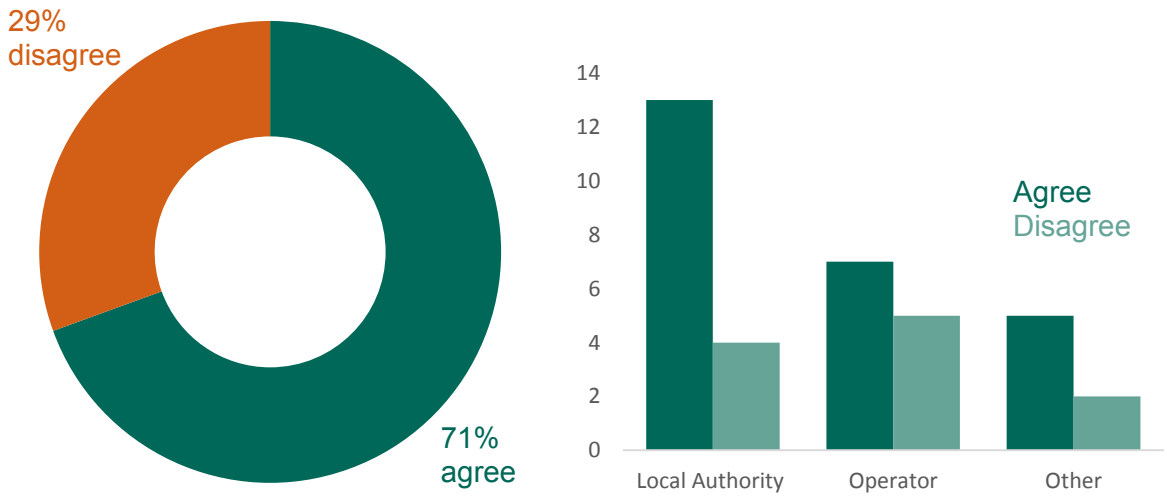
to make it clear that the authority can set out the timescales within which they are seeking agreement as part of that notice.

5.8. The Department proposes to amend the Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) Regulations to:

- Clarify that roles and groupings of employees are one of the factors that can be taken into account when considering whether staff are 'principally connected'; and
- Make it clear that the authority may specify the timescales within which they are seeking agreement as part of the notice that they are required to publish.

Question 12 - Where agreement cannot be reached locally, do you agree that both the employee's time spent assigned to the affected local services and their time in continuous employment are the appropriate factors for determining whether they are 'principally connected'? Please explain your reasons.

5.9. We received 38 responses to this question. Just over 70% respondents agreed that these were appropriate factors.



5.10. The majority of respondents agreed that time spent assigned to the local services was an appropriate factor to be taken into account where agreement cannot be reached locally. However, there was widespread concern about using time spent in continuous employment as a factor. Several respondents commented that using time spent in continuous employment could mean that staff recruited to backfill positions in the run up to franchising or the letting of a contract in an enhanced partnership scenario may not be considered in scope to transfer.

5.11. In addition, a few respondents argued that the regulations could be clearer on the time period over which to assess the percentage of time that a member of staff spends assigned to the affected services, i.e. should this be assessed over the last 3, 6 or 9 months before the transfer occurs.

Government response

5.12. The Department agrees that there could be unintended consequences of specifying time spent in continuous employment as a factor to be taken into account when determining whether a member of staff is 'principally connected'. As such, we propose to remove this from the draft regulations.

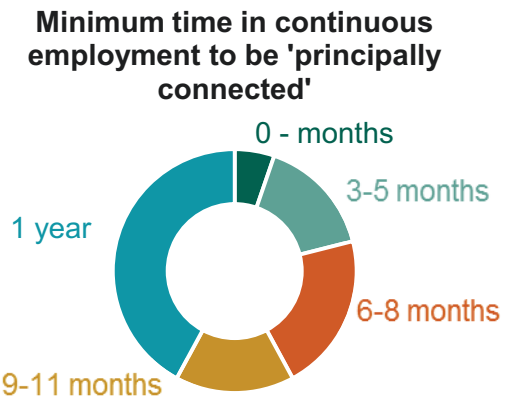
5.13. In addition, we agree that it may be useful to specify the time period over which to assess the percentage of time that a staff member spends assigned to the affected local services. However, we consider that this would be better suited to guidance.

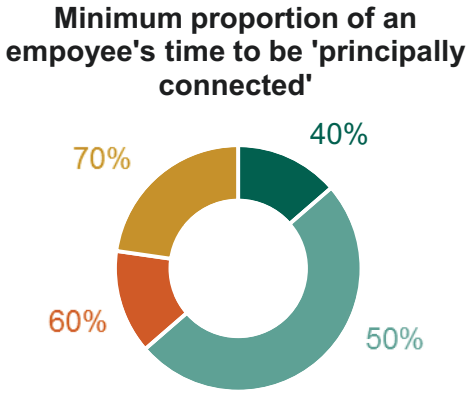
5.14. The Department proposes to amend the Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) Regulations to remove time spent in continuous employment as a factor to be taken into account when determining whether a member of staff is 'principally connected'.

Question 13 - If you agree that these are appropriate factors: a) What minimum proportion of a person's time should be spent assigned to affected local services for them to be considered as 'principally connected'?

b) What is the minimum time an employee should have spent in continuous employment for them to be considered as 'principally connected'?

5.1 We received 24 and 25 responses respectively.





Government response

5.2 The Department agrees with the majority of respondents that 50% should be the minimum proportion of a person's time that should be spent assigned to affected local services for them to be considered as 'principally connected'.

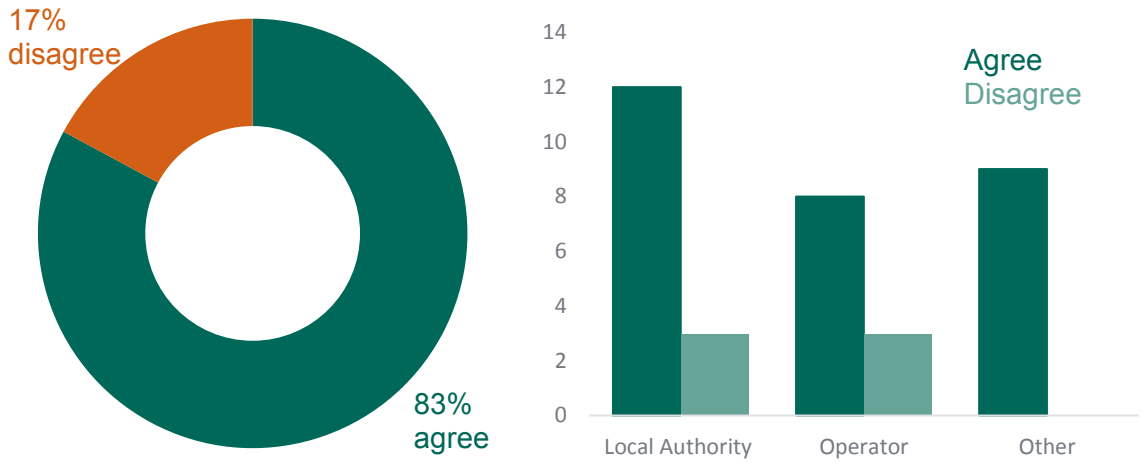
5.3 Turning to time spent in continuous employment, as set out in response to an earlier question, the Department intends to remove this from the draft regulations.

5.4 The Department proposes to amend the Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) Regulations to ensure that

employees who spend at least 50% of their time assigned to the affected local services should be considered

Question 14 - Do you agree with arrangements to enable authorities to request employee-related information from operators?

5.5 We received 35 responses to this question. Overall, just over 80% of respondents agreed that these were appropriate arrangements.



5.6 A number of respondents argued that the regulations should place a legal duty on operators to comply with the information request, and a number of other respondents felt that the regulations should be clear that the authority can request information from operators in relation to employee pensions. Furthermore, some respondents commented that operators should have 28 days to provide the information requested rather than the 21 days as set out in the draft regulations.

Government response

5.7 The Department agrees that operators should be obligated to provide the information requested. However, the draft regulations already make clear that there is a legal obligation on operators to provide the information unless they do not hold it, or are not able to provide it at a reasonable cost.

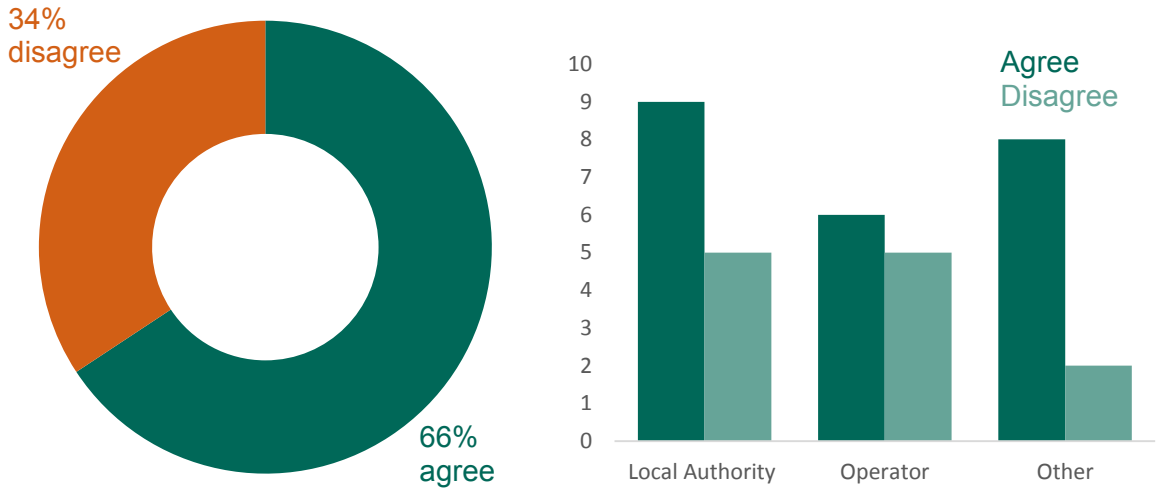
5.8 Again, the Department agrees that authorities should be able to request information about employee pensions to help them better understand the likely costs of the TUPE transfer. However, we consider that draft regulations already allow authorities to request this information.

5.9 In preparing these draft regulations we took the Quality Contract Schemes (Application of TUPE) Regulations 2009 as our starting point, which gave operators 21 days to provide the requested information. We do not consider that a sufficiently strong case was made through the consultation responses to deviate from that.

5.10 The Department does not propose to make any changes to the Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) Regulations in light of responses to this consultation question.

Question 15 - Do you agree with the process for allocating transferring staff?

5.11 We received 35 responses to this question, with over 65% of respondents agreeing with the process.



5.12 There were few comments made in relation to this consultation question, however a number of respondents did argue that 'recognised trade unions' should be specifically named in the regulations as parties to be consulted.

Government response

5.13 The Department agrees that all employee representatives of affected staff – including trade unions – should be consulted on the proposed allocation arrangements. The regulations already provide for this by specifying 'employee representatives' as parties to be consulted, and, as such, the Department does not consider it necessary to amend the regulations.

5.14 The Department does not propose to make any changes to the Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) Regulations in light of responses to this consultation question.

Question 16 - Do you have any further comments on the draft TUPE regulations?

5.15 30 respondents had further comments to make on the draft TUPE regulations. A number of respondents argued that the regulations should make provision to provide staff not transferred as a result of TUPE with minimum terms of conditions, with others arguing that the regulations could be clearer with respect to the enforcement provisions.

Government response

5.16 Turning first to the issue of minimum terms and conditions, the Department considers it the role of the Mayor or local authority that is implementing the franchise or enhanced partnership to determine whether there are any requirements in relation to the terms and conditions that it expects operators to offer to staff, bearing in mind local circumstances, and if so, what those might be. As such, the Department does not agree that provision should be made centrally.

5.17 On the issue of enforcement, schedule 2 to the Bus Services Act gives Traffic Commissioners the ability to attach conditions to an operator's license or penalise an operator where they do not provide the information requested.

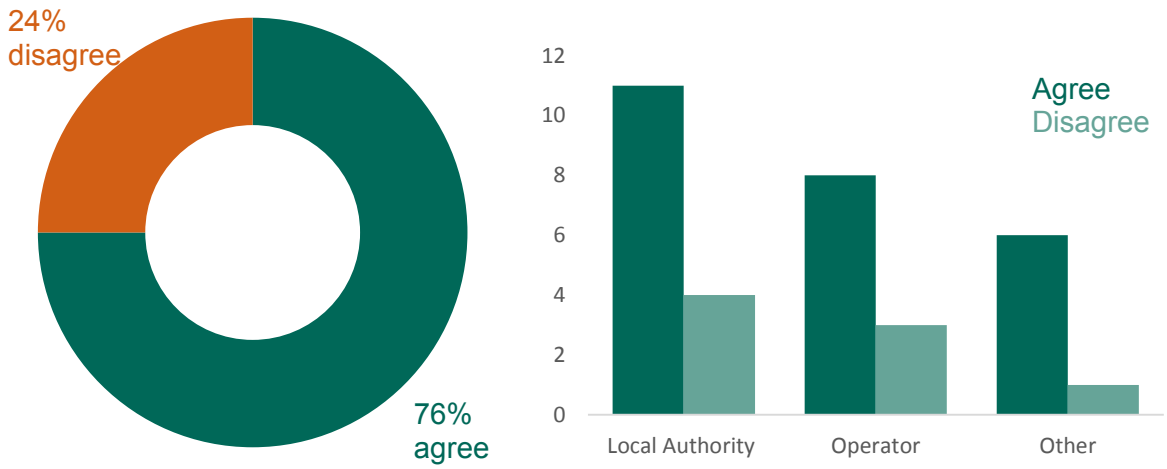
5.18 The Department does not propose to make any changes to the Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) Regulations in light of responses to this consultation question.

6. Franchising and enhanced partnerships: Pension protection

The Act makes clear that staff originally transferred when franchising is first introduced or as a result of the introduction of a contract in the enhanced partnership context should be provided with pension protection. The regulations provide further detail.

Question 17 – Do you agree with the proposals for protecting an employee's pension rights? Please explain your reasons.

6.1 We received 33 responses to this question. Three quarters of respondents agreed with the proposals, including three trade unions.



6.2 There were few comments about the detail of the draft regulations themselves. However, a number of respondents queried whether the regulations should refer to the Local Government Pension Scheme, making it clear that new employers should be given the right to apply for 'Admitted Body Status' to provide continuity for employees, with others questioning which body should take responsibility for historic pension liabilities.

Government response

6.3 Turning first to the issue of the Local Government Pension Scheme, the draft regulations require all staff transferred when franchising or an enhanced partnership contract is first introduced is provided with a 'broadly comparable' pension scheme. For staff that are members of the Local Government Pension Scheme it may be that the new employer applies for 'Admitted Body' status and is then able to offer relevant employees with continued membership of that scheme, or it may be that the new employer establishes a different but 'broadly comparable' scheme. All the regulations aim to do is reference relevant published Government documents to assist with the assessment of whether a pension scheme is broadly comparable.

6.4 On the issue of pension liabilities, it is for current employers to put in place the necessary arrangements to address any shortfalls that exist and to manage the pension funds that relate to the past service of their employees – franchising

authorities will not be expected to make arrangements to address shortfalls that have arisen before franchising is introduced.

6.8 The Department does not propose to make any changes to the Franchising Schemes and Enhanced Partnership Schemes (Pension Protection) Regulations in light of responses to this consultation question.

Question 18 – Do you have any further comments on the draft pension protection regulations?

6.9 16 respondents had further comments on the draft pension protection regulations. A number of respondents queried the provision in the draft regulations which enables new employers to provide employees with compensation where there are 'exceptional circumstances' which mean that it would not be reasonable or practicable for the new employer to provide a 'broadly comparable' pension scheme.

6.10 In addition, the draft regulations also required some finalisation, particularly with respect to updating references to relevant guidance documents that should be followed when assessing 'broad comparability', and there were a number of comments made on that issue.

Government response

6.11 The draft regulations will be updated to reflect the latest relevant guidance on the issue of broad comparability. In discussion with colleagues in the Government Actuary's Department we have identified HM Treasury's document, *'Fair Deal for staff pensions: staff transfer from central government'*[b], dated October 2013, as the most up to date reference.

6.12 The 'exceptional circumstances' provision has been included in the draft regulations to balance the need for staff to be protected against concerns that the requirements to provide certain pension schemes could act as barrier to smaller operators bidding for franchise contracts. Ultimately it will be for the Courts to determine in the event of a challenge whether or not it was reasonably practicable for the employer in question to provide a broadly comparable pension scheme, but we consider that any decision to provide compensation rather than a broadly comparable pension scheme should only be taken following consultation with employee representatives.

6.9 The Department will update the Franchising Schemes and Enhanced Partnership Schemes (Pension Protection) Regulations to reflect the latest available guidance on the assessment of 'broad comparability'.

[b] Can be accessed at - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262490/PU1571_Fair_Deal_for_staf_pensions.pdf

7. Franchising and enhanced partnerships: Information from operators

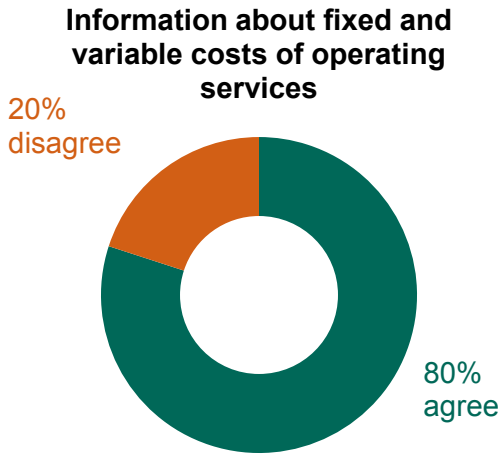
The Act enables authorities to request certain information from bus operators in connection with their franchising and enhanced partnership functions respectively. The draft regulations supplement the provisions in the Act.

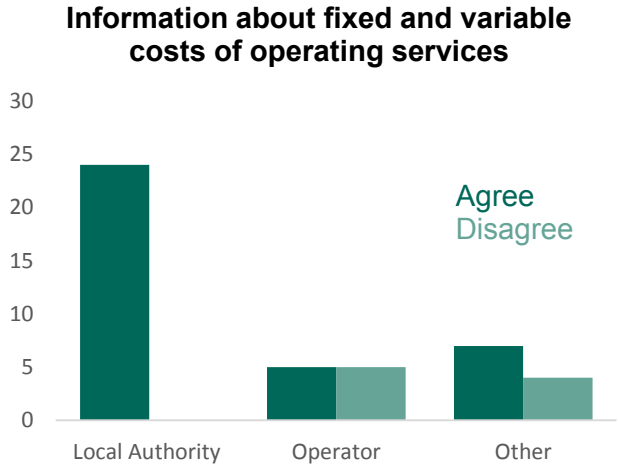
Question 19 – Do you agree that authorities should be able to request the following types of information in connection with franchising functions:

a) Information about fixed and variable costs of operating services?

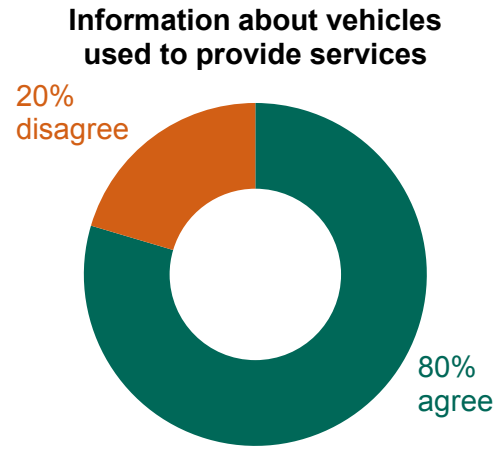
b) Information about the vehicles used to provide services?

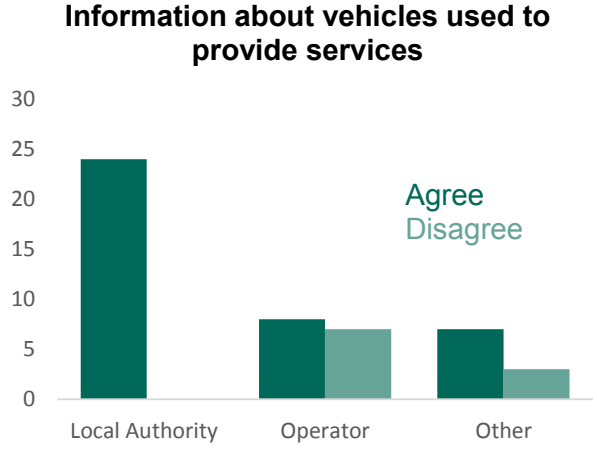
7.1 We received 45 responses to question 19a, with 80% of those who responded agreeing that authorities should be able to request information on fixed and variable costs. However, of the operators or operator representatives that responded, 50% disagreed.





7.2 We received 49 responses to question 19b, with 80% of those who responded agreeing that authorities should be able to request information about the vehicles used to provide services. However, of the operators or operator representatives that responded, just under 50% disagreed.





7.3 The responses to this question were polarised, with the majority of local authorities and organisations representing local authorities agreeing that authorities should be able to request this sort of information in connection with their franchising functions, and the majority of bus operators and representative organisations disagreeing.

7.4 There were a number of comments made about the commercial confidentiality of information about the costs of operating services, and the need for more clarity about the sorts of cost information that operators would be required to provide. In addition, a number of respondents commented that any information relating to costs of providing services should be treated with caution as different operators are likely to have different cost bases. There were few comments made about the inclusion of information about vehicles as a category of information that can be requested by an authority.

Government response

7.5 We want to ensure that decisions to proceed with franchising are taken on the basis of robust analysis and information. The provisions in the Act, supplemented by these proposed regulations, will help ensure that authorities have up to date information on which to base their decisions. We understand the reservations expressed by many operators and operator representatives through this consultation process, but consider that information about the costs of operating services in the area is something that authorities need to understand if they are to make informed judgements about the value for money and affordability of franchising.

7.6 We have taken the approach in the Act of only requiring operators to provide information that they hold, rather than requiring them to prepare information for the sole purpose of meeting these requirements. So, with regards to the issue of the need for clarity about the sorts of cost information that operators could be required to provide, we consider that authorities should be able to request any cost information that they consider relevant for their purposes in preparing an assessment of a proposed franchising scheme, but operators will only be required to provide information which they hold.

7.7 However, we also agree with the comments made that that authorities should treat the information they receive with caution, and that it should not form the only input into the development of the franchising scheme assessment.

7.8 The Department proposes to retain both information about the costs of providing services, and information about the vehicles used to provide services as information that an authority can request from an operator in connection with its franchising functions under the Bus Services (Provision of Information for Franchising Schemes and Enhanced Partnership Plans and Schemes) Regulations 2017.

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

7.9 We received 49 responses to this question with 28 respondents suggesting that other categories should be added.

7.10 Firstly, a number of respondents queried why authorities were restricted to requesting information from a pre-defined list as set out in the Act and in the supplementary regulations, rather than being able to determine for themselves the information required for the preparation of their assessment.

7.11 There were a number of additional categories of information suggested through responses to this consultation question. These included operational aspects such as punctuality, journey speeds and lost mileage, information about pensions and work schedules of staff, as well as information about the accessibility standards of services and about customer complaints.

7.12 Concerns were also expressed about an authority's ability to request information in relation to cross-boundary services, or services in neighbouring areas, with some respondents suggesting that the regulations should provide authorities with the powers to request information about services with at least one stopping point in the proposed franchising scheme area.

Government response

7.13 The Act sets out a list of categories of information that franchising authorities can request in connection with their franchising functions, and also provides the Secretary of State with the ability to specify further categories of information in regulations. As such, the only information that can be formally requested by authorities in connection with their franchising functions is that which is set out in the Act or in these supplementary regulations.

7.14 The Department considers that a number of the suggested categories of information could already be requested by authorities in connection with their franchising functions, due to the fact that they fall under one of the existing categories listed in the Act itself or the draft regulations. For example, information about the accessibility standards of services could be requested under the 'information about the vehicles used to provide services' category, and information about the pensions provided to employees could be requested under the 'information about persons employed' category as set out in the Act.

7.15 In drafting the Act and the related regulations we have tried to ensure that we provide authorities with the tools they need to take well-informed decisions about the suitability of franchising for their local area, whilst not placing unnecessary burdens on local bus operators. We do not consider that there are sufficiently strong arguments to add further categories of information to the regulations, and consider that the Act and supplementary regulations as they stand provide authorities with the ability to request a broad spectrum of information from local operators.

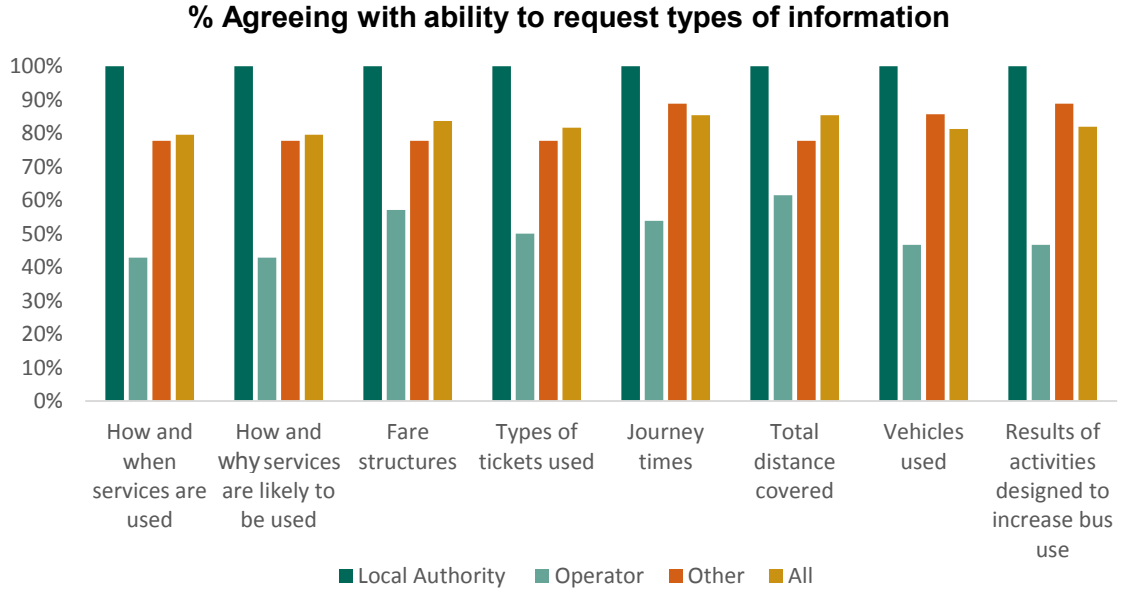
7.16 However, there is nothing to stop an authority and local operators from coming to agreements locally about the sharing of information, or to stop an authority from gathering its own information to supplement its assessment.

7.17 Turning to the issue of cross-boundary services, we consider that the core information that a franchising authority requires will be in relation to the services, or parts of services that operate in their area. We are concerned that providing authorities with the powers to request information about services that operate outside their area, or about the portion of the service that lies outside their area, could potentially place large burdens on operators who are relatively peripheral to the franchising proposal. Again, we consider that agreements could be reached locally, outside of the formal legislative requirements, to enable authorities to gather any additional information that they might require.

7.18 The Department does not propose to make any further amendments to the franchising aspects of the Bus Services (Provision of Information for Franchising Schemes and Enhanced Partnership Plans and Schemes) Regulations 2017 in light of responses to this consultation question.

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

7.19 We received 50 responses to this question, with the majority agreeing with the inclusion of the proposed categories of information.



7.20 Some respondents were concerned that information provided to authorities for the purposes of an enhanced partnership could potentially be used to consider franchising. In addition, some respondents commented that detailed passenger data should only be provided if it is relevant to the proposals, with the authority

required to provide assurances as to its interpretation and use – e.g. by using an independent third party. On the other hand, a number of respondents commented that comprehensive good quality information was critical to the preparation of an enhanced partnership.

7.21 Furthermore, a small number of respondents commented that providing information in miles, as opposed to kilometres, created additional work.

Government response

7.22 The Department agrees that it is important that authorities should have powers to request certain categories of information when considering an enhanced partnership. However, the Act makes clear that this data can only be requested when 'preparing a plan and scheme' – i.e. that the authority has already decided to pursue this option and has, given notice and invited operators to participate. It is not to be used to inform either the decision to pursue, or the development of a franchising proposal. We will make this clear in guidance.

7.23 We will also amend the regulations to ensure they are more flexible, allowing distance information to be provided in kilometres or miles.

7.24 The Department proposes, on the basis of these responses, to move forward with the categories of information included in the draft regulations. We also propose to change item 6 in the Schedule to allow operators to provide distance information in miles or kilometres.

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

7.25 We received 51 responses to this question. 25 respondents said other categories of information should be added.

7.26 A number of respondents commented that off-bus ticket sales should also be included as information that can be requested. Two respondents suggested lost mileage, and another that work schedules of services should be included. Two suggested that information provided should be identical to that provided under franchising. Other responses suggested boarding and alighting locations should be included and that information on the smart ticketing equipment used on board services should also be included.

7.27 In addition, it has come to our attention that authorities may need to be able to request registration particulars from operators in order to ensure that the operator objection mechanism is calculated on the basis of robust information. We are concerned that the current registration system may not be sufficiently robust to be called upon for these purposes, and as such think it sensible to provide authorities with the ability to request this information directly from operators.

Government response

7.28 The Department agrees that it is important that authorities can access comprehensive core information about bus services in their area. However, this

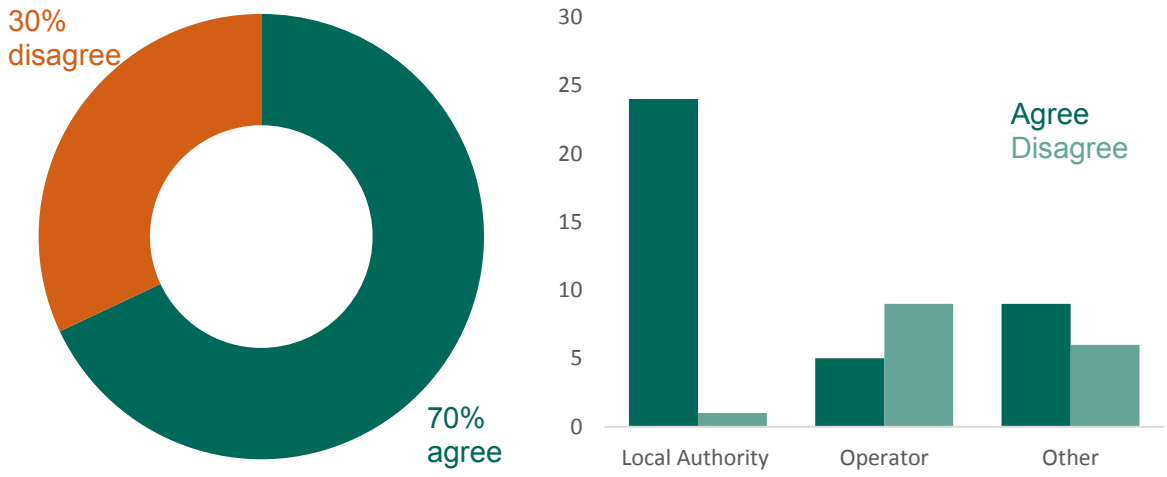
must be balanced against the fact that if an enhanced partnership is to be successful, we would expect the majority of operators, in the spirit of partnership, to provide this information voluntarily. These provisions are therefore primarily aimed at any minority of operators that, for whatever reason, do not wish to provide information on that basis. In this case, a balance must be struck between the legitimate needs of the authority and placing burdens on local operators.

7.29 In addition, we consider that some of the additional categories suggested could be requested under one of the existing categories in the regulations. For example, off-bus ticket sales could be requested under the 'types of tickets used' category.

7.30 The Department proposes to proceed with the categories of information set out in the Bus Services (Provision of Information for Franchising Schemes and Enhanced Partnership Plans and Schemes) Regulations, and in addition proposes to add 'registration particulars' as a further category.

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

7.31 We received 54 responses to this question. 70% of respondents thought that authorities should be able to request revenue information, with 30% opposed. However, responses were polarised, with over 65% of the operator or operator representatives that responded disagreeing.



7.32 In addition, there were a number comments made in response to the previous two questions, both in favour and against including cost and revenue information amongst the data that operators must provide to authorities.

7.33 A number of respondents felt that revenue information is commercially highly sensitive information, and as long as the revenue risk lies with the operator, then

this information should not be required to be disclosed. Some respondents also felt that passenger information was sufficient for developing proposals.

7.34 On the other hand, a number of respondents felt revenue information is essential in forming an enhanced partnership, especially in relation to determining the strategic value of a service. A number of respondents also said that knowing revenue information on a confidential basis would ensure that correct decisions are made when developing multi-operator ticketing schemes or determining maximum frequencies.

Government response

7.35 Although an enhanced partnership is 'made' by the authority, it is still a collaborative partnership. The Department therefore assumes that the majority of operators will provide information to the authority voluntarily to help build the partnership, and authorities should therefore be able to rely upon such information – otherwise partnership working would not seem a viable proposition. These regulations therefore serve to provide a statutory mechanism to obtain information from a minority of unwilling operators.

7.36 Against this background, the Department has listened carefully to the arguments on both sides for allowing revenue and cost information to be requested. However, we are not convinced that a sufficiently strong case has been made through the responses to this consultation.

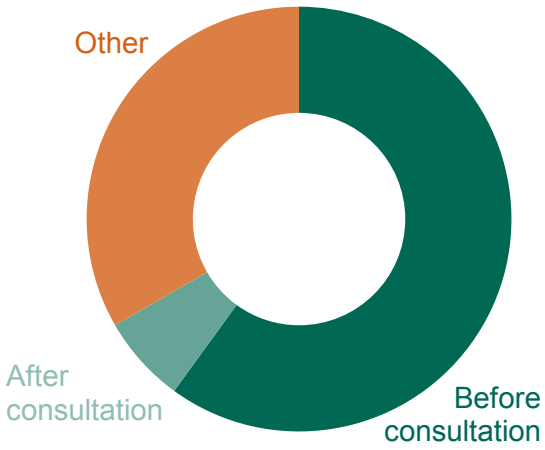
7.37 Firstly, it is not the role of the authority to determine whether operators can afford to comply with partnership requirements - that is a commercial consideration for the operators themselves. Operators will be able to make clear during the development of enhanced partnership proposals whether they believe those proposals, or elements of them, are sustainable for their business in the short, medium or long term.

7.38 We understand that authorities may, in some cases, need to develop a business case to justify their involvement in an enhanced partnership. But we do not believe that it is proportionate for authorities to request comprehensive and sensitive commercial information on costs and revenue from operators to mitigate their own risks as part of any business planning exercise.

7.39 The Department does not propose to include revenue and cost information as part of the enhanced partnership element of the Bus Services (Provision of Information for Franchising Schemes and Enhanced Partnership Plans and Schemes) Regulations.

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

7.40 We received 30 responses to this question. 60% of respondents thought the information should be requested at the earliest opportunity, or before consultation. 7% of authorities thought the information should be requested after consultation, before the final decision is taken. 33% of respondents thought the information should be requested at a different time, either in line with other information being requested, or in line with the requirements for franchising schemes, or quarterly.



Government response

7.41 As we have decided not to amend the Bus Services (Provision of Information for Franchising Schemes and Enhanced Partnership Plans and Schemes) Regulations to allow authorities to request revenue and cost information, this question is now irrelevant.

8. Enhanced partnerships: Operator objection mechanism

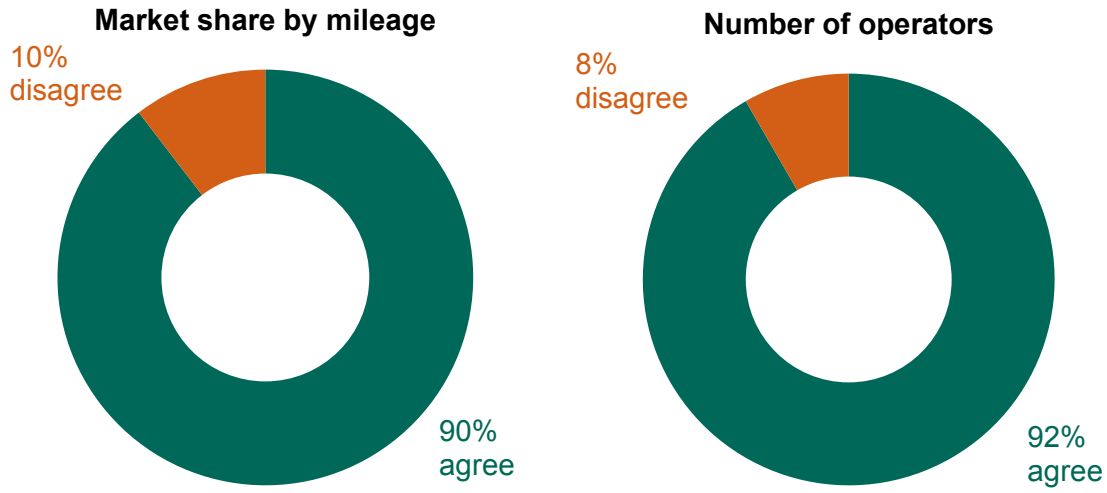
Operators participating in an enhanced partnership will be given an opportunity to object at a number of points during the development and life of an enhanced partnership plan or scheme. The draft regulations set out how the objection mechanism works and how it should be applied.

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

a) Market share by mileage?
b) Number of operators?

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

8.1 We received 49 responses to this question. Around 90% of respondents agreed that these factors should be taken into account in the objection mechanism.



8.2 We received 47 responses to question 26 on whether other factors should be taken into account, with 26 respondents suggesting that other factors should be taken into account.

8.3 10 respondents suggested that patronage data could also be taken into account as part of the objection mechanism to help estimate market share. Other suggestions included using turnover data and passenger satisfaction data, with some respondents suggesting that staff employed by operators should have a say in whether an enhanced partnership progresses.

8.4 There was some confusion expressed as to the objection rights for new operators entering an enhanced partnership area, with a number of respondents also proposing that staff should be able to play a part in the objection mechanism.

Government response

8.5 Whilst we agree with respondents that it would be helpful to include patronage levels as part of the objection mechanism, there is no 'independent' patronage data which could be called upon. Both scheduled mileage and the number of operators can be calculated using definitive data.

8.6 In addition, as part of the development of the proposals, we analysed market share in anonymised real-world areas. This statistical analysis looked at both operated mileage and passengers carried and showed that vehicle kilometre data provided a more evenly distributed market share in the areas considered. Passenger data tended to skew market share towards the bigger operators and give smaller operators a smaller say. It is also much more difficult to evidence consistently.

8.7 On the issue of objection rights for new operators entering an enhanced partnership area, any operator that enters that market has the right to participate in the objection mechanism when it is next used.

8.8 Some responses also suggested that employees should also be able to take part in the objection mechanism. We believe it is right that the final decision on whether to object to individual schemes is one for the management/owners of the bus company itself – who are ultimately responsible for its financial wellbeing. Whilst we accept that those decisions may have implications for staff, we believe employee concerns should be taken up separately as part of their established procedures.

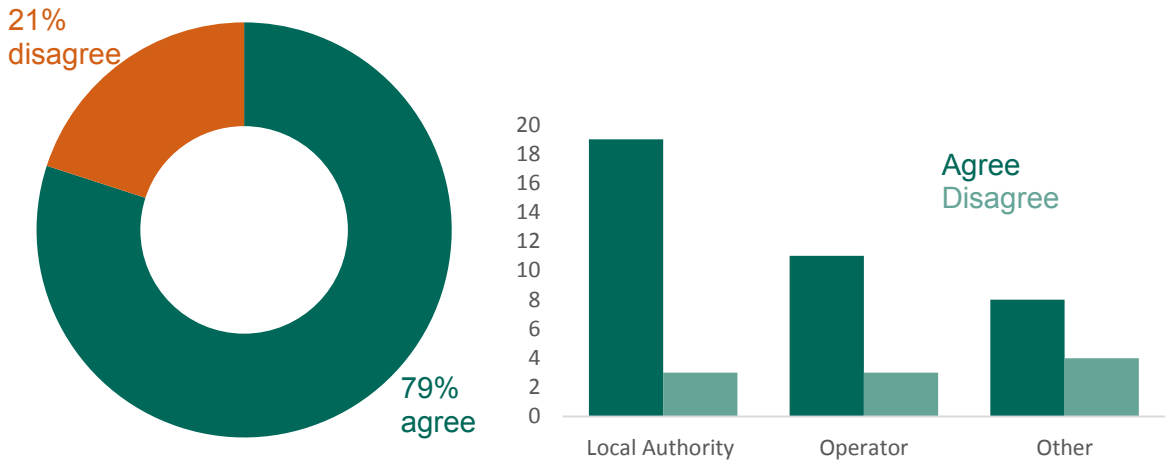
8.9 It is also worth reiterating that this statutory objection mechanism needs only to be used when an enhanced partnership scheme is first introduced. Schemes can contain bespoke arrangements for objection – developed by the local authorities and bus operators involved – that apply when the scheme is varied.

8.10 The Department does not propose to make any changes to the Bus Services (Objections to Enhanced Partnership Plans and Schemes) Regulations in light of responses to these consultation questions.

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

8.11 We received 48 responses to this question. Just under 80% of respondents agreed that the mechanism should have two separate tests.

8.12 A number of respondents reiterated our aim that the objection mechanism should not allow either a dominant operator or a coalition of smaller operators from blocking an enhanced partnership. One respondent also expressed concern that the Department was seeking a 'one size fits all' solution that did not adequately take into account mid-sized operators.



Government response

8.13 The principle objective in preparing the objection mechanism was to ensure that operators had a proportionate say, with neither one or two large operators, nor a collection of very small operators, who collectively have only a very small market share, able to stop the progression of an enhanced partnership. The majority of responses agreed that, given the wide variation in local markets, the objection mechanism should have two separate tests.

8.14 The geography of individual enhanced partnership areas may vary considerably. Some may encompass only urban or rural areas, others may be a combination of both. Some may be relatively small, say the centre of a city or major town, others may encompass a number of local authority areas. In light of this, a single objection criteria based upon a combination of number of operators and market share also, in our view, does not adequately reflect how the objection mechanism may be used in practice. This could result in either a dominant operator or a coalition of smaller ones unreasonably blocking a scheme.

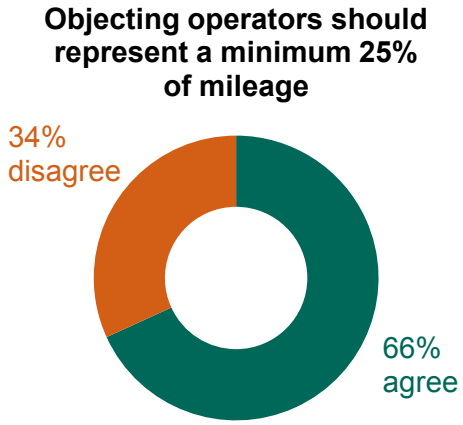
8.15 The Department does not propose to make any changes to the Bus Services (Objections to Enhanced Partnership Plans and Schemes) Regulations in light of responses to this consultation question.

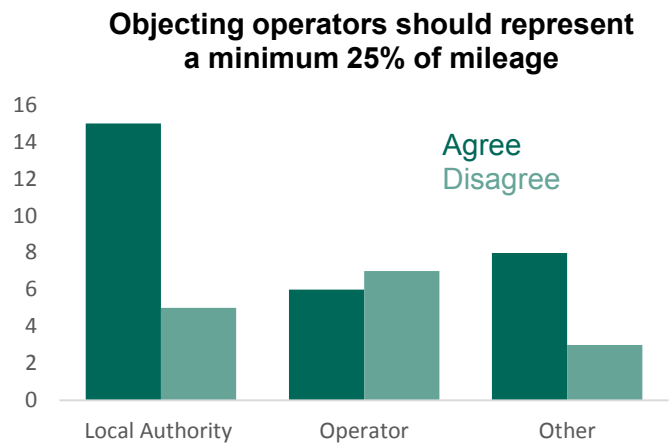
Question 28 – For test one, do you agree that:

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

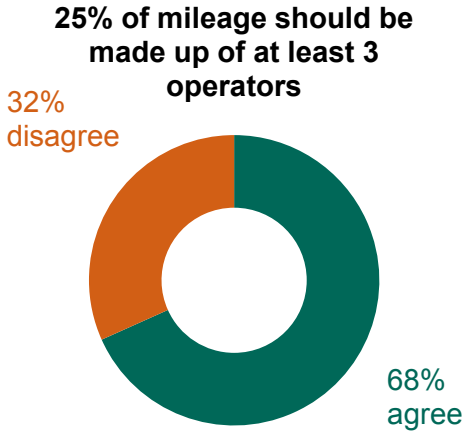
Question 29 – If not, what alternative values would you propose? Please explain your reasons.

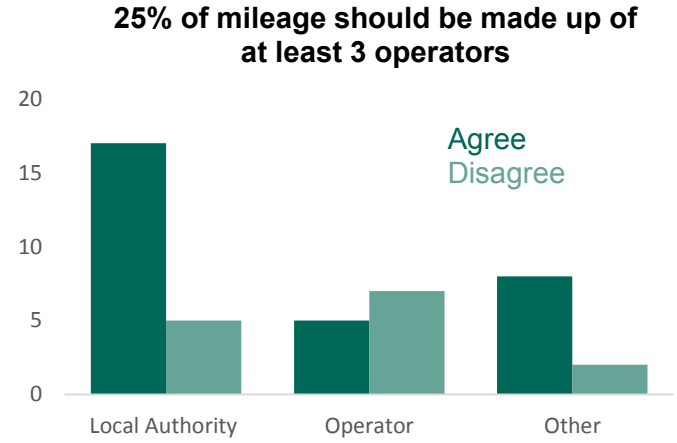
8.16 We received 44 responses to question 28a which asked whether objecting operators should be required to represent a minimum of 25% of mileage. 66% of respondents agreed with this figure. However, over 50% of operators disagreed.





8.17 We received 44 responses to question 28b which asked whether that 25% of mileage should be made up of at least three operators, to stop proposals being blocked by a single operator. Again, 68% of respondents agreed with this figure, but over 50% of operators that responded disagreed.





8.18 We received 14 responses to question 29 - but there was no general consensus amongst respondents on alternative values. Those alternatives varied from 5% as a measure for mileage, to over 30% or 35% for one or both.

8.19 One respondent pointed out that the regulations should specifically cater for areas where there may be less than three operators.

Government response

8.20 As stated previously, the principle aim of the objection mechanism is to ensure that participating operators have a proportionate say. The figures in the draft regulation are based on 'real world' scenarios, with analysis conducted using DfT data. As none of the respondents that suggested alternative figures provided any analysis to support their views, we consider that our proposals will be suit the wide variety of local markets that exist.

8.21 However, we agree that the regulations should be clear on the actions that should be taken should there be fewer than three operators in any one market.

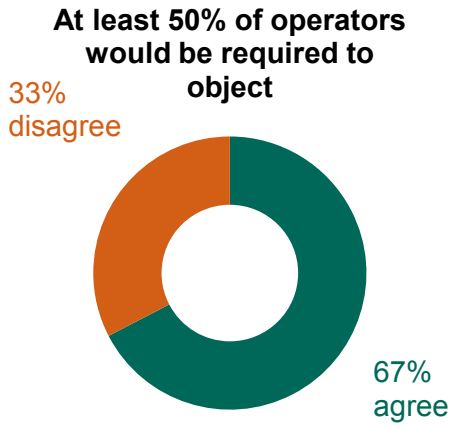
8.22 The Department considers that 25% of millage that is made up of at least 3 individual operators represents the right balance for this element of the objection mechanism. We propose to amend the Bus Services (Objections to Enhanced Partnership Plans and Schemes) Regulations to clarify that if there are 3 operators or fewer then they would all need to object for this element of the mechanism to be triggered.

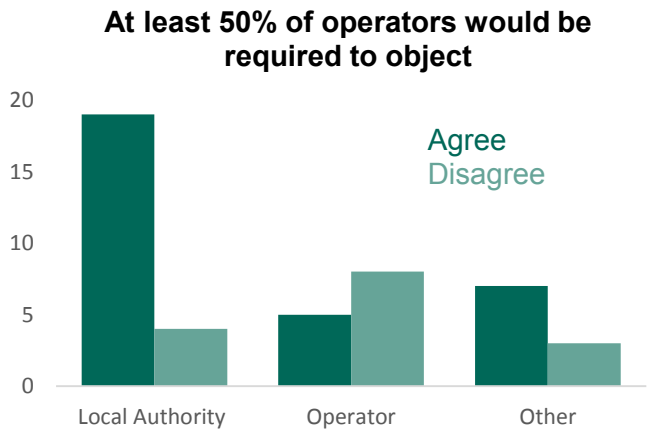
Question 30 – For test two, do you agree that:

a) **At least 50% of operators would be required to object?**
b) **Those 50% of operators should represent at least 4% of mileage?**

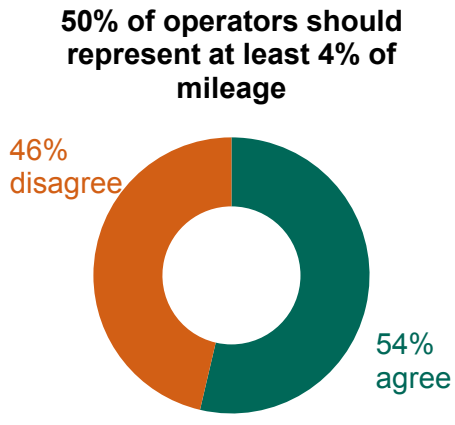
Question 31 – If not, what alternative values would you propose? Please explain your reasons.

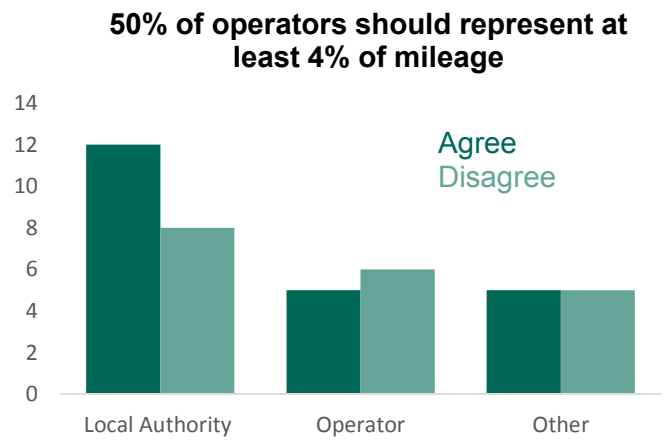
8.23 We received 46 responses to question 30a which asked whether 50% of operators should be required to object. 67% of those who responded agreed with the figure, but over 50% of operators that responded disagreed.





8.24 We received 41 responses to question 30b which asked whether those 50% of operators should be required to represent at least 4% of mileage. 54% of respondents agreed with the figures proposed, but again, over 50% of operators that responded disagreed.





8.25 We received 6 alternative proposals in response to question 31. A number of respondents thought that the 4% figure might be too low and another that both figures should be over 50%. Other respondents suggested alternative figures of 10% and 75%.

8.26 One respondent suggested that specifying an absolute number of operators should be avoided since it may be inoperable in some local markets. The point was also made that a large operator in a single market may be a small operator in a regional or national market, or vice versa.

8.27 Only two respondents provided any analysis of the effect of the suggested percentage figures on their local markets. One supported the figures in the draft regulation, the other suggested the mileage figure could be too low.

Government response

8.28 The Department agrees with the majority of respondents that this test is a useful partner to the test based on operated mileage. Again, whilst other percentage figures or methodologies were suggested, only one respondent provided any analysis of their effect. However, the figures in the draft regulation are based on 'real world' scenarios.

8.29 There was also some misunderstanding of how the 4% of operated mileage figures is used. It does not favour operators running only 4% of mileage over those running the remaining 96%. Its purpose is only to ensure that if 50% or more of operators are objecting to the scheme that those objecting operators represent enough operated mileage to ensure their objections are properly representative of the local bus market. As stated in the consultation document, without this qualification, a scheme could be halted by objections from operators that represent only a tiny percentage of the market.

8.30 The Department agrees with the majority of responses that the existing figures of 50% and 4% are sufficient. Whilst we accept that the percentage figures may not suit all areas and bus markets, it would not be possible to arrive at ones that do.

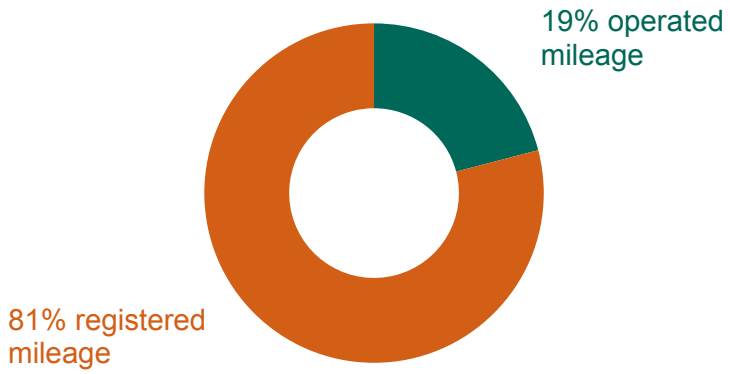
8.31 The Department considers that the figures of 50% and 4% respectively represents the right balance for this element of the objection mechanism, and therefore does not propose to amend the Bus Services (Objections to Enhanced Partnership Plans and Schemes) Regulations.

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

c) operated mileage; or
d) registered mileage? Please explain your reasons.

8.32 We received 42 responses to this question. Just over 80% of respondents thought the measure should be based on registered mileage, and there was consensus amongst the different groups.

8.33 Respondents supported registered mileage for a variety of reasons: that it is easy to measure, it is what the operator has committed to the Traffic Commissioner and the figures can be calculated from information in the public domain.



8.34 There were a number of other comments made in relation to this issue. Five respondents suggested that services registered to be operated at 'frequent' intervals should assume 6 journeys per hour unless the operator commits to a higher frequency. Another respondent suggested that there needs to be a direct link to commercial BSOG. One respondent suggested that the figure used should include 'dead' mileage, while another suggested that this should be excluded. Another respondent suggested using passenger journeys instead.

Government response

8.35 The Department agrees with the majority of respondents that this figure should be based on registered mileage. As pointed out in the responses, in the case of dispute, this figure can be calculated from information in the public domain – the particulars registered with the Traffic Commissioner – and it avoids the need to carry out potentially complex calculations based on changing operated mileage.

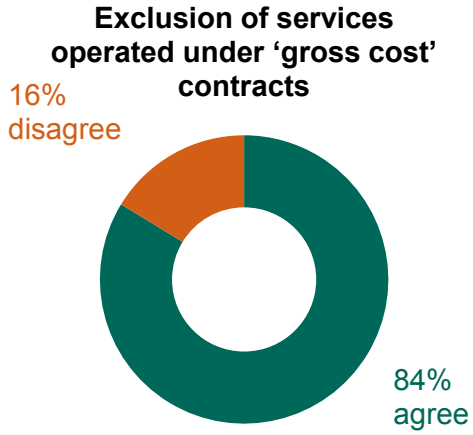
8.36 The current local bus service registration mechanism also allows a standard service operating at a frequency of 10 minutes or less to provide a statement of that fact instead of a timetable. The Department agrees that the regulations should contain specific provisions to deal with frequent services. The regulations will therefore be amended to specify that a 'frequent' service operates six buses an hour unless the operator commits to a higher frequency as part of the service registration.

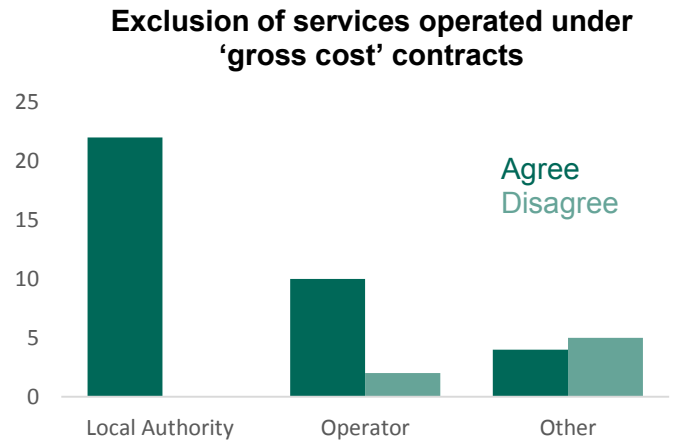
8.37 The Department proposes to amend the Bus Services (Objections to Enhanced Partnership Plans and Schemes) regulations to base the mileage data on registered mileage and clarify how 'frequent' services should be dealt with.

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

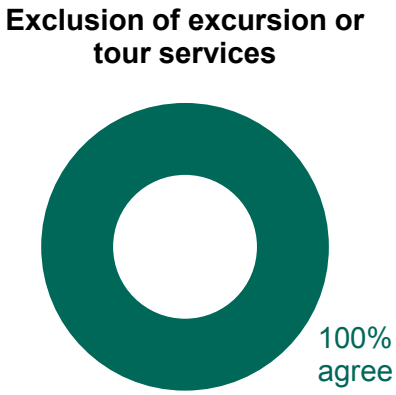
a) Operators running services under 'gross cost' contracts;
b) Excursion or tour services; and
c) Services with less than 10% of mileage in the enhanced partnership area.

8.38 We received 43 responses to question 33a in relation to excluding services operated under 'gross cost' contracts. Over 80% agreed with this exclusion.

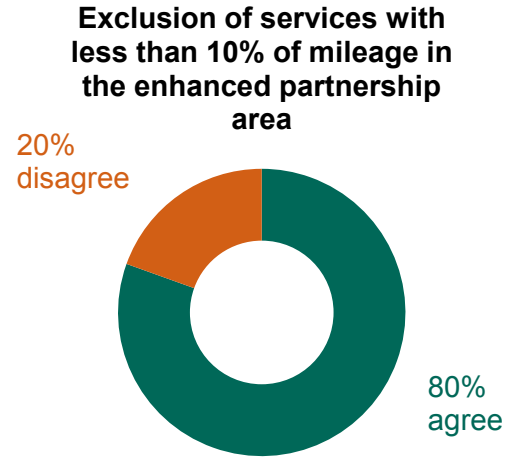


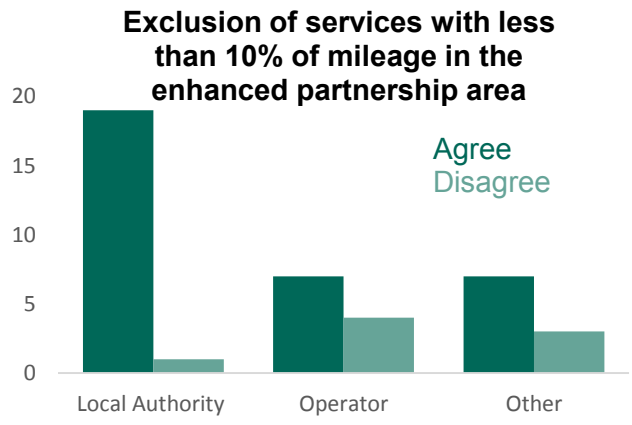


8.39 We received 41 responses to question 33b in relation to excluding excursion or tour services. All respondents agreed with this exclusion.



8.40 We received 41 responses to question 33c in relation to excluding services where less than 10% of mileage is in the enhanced partnership area. 80% of respondents agreed with this exclusion.





8.41 Four respondents suggested that for supported cross-boundary services, the contracting authority should be treated as the operator for the objection mechanism. A further three respondents suggested that services supported by authorities using 'de minimis' provisions should be treated as commercial. Conversely, two respondents suggested that all services operating under contract to authorities should be excluded from the objection mechanism as this would reduce the ability of operators with a heavy reliance on subsidy objecting to a scheme, and as they are under full control of the authority, operators can mitigate any risks through contract prices.

8.42 In addition, two respondents suggested that excursion and tour services should be included where they offer short-distance fares and participate in the concessionary fares scheme.

Government response

8.43 The objection mechanism is designed to give bus operators a fair and proportionate vote as to whether or not the proposal should proceed. Therefore, we do not believe authorities should also be able to take part in the objection mechanism. We also cannot see why 'de minimis' services – which have been awarded by the authority without an open competition – should be treated as commercial services.

8.44 We can see some merit in allowing excursion and tour services to be included if they offer short distance fares and participate in the concessionary fares scheme. However, a service with less than 10% of its overall mileage operating in the enhanced partnership area, is more likely to be primarily concerned with the travel needs of longer distance passengers, rather than catering for, or responding to, the needs of local passengers.

8.45 The Department proposes to proceed with the exclusions set out in the Bus Services (Objections to Enhanced Partnership Plans and Schemes) regulations.

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

8.46 13 respondents gave suggestions for other services that should be excluded.

8.47 A number of respondents suggested that registered school services should be excluded unless they form an integral part of the proposed enhanced partnership scheme. Others suggested that supported services operated under net cost contracts should have a weighted objection response as commercial risk is balanced by the authority contract arrangement. Another suggested that services that had only one or two stops in the enhanced partnership area should be excluded.

8.48 Two respondents suggested that authority tendered services should be excluded altogether and a further two suggested excluding park and ride services. A further

response suggested that services contracted by a third party – e.g. educational establishments or supermarket – those covered under 'bulk rate' contracts or tourist services where they operate for less than six consecutive weeks. Three responses also suggested that 'football specials' should be excluded.

Government response

8.49 The Department believes that, as a general principle, operators running local bus services in the enhanced partnership area should be able to participate in the operator objection mechanism. Particular types of service should only be excluded from the objection mechanism if certain criteria apply. These are:

(a) the operators bear little or no financial risk or burden of implementing the enhanced partnership requirements; and

(b) that the inclusion of those operators at (a) above is likely to have a material effect on the overall outcome of the objection mechanism.

8.50 For this reason we do not believe it is necessary to exclude every type of registered service that meets only criteria (a) above. So, for example, the provision of services catering for football matches are unlikely to have a material effect on the overall pattern of operator objection. An extensive list of exemptions may also pose a significant administrative burden on the authority and make the regime difficult for authorities and operators to understand and use.

8.51 School bus services are required to be registered with the Traffic Commissioner if they carry the general public. The Department believes it is right that the operators of such services – provided they are not operated under gross cost contracts – should take part in the objection mechanism, as they are contributing to the local bus service market and the operators are bearing some financial risk.

8.52 Also, we see no reason why operators of park and ride services should not take part in the objection mechanism if they are bearing some financial risk. Decisions on the provision of local services in the surrounding area may impact – beneficially or otherwise – on such services and in these conditions we believe it is right that they should have a say.

8.53 The Department does not therefore propose to add any further exclusions to the Bus Services (Objections to Enhanced Partnership Plans and Schemes) regulations.

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

8.54 We received 11 further comments on the proposed mechanism. A number of respondents did not agree with the ability for operators to object at two stages during the development of proposals. They thought that operators should only be able to object before a scheme is 'made'.

8.55 Another respondent pointed out that when an authority has one operator which operates over 50% of the network mileage, a scheme could be blocked on the basis that the largest operator plus two small operators object. A further response pointed out the need for local discretion in determining the operator objection mechanism, for example, in dealing with commercially operated demand responses services where 'registered mileage' may be an inappropriate measure.

Government response

8.56 The ability for bus operators to object at two stages during the development of an enhanced partnership proposal – before public consultation on draft proposals and in certain circumstances, before a scheme is 'made' – is contained in the Act and is therefore outside the scope of this consultation.

8.57 As stated elsewhere in this response, the Act does make provision for bespoke objection mechanisms to be used locally when the scheme is varied. The statutory objection mechanism is only required to be used when the scheme is first 'made'.

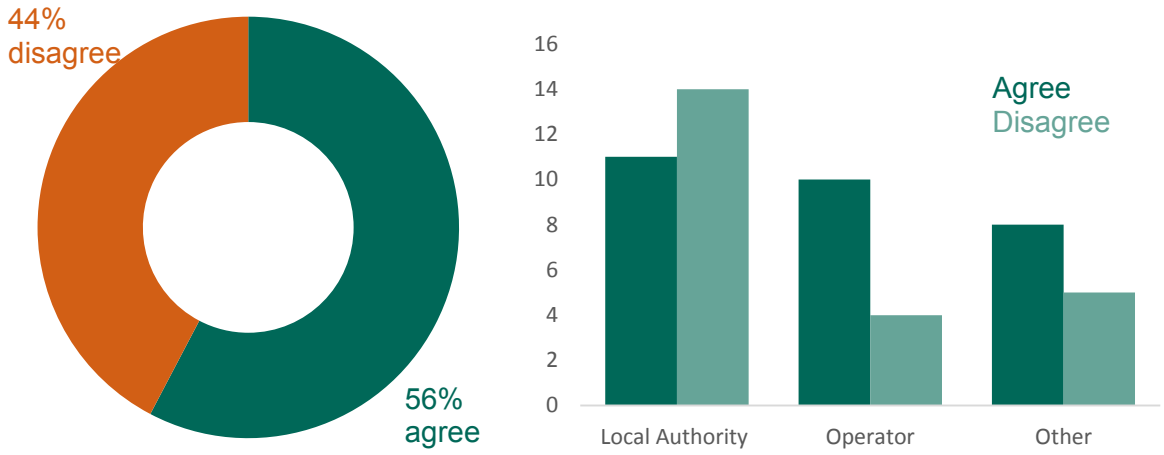
8.58 The Department does not propose to make any further changes to the Bus Services (Objections to Enhanced Partnership Plans and Schemes) regulations in light of the responses to this consultation question.

9. Information on varied or cancelled services

The Act enables regulations to be made to require bus operators to provide information when requested by a local authority, on the patronage and revenue of a service that they propose to cancel or vary in an area. The regulations set out the detail of this process.

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

9.1 We received 52 responses to this question. Just over 55% of respondents agreed with the proposal.



9.2 The responses to this question were mixed. Although the majority of respondents agreed with the proposal, there were a number of views expressed about the circumstances in which the information could be requested, and the ways in which it could be used, including suggestions that local authorities should be able to share the information with other commercial operators or community transport operators. Issues about the disclosure of information will be dealt with in response to later consultation questions.

9.3 One respondent recommended that authorities should only be able to request information in circumstances where there is likely to be adverse impacts on passengers. Other respondents felt that authorities should also be able to request the information in connection with their wider functions, rather than only be able to request the information in connection with their public transport functions. These respondents considered that authorities may need this information when thinking about issues such as congestion and air quality.

9.4 A number of authorities disagreed with the premise of having to request the information at all, and argued that it should be available as a matter of course to make the process faster and more efficient.

9.5 In addition, a number of respondents raised concerns about the commercial confidentiality of the information, and the risks associated with releasing that information. However, a number of other respondents argued that when an operator chooses to cancel a service, it gives up its commercial interests and therefore has no case to claim commercial confidentiality of patronage and revenue information.

Government response

9.6 Turning first to the views expressed by some respondents that local authorities should be able to request revenue and patronage information in connection with their wider functions, rather than solely in connection with their public transport functions. We understand that authorities may want to assess the impacts of service changes on local communities, including considering the impacts of such changes on issues like congestion and air quality. However, we do not consider that revenue and patronage information in particular would help an authority with this task, and as such we are not of the opinion that authorities should be able to request this information in connection with their wider functions.

9.7 On the issue of authorities being required to request this information, rather than it being provided automatically, we have tried to balance the need for information against the potential burdens on business. We do not consider that all local authorities will necessarily have a need for this information, and as such, the Department considers that an automatic requirement for operators to provide it would place an unnecessary burden on business. There is however nothing to stop an authority coming to a voluntary information sharing arrangement with operators in their area if they wish to receive this information automatically.

9.8 The Department does not propose to make any changes to the Public Service Vehicles (Registration of Local Services) (Amendment) regulations in light of the responses to this consultation question.

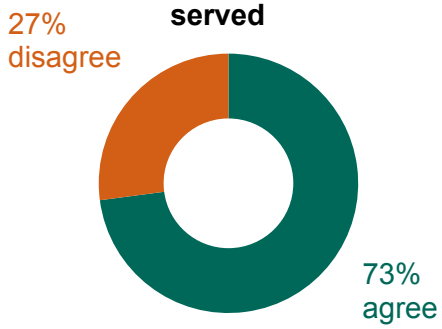
Question 37 - The draft regulations set out exceptions from the circumstances in which a local authority can request information from operators when a service is cancelled or varied. Do you agree with the list of exceptions?

Question 38 - Should other exceptions be added? If so, what should these be?

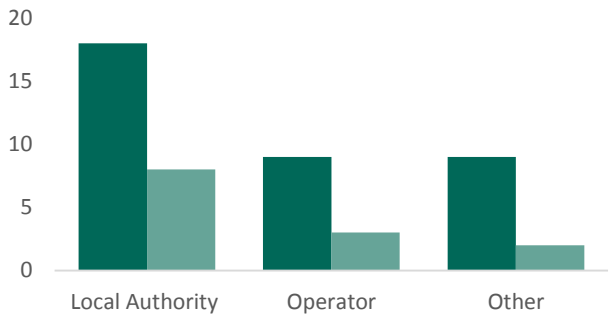
9.9 We received 49 responses to question 37 and 48 responses to question 38. The majority of respondents agreed with the exceptions in the draft regulations, but there a number of respondents that disagreed with the inclusion of each exception. 18 respondents suggested additional exceptions.

9.10 A number of respondents felt that authorities should be able to request information in relation to all variations, even those that made improvements to the service, for example to assess environmental impacts of increasing the number of buses on a sensitive street.

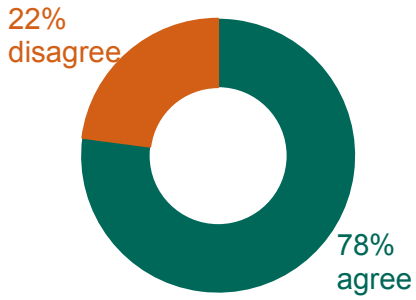
Variation increases the number of bus stops served



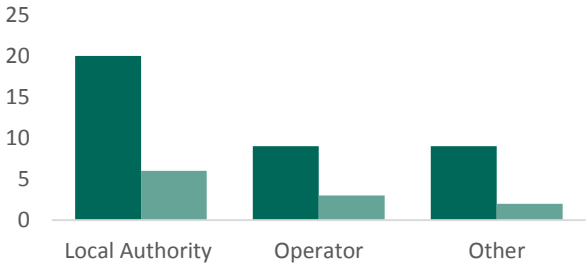
Variation increases the number of bus stops served



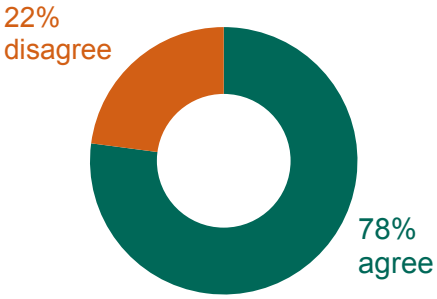
Variation increases the frequency of the service



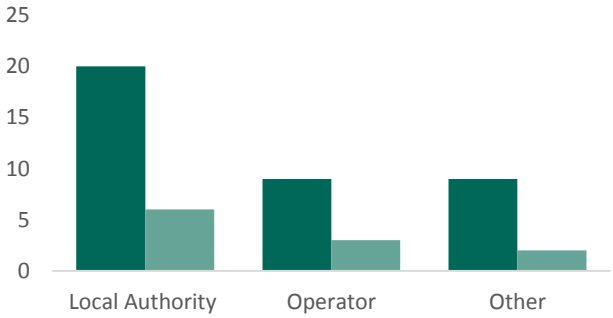
Exception when the variation increases the frequency of the service



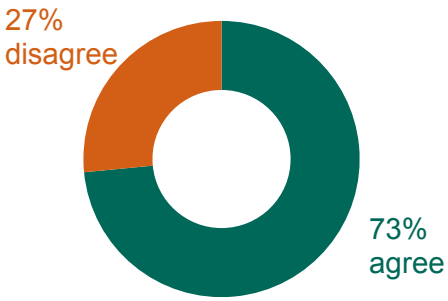
Variation extends the period for which the service operates



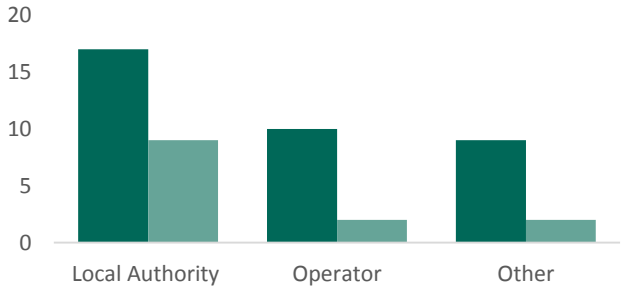
Variation extends the period for which the service operates



Timetable adjustment that does not significantly affect the level of service



Timetable adjustment that does not significantly affect the level of service



9.11 However, other respondents suggested that the list of exceptions should be broadened, with operators able to make more changes to services without being subject to requests from authorities for information. The respondent cited examples of variations such as relatively small frequency reductions to better match demand or allowing additional running time to address unreliability caused by congestion. In addition, a number of respondents thought that authorities should only be able to request information in relation to services that had been cancelled, and that operators should not be required to provide information if a variation or cancellation of a service is immediately replaced by a new service registration.

9.12 The issue of short notice applications to register, vary or cancel services was also raised by a number of respondents. Currently, there are a number of circumstances in which the Traffic Commissioner has discretion to grant an application in less than 56 days, for example where a change is made to a service to deal with urgent passenger demand. These are set out at regulation 7 of the Public Service Vehicles (Registrations of Local Services) Regulations 1986. In particular, respondents queried whether authorities would be able to request information in relation to such variations and cancellations, and whether these applications would be subject to any pre-notification period. Queries in relation to pre-notification periods will be dealt with in response to later questions.

Government response

9.13 Our aim in drafting the list of exceptions was to ensure that operators could freely make changes to services in the interests of passengers without having to pass information to the relevant authority.

9.14 With regards to the points made that authorities should be able to request information in relation to any variation, even where it improves the service, the Department understands the desire of some authorities to be made aware of such services changes. However, the Department does not consider that a sufficiently strong argument was made for authorities to be able to access revenue and patronage information in relation to such variations, as assessing issues such as the environmental and congestion impacts of such changes could be done without such information. It is also worth noting that there is nothing prohibiting authorities and operators from entering into local, voluntary information sharing arrangements. Therefore the draft excluded variations will remain in the regulations.

9.15 The Department has considered the points made about broadening the list of exceptions to allow operators to make more variations to services without being subject to information requests from authorities. The Department considers that the current draft regulations already enable operators to make minor adjustments to the timetables of services without being subject to the requirements to provide information to authorities, and as such, the Department is not convinced of the need to add further exceptions. In addition, the Department considers that a

significant variation in a service can have an adverse effect on passengers or the wider transport network, therefore the relevant authority will need the required information to assess if replacement services are needed.

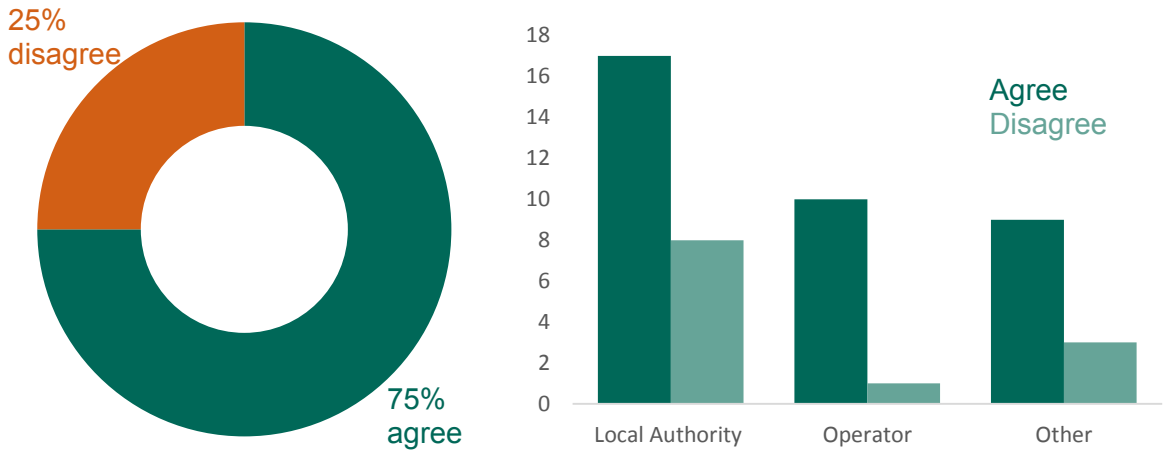
9.16 However, we agree that circumstances in which an operator can apply for a short notice variation or cancellation should also be added to the list of exceptions, reflecting the fact that these sorts of changes are usually made to enhance a service or in response to road traffic regulation issues.

9.17 The Department proposes to retain the exceptions listed in the Public Service Vehicles (Registration of Local Services) (Amendment) Regulations and additionally except variations or cancellations of the type specified in regulation 7(2) of the Public Service Vehicles (Registration of Local Services) Regulations 1986.

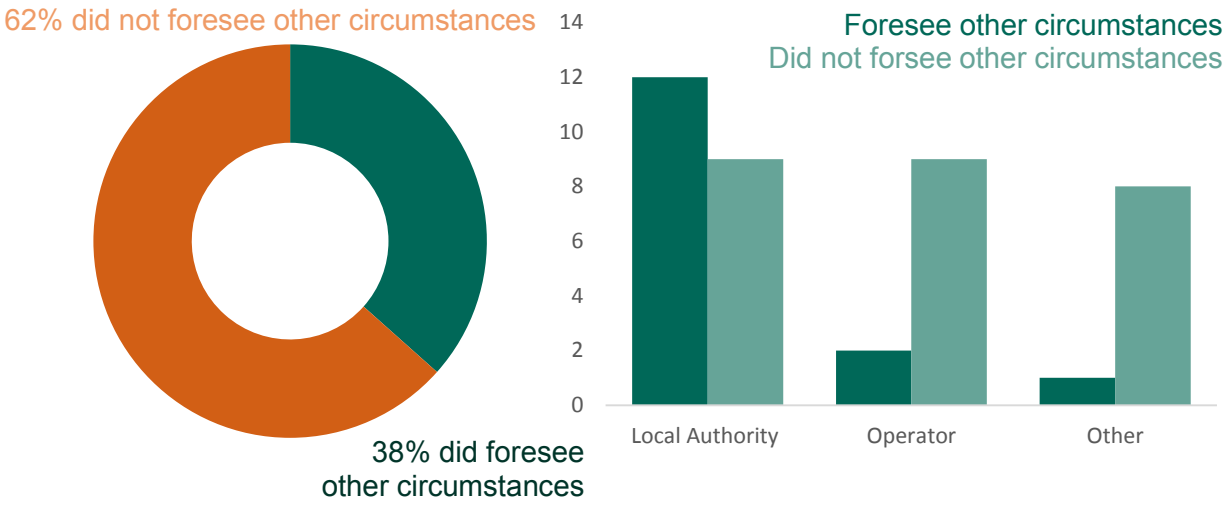
Question 39 - Do you agree with the disclosure provisions? Please explain.

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

9.18 We received 48 responses to question 39, with three quarters of respondents agreeing with the disclosure provisions.



9.19 We received 42 responses to question 40, on the issue of whether or not there were other circumstances in which authorities should be able to disclose the information. Only 38% of respondents responded to say that they could foresee other circumstances in which authorities should be able to disclose this information.



9.20 The current draft regulations enable authorities to disclose information where they are inviting tenders for a subsidised service. They require patronage data to be aggregated on a monthly basis and revenue on an annual basis so as not to damage the operator's commercial interests. Operators can also request that information not be disclosed but this decision will lie with the relevant authority. Most respondents agreed with the disclosure provisions as currently drafted, with some commenting that this information would allow operators to accurately calculate a price for subsidised contracts.

9.21 However, other respondent suggested that being able to disclose the information to other commercial operators would maximise the chances of a commercial bus service being maintained, and others commented that they should be able to disclose this information during discussions with alternative transport providers, for example community transport providers, to help the authority implement the most cost effective approach to providing the service.

9.22 In addition, a number of respondents thought that authorities should be free to disclose patronage data only to the public or other transport providers to enable open discussions about the provision of alternative services as this information was less commercially sensitive in nature. Other respondents thought that the authority should be able to disclose all the information to other operators or community transport providers.

9.23 Another respondent thought that that revenue data should be aggregated on a monthly basis, rather than annual.

Government response

9.24 The original intention of this regulation was to ensure that bidders for subsidised service contracts are operating on a level playing field, with the same information, which should then lead to the authorities receiving competitive tender prices. In considering the responses to these consultation questions we have tried to balance the need to protect operators' commercial interests against the desire to ensure that services are provided to passengers in cost-effective ways.

9.25 The Department agrees that there may be other circumstances in which this information could be released which could be beneficial to passengers, and that a local authority subsidising a service may not be the only solution to an issue created by the cancellation or variation of a service - there may be instances where other commercial providers or community transport operators can step in.

9.26 However, we also take note of the concerns around commercial confidentiality and the implications of providing such information to other commercial operators. We acknowledge that revenue information has the potential to be commercially sensitive, providing insight into the performance of an operator's remaining commercial services. However, the Department does not agree that patronage information is as commercially sensitive as revenue information.

9.27 We consider that useful conversations could be had with alternative transport providers on the basis of patronage information only. As such, the Department considers that local authorities should be able to disclose patronage information to other commercial operators and transport providers to discuss alternative replacement services.

9.28 We remain concerned about the potentially sensitive nature of revenue information, and therefore consider that such information should only be released for the purposes of issuing a tender for a subsidised service.

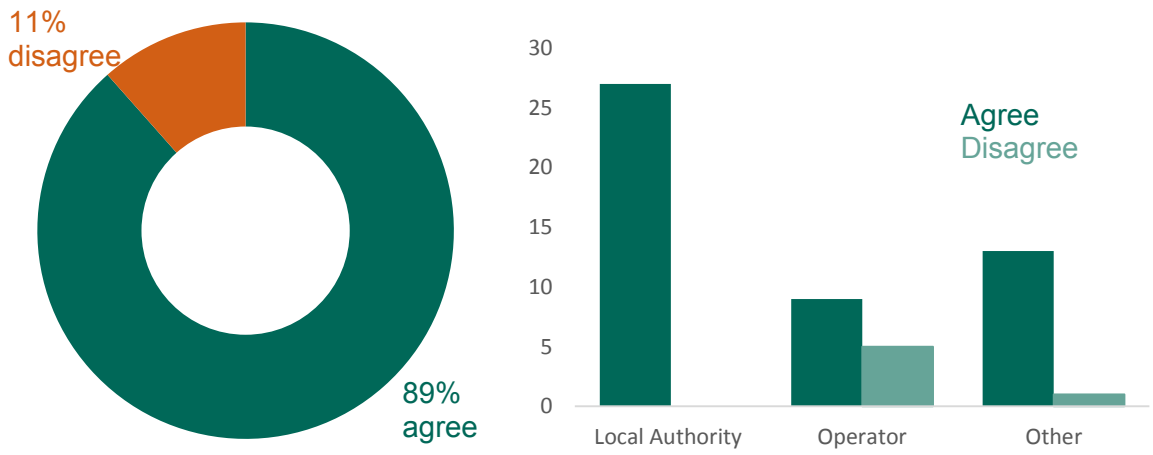
9.29 The Department proposes to amend the Public Service Vehicles (Registration of Local Services) (Amendment) regulations to allow patronage data to be released for the purposes of discussing the provision of replacement services with alternative providers.

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

9.30 We received 55 responses to this question. Almost 90% of respondents agreed with the introduction of a pre-notification period.

9.31 Mainly respondents said that the overall registration period of 56 days was not enough time for an authority to assess the need for a replacement service. Respondents commented that extra time would allow for more pragmatic and well-researched decisions, and encourage better dialogue and communication between operators and the authority.

9.32 Of the respondents that disagreed with the introduction of a pre-notification period, several expressed concerns that it would delay necessary changes to the detriment of the passengers.



9.33 In addition, a number of respondents raised questions about the treatment of existing 'short notice' applications to register, vary and cancel services, and whether applications to make variations and cancellations in those circumstances could be subject to a pre-notification period.

Government response

9.34 Given the support expressed for this proposal through the consultation, the Department agrees that the implementation of a pre-notification period will facilitate improved dialogue between authorities and operators about changes to existing services and new proposed services, and provide authorities with more time in which to assess the potential impacts of changes and put in place any necessary plans.

9.35 The Department has however noted the concerns expressed about the introduction of a pre-notification period, and the potential for such a period to hinder operators' ability to respond to changes in the market. Currently, the Traffic Commissioner has discretion to grant applications to register, vary or cancel a service with less than 56 days' notice, and we agree that there are certain circumstances in which operators should be able to quickly change their services, for example in responding to an urgent public transport need, or where there is additional demand due to an event.

9.36 We do not want to unnecessarily limit the ability of operators to make changes more quickly, and propose to amend the regulations to make clear that operators can apply to the Traffic Commissioner earlier than 28 days after they have notified the relevant authority if the authority is content for them to do so. This should ensure that operators have sought support from the relevant authority before submitting their request for a short notice variation or cancellation to the Traffic Commissioner, but still provides the ability to progress the application more quickly where it is suitable to do so.

9.37 We will also make it clear in the regulations where the pre-notification period will not apply. For example where a franchising authority has issued a transitional notice, applications to vary or cancel services will not be caught by the

requirements to observe a pre-notification period. This is because the franchising authority will already have had the ability to increase the notice period to 112 days and therefore we do not consider it appropriate for further time to be added to that period.

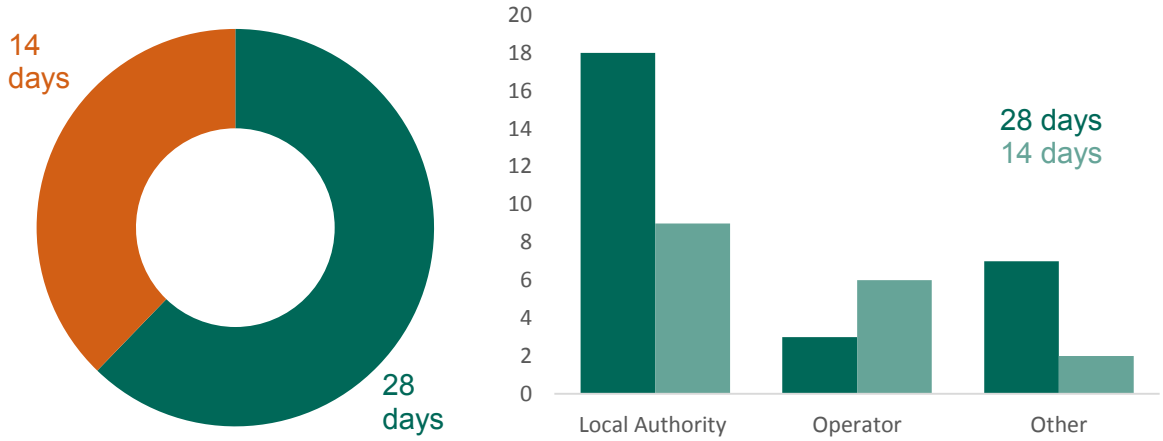
9.38 The Department proposes to amend the Public Service Vehicles (Registration of Local Services) (Amendment) Regulations to introduce a pre-notification period, and also to give operators discretion to progress their application to the Traffic Commissioner more quickly where they have the support of the relevant authorities.

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

9.39 We received 50 responses to this question. Over 60% of respondents agreed with a 28 day pre-notification period.

9.40 The consultation proposed introducing either a 14 day pre-notification period, followed by the existing 56 day registration period, or a 28 day pre-notification period, but with a reduced 42 day registration period.

9.41 A number of respondents expressed the need for a longer time period in which authorities and operators could discuss the potential implications of the proposed changes and provide relevant information to passengers.



Government response

9.42 The Department agrees that 28 days is a reasonable amount of time for authorities and operators to discuss service changes and provide relevant information if necessary or appropriate. However, we must balance this against placing heavy burdens on operators. Therefore, the Department plans to introduce a 28 day pre-notification period, but also reduce the registration periods for services operated under PSV operator licenses and section 22 permits to 42 days and 14 days respectively – reflecting the fact that we do not wish to overly extend the overall period.

9.43 The exchange of information between the authority and the operator would therefore be as follows:

- Operator sends a complete draft of the proposed application to the authority 28 calendar days in advance of the date the operator intends to notify the Traffic Commissioner of its intention to cancel or vary the service;
- Authority has 14 days calendar days to consider and contact the operator to request information if necessary;
- Operator has 14 calendar days to supply the relevant information;
- Operator submits its application to the Traffic Commissioner.

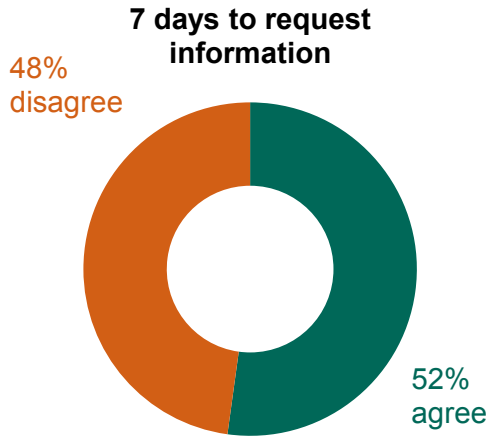
9.44 The registration period will be reduced from 56 to 42 days for services operated under PSV operator licenses and from 28 to 14 days for services operated under section 22 permits, in order to maintain the overall time taken for the whole process of 70 days and 42 days respectively.

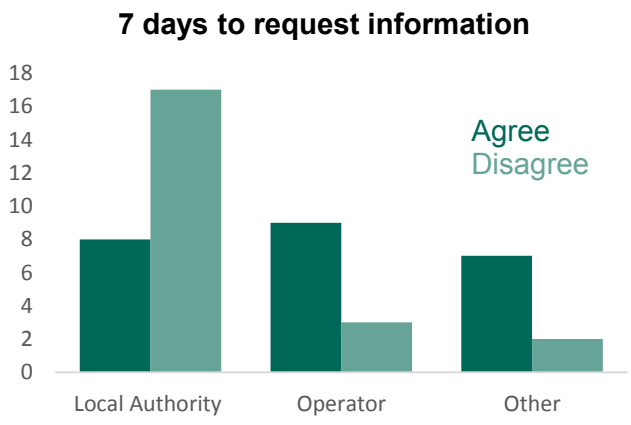
9.45 The Department proposes to amend the Public Service Vehicles (Registration of Local Services)(Amendment) Regulations to introduce a 28 day pre-notification period, and also proposes to amend the Public Service Vehicles (Registration of Local Services) Regulations 1986 to reduce the period of notice to the Traffic Commissioner by 14 days. Updated guidance will be issued for bus operators and authorities before the new timescales take effect.

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

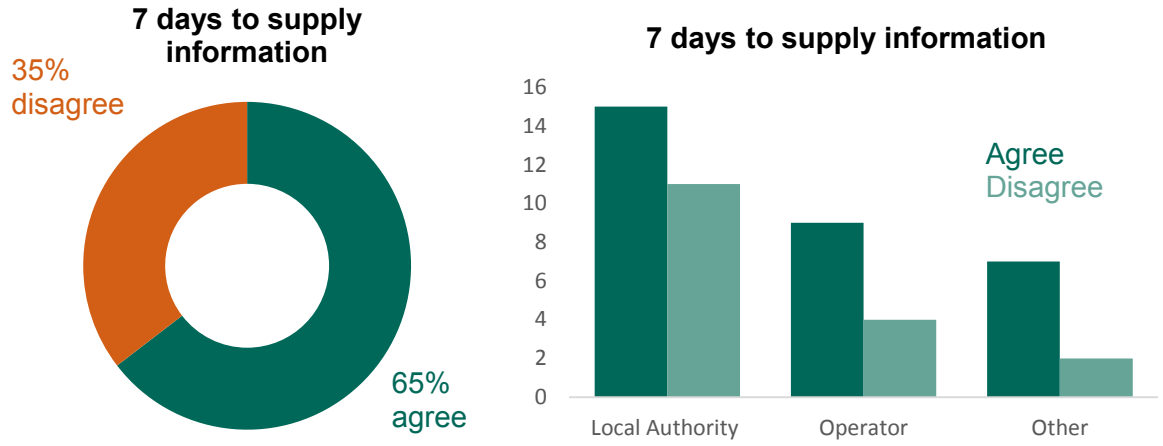
Question 44 - Is 7 days a reasonable amount of time for the operator to supply the relevant information to the local authority? Please explain your reasons.

9.46 We received 46 responses to question 43, with just over half of respondents expressing their opinion that 7 days was a reasonable amount of time for authorities to consider whether to request information.





9.47 We received 48 responses to question 44, with over 60% of respondents considering that 7 days was a reasonable amount of time for operators to supply information to the authority.



9.48 However, a number of respondents thought that the length of time required by both parties would be dependent on the size and complexity of the bus network.

9.49 A number of respondents thought that 14 days would be more reasonable in both cases, with concerns raised in particular about smaller operators. Another respondent thought that authorities should be able to make a request for information on one occasion, with the information then automatically provided on every subsequent occasion.

9.50 However, some respondents expressed concern that providing operators with more time would reduce the time the authority had to decide an appropriate course of action. In addition, a number of respondents queried how enforcement of these provisions would work, and what action could be taken should an operator not provide the information within the prescribed time period.

Government response

9.51 We want to ensure that authorities have access to the relevant information as soon as practicable. However we must balance this against placing unnecessary burdens on operators to provide information every time, even if the authority has no intended purpose for it. Therefore, the Department does not agree that authorities should have access to revenue and patronage information automatically.

9.52 The Department does however agree that 14 days is a more reasonable period of time to give both authorities and operators when requesting and supplying data. Depending on the complexity and scale of the network, 7 days may not be enough time for all operators to provide the relevant information.

9.53 The Act allows for the regulations to provide that an application from an operator to vary or cancel a service can be refused if the operator fails to provide the information requested. However, in keeping with the enforcement provisions

used in relation to other areas of the Act, we intend to use the powers that Traffic Commissioners have to place sanctions on operators that do not provide the necessary information, including imposing financial penalties, as set out in section 155 of the Transport Act 2000.

9.54 The Department proposes to amend the Public Service Vehicles (Registration of Local Services)(Amendment) Regulations to allow authorities and operators 14 days to request and provide the relevant information respectively.

10. Guidance for improving bus services

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

10.1 49 respondents had further comments about the general guidance. Those that commented highlighted the need for the guidance to urge authorities to think carefully about how to manage local bus service provision in rural areas, with others commenting that passengers need to be at the heart of any authority's considerations.

Government response

10.2 The Department prepared the general guidance material in response to issues raised during the Act's passage through Parliament. As the final guidance to accompany the Act is developed we will determine how best to integrate this guidance on wider matters and considerations.

10.3 The Department proposes to integrate this wider guidance material as part of the final guidance to accompany the Act.

11. Franchising Guidance

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

11.1 46 respondents had further comments about the business case guidance.

11.2 In general the comments on the business case guidance were positive, with support in particular expressed for the aspects of the guidance which urge authorities to think about the 'case for change' and the outcomes they are looking to achieve. However, a number of respondents argued that there should be a greater focus on passengers, with passenger needs and wants forming a key element of the case for change.

11.3 Some respondents felt that the guidance was overly burdensome on authorities, considering that it went beyond HM Treasury Green Book guidance in places. Particular attention was drawn by some respondents to the aspects of the guidance which require authorities to compare the proposed franchising scheme to other courses of action, arguing that the guidance goes beyond the requirements of the Act itself and that is it not standard practice to consider the management, commercial and financial cases of different options. A number of respondents argued that only as part of the strategic and economic cases should the franchising authority consider the relative performance of the different options, and that the guidance should therefore focus on assessing the performance of the preferred option under the management, commercial and management cases.

11.4 There were also a number of comments made about the ability of operators and other affected parties to scrutinise the proposals, and whether the guidance should make clear that authorities should co-operate with affected local operators and enable them to sense-check proposals.

11.5 In addition, many respondents made very detailed comments on the phrasing and wording of aspects of the business case guidance. In particular, comments were made about the sequential nature of the guidance. As currently drafted it could read like a step-by-step process for authorities to follow. Also, some respondents were concerned that authorities should be provided with more freedom to determine exactly how they develop their assessment and that the guidance as drafted could unintentionally hinder that.

Government response

11.6 The Department has thoroughly considered all of the detailed comments made with respect to the business case guidance, and does not consider that there are any substantial changes to make to the contents of the guidance itself.

11.7 Turning to the issue of whether the guidance should require authorities to consider the relative performance of one or more options under all five cases, rather than just considering the preferred option under the management,

commercial and financial cases, the Department is aware of a variety of different approaches that have been taken across central and local Government. In this instance we consider that it is likely that different options that an authority considers could have materially different financial, commercial and potentially management cases. If so, this is a material factor that we would expect an authority or Mayor to take into account in reaching their final decision on whether or not to proceed with a franchising scheme. As such, we would expect any difference between the options to be identified and considered in the assessment of the scheme, and will make clear in the guidance that authorities should look to clearly present any material differences between the options under the financial, commercial and management cases.

11.8 However, the Department does agree that some of the sequential language in the guidance could be restrictive for authorities when attempting to develop their assessments, and this can be easily amended to ensure that the substantive content of the guidance remains unchanged – authorities will still be expected to consider certain things as part of their assessments – but that any unintentional restrictions on authorities is removed.

11.9 On the issue of the ability of operators to scrutinise proposals, it is important to note that affected parties, including bus operators, will need to be consulted by the authority on their franchising assessment, which should give operators the chance to scrutinise proposals. The Act places the final decision to implement franchising, or not, with the Mayor or authority involved, and it will be down to them to determine how best to act in response to any issues raised by operators following consultation.

11.10 The Department proposes to leave the substance of the guidance unchanged. However, we propose to remove any sequential language to ensure that we do not place unintended restrictions on authorities as they prepare their franchising assessments. We also propose to amend the wording of guidance under the financial, commercial and management cases to make it clear that authorities should consider the relative performance of options under these headings, drawing out any material differences for the decision-maker.

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

11.11 50 respondents had further comments on the role of the auditor.

11.12 A number of respondents raised concerns about the degree of independence of the auditor, several were keen that the guidance makes clear that the auditor should not have any pre-existing relationship with the franchising authority, including having previously conducted any work for the authority or on the authority's behalf.

11.13 A small number of respondents commented on the nature of the auditor's role, with several concerned that the role was too narrow, and that the auditor should

seek input from relevant parties when preparing its report, including bus operators.

11.14 In addition to the consultation responses, Government made a number of changes to the Act as it passed through the House of Commons to clarify further the independence of the auditor, and help ensure auditors are clear on the criteria that must be taken into account when compiling their reports. The amendments require Government to issue guidance as to the matters to be taken into account by a franchising authority when selecting a person to act as an auditor, and to issue guidance regarding the matters to be taken into account when compiling their report.

Government response

11.15 In terms of the changes made to the Act as it passed through the House of Commons, and new requirements for Government to issue guidance, the draft guidance on which we consulted will be recast into two sections, the first dealing with the matters to be taken into account by a franchising authority when selecting a person to act as an auditor, and the second regarding the matters to be taken into account by the appointed auditor when compiling their report. The majority of the content of the guidance will however remain unchanged from the draft included as part of this consultation.

11.16 The Department agrees that the auditor should be independent of the franchising authority, and the draft guidance made this clear. However, in light of the Parliamentary debates, the guidance will be expanded further in this respect to make it clear that the authority should put in place the necessary procedures and processes to ensure that the auditor or audit company used to prepare the report is not the auditor or audit company also used by the authority to assist with the development of its business case.

11.17 The Department intends to retain the aspects of the guidance which talked about the sorts of activities that an authority should require of the auditor as part of their terms of reference. However, the revised guidance will make clear that Government expects that list of activities to act as the set of ‘criteria’ against which the auditor should assess or consider the authority’s assessment of its proposed franchising scheme when compiling their report.

11.18 The Department proposes to amend the guidance by recasting it into two sections, the first dealing with the matters to be taken into account by a franchising authority when selecting a person to act as an auditor, and the second dealing with matters to be taken into account by the appointed auditor when compiling their report. We also propose to make clear that the auditor or audit company used to prepare the report should not be the auditor or audit company also used by the authority to assist with the development of its business case.

12. Enhanced Partnership Guidance

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

12.1 22 respondents had comments on the enhanced partnership guidance.

12.2 There was broad support expressed for this guidance. A number of respondents suggested that the guidance should include a process flow-chart to help parties navigate the legislation, and others suggested that it would be helpful to draw out the differences between enhanced partnerships, advanced quality partnerships and voluntary partnerships.

12.3 One respondent thought that organisations representing disabled and older people should be added to the list of organisations that the authorities should consult on the enhanced partnership proposals. Another thought there was a danger of simple partnership concepts being 'swamped' by detailed guidance when only guiding principles would be necessary. Another suggested that an upfront section on guiding principles would be helpful to 'set the tone' for the discussions.

12.4 The remainder of the responses comprised a number of detailed comments on the drafting of particular sections of the draft guidance.

Government response

12.5 The Department agrees that the guidance is key to parties understanding and making full use of the enhanced partnership powers available. The Department believes, however, that a balance needs to be struck between providing guidance that is helpful and detailed to assist when proposals are being developed, and swamping the reader by being overly prescriptive.

12.6 The stakeholders that the authority must consult when developing enhanced partnership proposals are set out in the Act itself. However, it is for individual authorities to decide which additional stakeholders to consult, bearing in mind local circumstances. The draft guidance already makes it clear that authorities should be mindful of the possible benefits of consulting more widely than is required in the Act. We will add further content to the guidance to cover this point including a reference to the benefits of consulting older people and disabled people.

12.7 The Department agrees that that the authorities and bus operators should enter into enhanced partnership negotiations in the right spirit and will give consideration to including a 'setting the scene' section in guidance on to give practical advice on how all parties should approach the development of proposals. We will also expand the flowchart and better link it to the guidance narrative.

12.8 The guidance is however a 'living document' that will be refined and revised in response to the needs of authorities and operators in the light of how the provisions in the Act are used in the real world.

12.9 The Department does not propose to make any substantial changes to the wording of the guidance, but will consider how it can be refined and made as clear as possible to the reader.

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

12.10 38 respondents had comments on the competition guidance.

12.11 Several responses particularly welcomed the reassurance that the guidance provided that operators who comply with an Enhanced Partnership Scheme, once made, in good faith would not be at risk of financial penalties from the Competition and Markets Authority (CMA) simply for doing so.

12.12 There were a number of detailed comments made in relation to this section. These included suggestions that the guidance could be more specific about how competition law applies and what would be considered to be unfair to operators. One respondent noted that the threat of action by the competition authorities has prevented many operators from voluntarily co-operating in relation to integrated ticketing and timetable arrangements, and those arrangements that did exist were complex and had higher fares than those offered by single operators. A number of respondents thought that it was important that CMA action should not delay or suspend implementation of proposals.

Government response

12.13 The Department agrees that there a number of improvements which could be made to the detail of this sections drafting.

12.14 It is, however, difficult to provide specific examples of what may or may not be considered unfair. This is because the legislation[c] envisages the local transport authority making a specific decision as to whether any adverse impacts on competition are proportionate to the benefits secured by the scheme – which is inherently a local question, grounded in the specific circumstances of the area and scheme concerned. We will work with local transport authorities who are considering implementing Enhanced Partnerships to support them in making this judgement and share experience and learning from other schemes. As with other elements of guidance, this is a 'living document' that we will continue to revise and refine as the provisions in the Act are used on the ground.

[c] Schedule 10 to the Transport Act 2000, as applied to Enhanced Partnership Schemes by the Bus Services Act 2017

12.15 The Department proposes to amend the initial guidance to address several of the detailed points raised by respondents and will revise it further, in due course, to include examples from early schemes.

Annex A – List of those who responded to the consultation

Abellio Group ALBUM Arriva Association of Transport Co-ordinating Officers (ATCO) Bath and North East Somerset Council Blackpool Council Bournemouth Borough Council Bus Users UK Bus Users UK South West England Brian Berry Campaign for Better Transport (CBT) Campaign for National Parks Chalkwell Garage & Coach Hire Limited Chartered Institute of Logistics & Transport Cheshire East Council City of York Council Community Transport Association (CTA) Confederation of Passenger Transport (CPT) Cornwall Council Dales and Bowland Community Interest Company Derby City Council Derbyshire County Council Derby and Derbyshire Local Access Forum Devon County Council Dr John Disney – Nottingham Business School East Riding of Yorkshire Council David Ellis John Ellis Jones FirstGroup plc UK Bus Division Go-Ahead Group PLC Guide Dogs for the Blind Association HCT Group Herefordshire Council Hertfordshire County Council Kent County Council Lancashire County Council	Leicestershire County Council Merseytravel National Express Bus Organisation (remained nameless) Timmy Nailor Nexus Nottingham City Council Nottingham City Transport Peak District National Park I L Pearson Public Transport Consortium of the LGA RATP Dev UK Rossendale Transport Limited Rotala PLC Roger Sexton Sheffield City Region Signal Training & Consultancy Services South Downs Local Access Forum South Downs National Park Authority Southend-on-Sea Borough Council Stagecoach Stoke-on-Trent Council Tower Transit Group Trades Union Congress (TUC) Transdev Blazefield Transport Focus Transport for Greater Manchester (TfGM) Transport for West Midlands (TfWM) TravelWatch NorthWest Andrew Tyldsley Unison UNITE Urban Transport Group (UTG) Melanie Watson West Hallam Parish Council West of England Combined Authority West Yorkshire Combined Authority Wiltshire Council Worcestershire County Council Transport Services Unit